DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

28 August 2001

Tuesday, 28 August 2001

Schedules of amendments:

Tuesday, 28 August 2001

The Assembly met at 10.30 am.

(Quorum formed.)

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

Petitions

Education

The following petitions were lodged for presentation:

*By **Mr Hird**, from nine residents*:

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 introduction of a $27.4m school bus service is of no educational benefit to ACT students.
- The funding of this expensive bus scheme will remain an ongoing economic burden to the people of the ACT.
- The $27.4m cost of the scheme would be far better utilised to improve the quality of educational delivery within the ACT.

Your petitioners therefore request the Assembly to support education in the ACT by redirecting the $27.4m funding, on a needs base into the ACT education sector, with the priority being the reduction of class sizes.

Gungahlin Drive

*By **Mr Corbell**, from 384 residents*:

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:

The opposition of Canberra Residents to the Recommendations of the Standing Committee on Planning and Urban Services in relation to the Gungahlin Drive Extension and the related Variation 138 for Gungahlin Drive Extension.

Your petitioners therefore request the Assembly to:

> Reject the recommendations of the Standing Committee on Planning and Urban Services and reject Variation 138 for Gungahlin Drive Extension when it is voted on by the Assembly.

The Clerk having announced that the terms of the petitions would be recorded in Hansard and a copy referred to the appropriate minister, the petitions were received.

Planning and Urban Services—Standing Committee
Report No 81

MR HIRD (10.34): Mr Speaker, I present the following report:

> Planning and Urban Services—Standing Committee—Report No 81—A Land Administration Information System for the ACT, together with a copy of the extracts of the minutes of proceedings.

I move:

> That the report be noted.

Mr Speaker, I am pleased to table this unanimous report by my committee. The report deals with a very important subject, namely, the nature of a comprehensive, useable, publicly accessible and central land administration information system across the whole of government.

An up-to-date land information system will benefit every person within the territory. It will help the politicians to know the exact details of all land holdings within the ACT. It will help government officials maintain up-to-the-minute records of changes to land in the territory. And, most important of all, it will help the public find the information that they want about land, at a time that suits them and in a format that they can determine.

Mr Speaker, the committee commenced this inquiry because we were concerned that the ACT was lagging behind what other states and territories were doing. In Hobart in 1998 we saw the operations of the Tasmanian land information system, known as the LIST system, and we were very impressed. LIST provides subscribers with Internet access to land title information, property and valuation information, sales information, a registry of deeds, and maps of individual properties. Can the ACT public obtain this range of information electronically? Sadly, Mr Speaker, the answer is no, at least not yet.

Our report describes the steps being taken in the ACT to update our land information system. But we are lagging well behind Tasmania, the Northern Territory, and other states, particularly Queensland and Western Australia. This was confirmed by the evidence we were given at our hearings by the ACT Law Society.

We need to concentrate our resources upon unbundling the complexity of the existing arrangements for handling land information within the territory. In doing so, we should have regard to four key principles. The first is that the public deserve to obtain the maximum amount of information possible. Secondly, we may need to introduce our own privacy legislation in order to facilitate the smooth transfer of land information among government agencies. Thirdly, we should insist upon all land information being available electronically, and without having to visit multiple sites. Fourthly, the public should be

charged only an amount that reflects the cost of collecting and maintaining the data. It should not be seen as a revenue raising proposition.

Mr Speaker, our report sets out detailed information about where PALM and the ACT Registrar-General are up to with respect to collating land information. I must say that the information provided by the Registrar-General was particularly helpful to my committee. Also of great use were the meetings we held with officers of the Northern Territory and Queensland governments. In particular, we were enormously impressed with the knowledge of Dr Eden of the Department of Natural Resources and Mines, who is the key officer handling the Queensland electronic land data system. We suggest in our recommendations that the government approach the Queensland government to see if this officer could be made available for a limited time to assist the ACT's efforts in improving our land data information systems.

Mr Speaker, this has been an unusually interesting inquiry. It demonstrates the worth of the committee system, and especially the usefulness of committees being able to initiate their own inquiries into matters they think are very important.

As members know, next week I will be attending, along with Ms Tucker, the Commonwealth Parliamentary Association Conference of Small Nations. I intend to inform the conference delegates about the usefulness of updating land administration information systems to make them relevant to today's public. For this to happen the systems must be in electronic form; they must be user friendly; they must be accurate; they must be available at all times that the public wants to access the information; and they must be flexible so that a person can pick and choose the particular information that suits them.

This is what we are after within the territory. It is what our community deserves and I hope our report goes a long way towards implementing such a land administration information system sooner rather than later. I commend the report to the house.

Question resolved in the affirmative.

Report No 82

MR HIRD (10.41): Mr Speaker, I present the following report:

> Planning and Urban Services—Standing Committee—Report No 82—Draft Management Plan for the Lower Molonglo River Corridor, together with a copy of the extracts of the minutes of proceedings.

I move:

> That the report be noted.

Mr Speaker, this unanimous report by my committee ends a long saga. In December 1999 the committee commenced the inquiry into the Draft Management Plan for the Lower Molonglo River Corridor. We held a public hearing in July 2000 at which Environment ACT undertook to revise the plan in light of the careful and detailed submission by the Conservation Council and the National Parks Association. We held

another public hearing in February this year to facilitate discussions between Environment ACT and a rural leaseholder whose property was affected by the management plan. During the term of the inquiry we made a site inspection.

We did not receive the revised management plan from Environment ACT until late June of this year. We held two public hearings on the amended plan in August, leading to the report today. Members will see that we recommend that the revised management plan be endorsed. We draw attention to three key points of concern that arose out of our inquiries.

I would like to thank my colleagues Mr Rugendyke and Mr Corbell; our secretary, Mr Power; the Minister for Urban Services, Mr Brendan Smyth; and all the staff that assisted us in our site inspection and the evidence that was given. In particular, I thank the leaseholders who have holdings along the corridor for their assistance in our deliberations. I commend the report to the house.

Question resolved in the affirmative.

Justice and Community Safety—Standing Committee
Report No 17

MR OSBORNE (10.43): I present the following report:

> Justice and Community Safety—Standing Committee—Report No 17—The Freedom of Information (Amendment) Bill 1998.

I move:

> That the report be noted.

Mr Speaker, to save time, I seek leave to incorporate my speech in *Hansard.*

Leave granted.

The speech read as follows:

> Mr Speaker, to me reform of the freedom of information law is the central plank in the reform of self-government.
>
> It has often been said in this place that the ACT has the best freedom of information law in the country.
>
> With respect to those who actually believe that, I have to say that is not saying very much
>
> In reality, the bar in Australia is set far too low.
>
> The intent of the Bill I initiated for drafting in 1995 and eventually tabled in 1997 and 1998 is to see the government of the Territory standing naked in Garema Place with perhaps just a fig leaf or two for modesty's sake.

I much prefer that model to one of a government hiding in a cave somewhere in the Brindabellas where you need a map, compass and spotlight to find them.

And as soon as you find them, they quickly move caves.

For me personally, this reform has become something of a marathon, and it appears there is still much running to do.

When I tabled this Bill on the first Private Member's day of this Assembly, I stated that it had been a long time in the workshop, but was not yet complete.

I anticipated a comprehensive committee process that cobbled together community input and expert advice to find the best way forward to reform.

While it is the recommendation of the committee to not pass the Bill for various reasons, I still consider the Bill has achieved an important goal.

Freedom of information is not about keeping secrets.

Rather, it should assist in the promotion of, and participation in, informed decision-making by the community.

The sensitivity of a particular issue to the government of the day ought not to be the reason for denying access to material that is critical to informed community participation. Information collected by government is a community resource.

Those who collect or produce it, do not do so for their own benefit.

Rather, they are merely trustees of that information for the people of Canberra.

Unfortunately, that is not always the attitude of the government **of** the day and its bureaucracy.

When I first began to consider this reform in 1995, I was struck with the complexity of our FOI Act.

Traditionally, around the world, FOI law starts out being very simple, and then is gradually made more complicated as successive governments bring forward amendments to suit themselves.

As an Act that is meant to provide easy access to a wide range of government information, our current Act it is a dismal failure.

We inherited a cut-and-paste version of the Commonwealth FOI Act, complete with a large number of creative exemptions and that favourite catch-all phrase when all else fails "not in the public interest".

Unfortunately, in the hands of a self-protecting . bureaucracy, "not in the public interest" is inevitably reinterpreted "not in the government's interest".

Since tabling this,latest version of the Bill, there have been some baby steps towards reform.

Mr Moore picked out of it a process to release Executive documents and the Government recently announced the removal of various fees.

Both measures are good, but finish up a long way short of being called reform.

True reform is yet to be achieved.

In rejecting the *Freedom of Information Amendment Bill* 1998, the committee wishes to strongly make the point that it is far from happy with our current system.

And it is far from satisfactory on a wide number of fronts.

In response, the committee has made nine recommendations.

Some refer to improving the cultural commitment within the public service to the concept of freedom of information.

Others refer to a process that will develop a completely new Act based on a model that contains the bare bones of access to information as stated in general principles, rather than one (as is the current model) where every eventuality is anticipated.

An important new concept for Members to also consider is establishing an Information Commissioner to administrate the Act.

Both .Queensland and Western Australia have a commissioner who has wide powers to intervene and give directions to both requestors and government agencies.

When our present chief minister, Mr Humphries, was doing one of his stints in opposition some years back, he stated that the true test of a good government was whether or not its record was able to be scrutinised.

In other words, there needed to be a high level of access to government-held information.

I have taken up that statement as a challenge and trust that one day there will emerge a freedom of information Act in the ACT that really does require government to operate in the sunshine.

Question resolved in the affirmative.

Scrutiny Report No 14 of 2001

MR HARGREAVES: Mr Speaker, I ask for leave to present Scrutiny Report No 14 of 2001 of the Standing Committee on Justice and Community Safety, performing the duties of a scrutiny of bills and subordinate legislation committee. I also ask for leave to make a statement.

Leave granted.

MR HARGREAVES: I present the following report:

> Justice and Community Safety—Standing Committee (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report No 14 of 2001—Report on the International Conference on Regulation Reform Management and Scrutiny of Legislation, Sydney, 9-13 July 2001, dated 28 August 2001.

Scrutiny Report No 14 of 2001 is a report on the committee's attendance at the International Conference on Regulation Reform Management and Scrutiny of Legislation held in Sydney between 9 and 13 July 2001. Mr Speaker, this was a very informative and enlightening conference. I am sure that Mr Moore, with his history of interest in the administration of interstate agreements and his RIS involvements, would have particularly enjoyed it.

An interesting point was made by one of the staff of the House of Lords in addressing the issue. He said, "Why should we change things when we can just pick up the Australian model?" We were quite flattered that the House of Lords thought our model was a pretty good one.

Mr Speaker, rather than blowing our own trumpet too much, we took the opportunity to listen and learn. The committee secretary, Mr Duncan, has provided members with a copy of the report, and I urge members to ignore the pictures—I am told that our Deputy Clerk is in quite a lot of them—and wander through the pages.

Mr Speaker, basically I took the opportunity to have a slash at those people who say, "Canberra does this, Canberra does that and Canberra does something else." Really, these are nothing more than the utterings of some of our highly paid tourists who come into this town from other jurisdictions and pitch their tent on the hill. But I did make a point about the Interstate Agreements Act and the RIS. The report is interesting reading and I commend it to the Assembly.

Scrutiny Report No 13 of 2001

MR OSBORNE: I present the following report:

> Justice and Community Safety—Standing Committee (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report No 13 of 2001, dated 28 August 2001.

Mr Speaker, I ask for leave to make a statement.

Leave granted.

MR OSBORNE: Thank you, Mr Speaker. Scrutiny Report No 13 of 2001 contains the committee's comments on four bills—and quite interesting comments, too—and two government responses. I commend the report to the Assembly.

Workers Compensation Amendment Bill 2001
Detail stage

Clause 1.

Debate resumed from 9 August 2001.

Clause 1 agreed to.

Clause 2.

MR BERRY (10.48): Mr Speaker, I move amendment No 1 standing in my name [*see schedule 3, yellow sheet, at page 3540].*

I will commence my comments by looking at the way that people in this place have approached the discussions and negotiations in respect of workers compensation in the ACT. Firstly, the government came forward with a bill to amend the Workers Compensation Act, and some promised regulations—

MR SPEAKER: Excuse me, Mr Berry, we have had the in-principle debate. We are now addressing an amendment that you have moved to clause 2 of the bill.

MR BERRY: That is right. Mr Speaker, all of this is important background to this issue.

MR SPEAKER: Well, I think I will be the judge of that. But I can assure you that, if you make an in-principle speech, I shall rule you out of order. We have had the debate on the in-principle stage.

MR BERRY: Mr Speaker, I am not making an in-principle speech.

MR SPEAKER: Thank you.

MR BERRY: Perhaps you will give me credit for proceeding in this way. Many issues were raised in the course of those discussions, not the least this one.

Mr Speaker, members of the Assembly need to understand that, as a result of consultation with the affected parties in the community, 70-odd pages of amendments were circulated from my office. People out in the community were deeply concerned that the promised regulations might never eventuate and, as a result, we have an amendment to include the majority of them in the legislation. After all, we do have the Hare-Clark system and it is a little hard to guess who might have the tiller in their hand after the next election.

Mr Speaker, I am now up to version 9 of my amendments, which I have prepared and distributed to the government and Assembly members. Last evening a meeting was scheduled with the government to deal with the amendments in general. Government officers attended my office to talk sensibly about the position. During the course of that meeting somebody dropped another 100 and something pages of amendments into my office. I do not mind dealing with people in good faith, but I think this was just a wee bit mean and tricky.

I know that the government has embraced a whole heap of the ideas which were incorporated in my amendments. This brings back the memory of the debate which occurred in relation to the independence of the Occupational Health and Safety Commissioner. This is just another example of how the government has tried but failed to pinch our agenda.

Mr Speaker, the government has kept all of its cards up its sleeve on this very complex piece of legislation, and there needs to be a bit of discussion to facilitate its passage through this place. Well, if that is the game they want to play, that is fair enough; we will cope.

Mr Speaker, last evening I said that I would work through the government's amendments. I told the government that I would have some difficulty getting matters sorted by this morning, bearing in mind that the amendments arrived at my office at around about 6 o'clock. The detail of the amendments have to be resolved with the secretariat support staff and, of course, the people in Parliamentary Counsel's office. Mr Speaker, as a result of those discussions, I have further amendments to circulate, and that will happen in due course.

At this point, Mr Speaker, there are some 70 to 73 pages of amendments. I do not know whether the government has circulated their amendments yet—I rather hope that they will so that everybody gets the opportunity to see them. But my amendments have been circulated at least eight times, and the ninth version is coming.

Mr Speaker, clause 2 goes to the commencement issue. The government has slipped up badly with this fundamental part of this legislation. It has come up with a whole new range of provisions that apply to injured workers, insurance companies, and so on. But nowhere has the government come before this place and told us what this will cost. In other words, the government does not have a clue what this will cost. No work, as far as I can make out, has been done in relation to the costs of the scheme which the government has put forward.

One of the concerns of constituents is that certain elements may turn out to be unaffordable. But we will never know what the cost will be unless we have an independent actuarial assessment of the provisions of this legislation. A proper report needs to be made to this Assembly to make sure that certain matters are considered by the Assembly.

Mr Speaker, it is important to deal with new section 80A in the context of our consideration of clause 2. My amendment to clause 2 is as follows:

> Omit the clause, substitute the following clause:
> **2 Commencement**
> (1) This Act (other than new section 8OA, as inserted by section 7A, and schedule 2) commences on 1 July 2002.
> *Note* The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).
> (2) The following provisions commence on the day this Act is notified in the Gazette:

(a) new section 8OA (Back, neck and pelvis impairments—Legislative Assembly endorsement for inclusion in sch 1), as inserted by section 7A;
(b) schedule 2 (Minor amendments).

Mr Speaker, 80A talks about permanent impairment of the back, neck and pelvis. These new provisions have been generously included in the act by the government. But nowhere has the government told us what it will cost to put these new provisions in the legislation. So, Mr Speaker, what I have set out to do is put in place a mandatory independent actuarial assessment of the situation and a report back process to the Assembly. It would be irresponsible not to do that. It is extremely important, therefore, that my amendment to clause 2 be supported so that the independent actuarial assessment can occur.

Last evening the government officers said they were not in a position to consider this issue. I have no idea what the government's position is in relation to it. Mr Speaker, I think new section 80A speaks for itself. However, the adoption of my amendment to clause 2 is extremely important in the context of the implementation of an independent actuarial report.

Members should never forget what happened in New South Wales where their workers compensation scheme has run away from them. It is not something that can be treated lightly. It has to be considered very closely because of the gravity of the effects that benefits contained therein will have on employers and on workers. The benefits also have an effect on insurance companies. But insurance companies, after all, effectively run a book on workers compensation risk and, whilst they are an important consideration because they provide the coverage in the private sector backed scheme in the ACT, they are less of a consideration than workers and employers.

On top of that, the scheme has got to be affordable. Unless we have an appropriate actuarial assessment we will never know the cost until it is too late. That is what new section 80A provides for. It deals with back, neck and pelvis impairments; it requires a minister to commission a report from an actuary who has expertise in workers compensation insurance; it requires a copy of the report to be presented to the Legislative Assembly on or before the first sitting day after 1 February 2002; and, of course, relevant disallowance procedures are provided for within the legislation. Mr Speaker, I commend the new commencement provisions to the house.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.59): Mr Speaker, the government will oppose not only this amendment but all of Mr Berry's amendments. Mr Berry began by speaking about good faith. Despite urgent requests for his amendments during the last sitting period when we may well have been able to deal with them, they were not forthcoming until after the first sitting week of this session.

Mr Berry talked about amendments being dropped on people yesterday. How often has the government come into this place and had huge rafts of amendments dropped on it? So it is somewhat precious to be saying that he has not seen these amendments or has not been taken through these amendments when, in fact, officers from the department were available yesterday to do exactly that. Yet, when we were giving him amendments

yesterday, he dropped amendments on us. So I think this holier than though attitude that we are doing something wrong is a little precious.

We have made these changes—they are very similar to some of the amendments that Mr Berry has proposed—after getting out and talking and listening to people. Mr Osborne in his scrutiny of bills committee report suggested that the regulations be moved into the act itself. We looked at that and discussed it with Mr Kaine. His advice was that he thought less of the regulations and more of the act. This was taken on board while I was away last week in China and these amendments were drafted. I apologise that they were not circulated until yesterday, but they were certainly circulated earlier than a lot of the amendments that the government sees presented in this place.

Our amendments will carry out the wish of several members to make the act stronger. What we have proposed will work because it is what is wanted by the folk we have consulted with. We get the sort of talk we have just heard from Mr Berry all the time. The government has been driving this agenda for some time and a number of reports led us to the conclusions that we have reached.

It is proposed that a limit be placed on the ability of muscular skeletal-type injuries to negatively impact on the scheme. Mr Berry wants a study done. However, the impact on the scheme is not known. You can only do that retrospectively. We can look at the effect once the process has started and we can then make an objective assessment of what these impacts will be. That is the appropriate way to do it. So it is not a matter of saying, "Don't do it now." We want to carry out a review.

It would appear that in the opinion of the Labor Party the government is in trouble for having a generous workers compensation scheme. It is extraordinary, Mr Speaker, that we are getting into trouble for being too generous.

We take this matter seriously and we do intend to carry out a review. If Mr Berry's amendments get up, I will move amendments to his amendments to make sure that we can do this in the appropriate manner and at the appropriate time.

MR KAINE (11.02): Mr Speaker, I will be quite brief. I think the debate between Mr Berry and the minister on clause 2 demonstrates the dilemma that we are in with this bill. I think we all agree that there needs to be a workers compensation bill in place. There seems to be general agreement that, by and large, it is a good bill. But a massive number of amendments have been put forward by Mr Berry on the one hand and an equally massive number of amendments have been put forward by the government on the other. My dilemma is that I cannot reconcile Mr Berry's amendment to clause 2—and much of that amendment depends on what follows in his other amendments—with what the government is proposing in its amendments.

I am in no position to judge whether the government's amendments are better than Mr Berry's or vice versa. So this raises the real question in my mind as to whether we ought to be debating this bill in detail at all until we have had time to make a proper comparison of the two lots of amendments that have been put forward. In all fairness I have to say that I have had Mr Berry's amendments since 15 August. I received the government's amendments this morning, although apparently they arrived late last night. My staff was told: "Well, Mr Kaine didn't get them last night because he wasn't here."

I do not know what time they were delivered but I was here until 5.30 and then I went home, which was reasonable, given the fairly heavy week that was ahead of us at that point.

I am in the position of now having to decide clause by clause whether I support the government's amendments or whether I support Mr Berry's amendments. I have not had a chance to compare them; to figure which is in the public interest. Mr Speaker, a lot of people have exhorted me to meet the requirement to get this bill into law, and in order to do that I will have to take an awful lot on faith. I will have to vote on clauses when, I really have to say, I am not sure what the impact of some of these amendments is going to be.

So I think this is a most unsatisfactory situation. I do not suppose that anybody else is in a better position than I am. I notice Ms Tucker has had to resort to putting forward two separate amendments, one against Mr Berry's amendment and another against the minister's amendment. Ms Tucker has to have two shots—one in case Mr Berry's amendment gets up and another in case the minister's amendment gets up.

I am not too sure what sort of legislation we are going to have at the end of the day. I think it is going to be a bit of a fruit salad. At this stage I do not know whether I should be supporting Mr Berry's amendment to clause 2. Quite frankly, I have to be as blunt as that.

MS TUCKER (11.05): Like Mr Kaine, I am not clear what the government's argument is. I heard what Mr Smyth said and I am trying, as Mr Kaine is, to understand the amendments that the government gave us late last night.

I understand that the government's position is that if we do not proceed now this matter will not be dealt with. Is it correct that we cannot adjourn consideration of this matter even for a few hours until a later time this day?

Mr Smyth: I would prefer to do it now.

MS TUCKER: Mr Smyth says he would prefer to do it now. I would like Mr Smyth to explain—I am sure the Assembly would give him leave to do so—why he thinks that is reasonable process and why it is reasonable to inflict this program on members of this Assembly.

As Mr Kaine just explained, we received these amendments last night and we have not had time to look at them. It is just an appalling process. This is very important legislation and we all want to get it up. I am working with the government on this. All we are asking for is a little bit of time to look at the extra work that the government has put in at the last minute. As responsible legislators, we have been put in an impossible situation.

If I cannot get support from the government to have consideration of the bill put off to a later time this day—and I hope Mr Smyth is considering doing that—then we are going to have to ask for very full explanations on every amendment; and the Assembly is going to have to give people leave to speak more than once if explanations are necessary.

I have to say that this process should not be accepted by a majority of members of the Assembly, and the government should not be trying to bully us into proceeding right now.

MR BERRY (11.08): Mr Speaker, I accept all of the reservations people have about proceeding. I said last night that I am not going to be in a position to have all of the amendments sorted by this morning. We are struggling but we are getting there.

I understand that members might find that their own processes are in a bit of disarray because of the paper that has been coming backwards and forwards. However, we are dealing with a comprehensive law and, as such, the process is an arduous one. Now that I have got my teeth into it, I am relaxed about proceeding—the blood pressure is up and you might as well keep going—but I accept that other people might not be of the same view.

Notwithstanding that, Mr Smyth tried to make the point that the Labor Party is trying to stop things from happening. No, the Labor Party is trying to make sure that we understand what is happening. That is the difference between us and the government.

Mr Smyth said, "Well, you can't tell what the effect on, say, soft tissue injuries is until you have given it a run." My amendment very clearly says that "the minister must commission a report from an actuary who has expertise in workers compensation insurance about the actuarial effect of the amendments made by that Act to this Act and, in particular, the actuarial effect of the inclusion of the disallowable items in schedule 1"—that is, the soft tissue matters.

Mr Speaker, is Mr Smyth saying to us that nobody out there knows what happens with soft tissue injuries, how long they last, and how that might impact on the provisions of this legislation? If he is saying that, then we are starting off in a vacuum. If he has not talked to people about this, we are starting off in a vacuum.

What I am saying to Mr Smyth and others in this Assembly is that we need an expert, somebody as described in the legislation, to look at the impact so that this Assembly can make an objective decision about where the legislation should be heading and how we should proceed with the rest of it. I, for one, will never stand in the way of a benefit to workers. But you have to look at the affordability of these issues so that you know what in fact is going to happen.

An election is to be held between now and when these decisions will have to be made. The actuarial report will come into this place and be considered by some of us—all of us will not be here—and some new members. The members of the new Assembly will need to understand exactly where they are taking workers compensation in the territory. That is why you need this actuarial report. It is important that we adopt my amendment to the commencement provision because it will lead us to an actuarial assessment of what the system costs.

People will say, "What information can we can get our hands on?" Yesterday some employer representatives I was talking to praised me for the information I gave them when I was a minister about the cost of workers comp and the premium costs on a two-

monthly or three-monthly basis. It seemed to be manageable then, but all of a sudden it is not manageable.

Mr Speaker, I was the chair of a committee that, I think before the end of last year, looked at this issue and required the government to do certain things about the collection of data. There has been some activity on that front. As I understand it, this work is not complete but it is proceeding.

There are new and additional benefits in the legislation for workers, but we have to know and understand the full impact of the costs. I have had some interesting letters in my office. The natural reaction from employers and insurance companies is to cut everybody's costs and benefits but their own. I received a long letter from the Business Council of Australia complaining that these amendments were going to slow down the process. I urge Mr Budd from that organisation to perhaps consider that the government last night put a hundred-odd pages on the agenda. Would he care, in a bipartisan way, to complain to the government that they might be slowing the process down by putting forward 130 amendments? I bet he won't. I bet he got a phone call from the government saying, "You'd better ring up and complain."

Mr Speaker, we always see a bit of politics in this area because lots of dollars are involved and a lot of people are interested. I am interested in workers benefits and I am interested in making sure that we have a workers compensation scheme which works well into the future. That is why we need a proper actuarial assessment of what the cost is to the territory and what the benefits are to the various players in the game. So I urge members to support the amendment.

MS TUCKER (11.14): I understand from what I have just heard that an actuarial study of particular types of maims is being sought. The Greens are not going to support that because we think it has to be included now.

Mr Berry: What is that—no actuarial assessment?

MS TUCKER: An actuarial study should occur. If I have understood the argument correctly, we are not prepared to delay at this point a study of particular types of maims. We support the proposal that you conduct an actuarial study but we will not support a delay at this point in time. If I have misunderstood the debate, someone can rise and tell me.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (11.15): Mr Speaker, we are opposed to the amendment. This is a new scheme. An actuarial study of a scheme that does not have data will come to the conclusion that you need to have some data before you can conduct a study. The government is saying that we believe that, given the new database that WorkCover has and, with a years information—

Mr Berry: You've got it now.

MR SMYTH: Not of the new scheme, Mr Berry. With the new database and the information that we will gather over the coming period, it would be reasonable to conduct the actuarial study based on the data provided by the scheme, and that is why we would be urging members not to support this amendment.

We would like to see the adoption of this scheme to protect workers who are injured. Like all new schemes that are contained in all new bills when they become law, we have to come back and look at the effects. What we have to do is make sure that we have got it right.

It is not uncommon for this place to come back and finetune a bill. Indeed, I suspect that we have finetuned several of Mr Berry's bills in the last couple of years because he acted in haste and we have had to clean up his mess. The government was left to clean up the mess that resulted from a litany of bills brought forward by Labor. I think the abolition of the Children's Court was one of them. Others included mistakes that were made in respect of the Long Service Leave Board and the cleaning industry.

I think the government approach is quite reasonable. We wish to include these items in the table when we see the effect of the scheme. We will do the assessment when the scheme is properly running. That is the only time you can do an assessment. We are quite happy to do the study but we need some data before we can do so. The government will oppose this amendment.

Question put:

> That **Mr Berry's** amendment be agreed to.

The Assembly voted—

Ayes, 7		Noes, 8	
Mr Berry	Mr Stanhope	Mr Cornwell	Mr Rugendyke
Mr Corbell	Ms Tucker	Mr Hird	Mr Smyth
Mr Hargreaves		Mr Humphries	Mr Stefaniak
Mr Osborne		Mr Kaine	
Mr Quinlan		Mr Moore	

Question so resolved in the negative.

Amendment negatived.

Clause 2 agreed to.

Clause 3.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (11.20): Mr Speaker, I move government amendment No 1 to clause 3 *[see schedule 2, at page 3475]*.

This amendment seeks to omit subclause (1) of clause 3 and substitute a subclause which specifies the Workers Compensation Regulations in addition to the Workers Compensation Act 1951. It is simply a formal requirement.

Amendment agreed to.

Clause 3, as amended, agreed to.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (11.21): Mr Speaker, I would like to seek leave to move all of the amendments circulated in my name together. The basic purpose of these amendments is to move the regulations into the body of the act. I have consulted with the PCO and I believe the amendments are drafted in such a way that this course could be followed. We could then adjourn the debate to let others come back and look at what they might seek to amend. There is broad agreement with what we are doing. These are the regulations that many members have asked to be shifted across into the act.

Mr Berry: Could you just go through that again. You want to adjourn it?

MR SMYTH: I am seeking leave to move all of my amendments in one hit. The amendments seek to move all of the regulations into the act itself, which is what many members want to see happen. If members are agreeable to that course, I would seek to adjourn the debate to let Mr Berry and Ms Tucker consider their amendments. I believe the majority of members would like to see the regulations put into the act.

One of the ways to overcome some of the confusion would be to deal with this part of the legislation. We could come back later today and Mr Berry and Ms Tucker could then move their amendments.

MR SPEAKER: The methodology would be to move that the bill as a whole be agreed to. But you will need leave to do that, Mr Smyth.

MR BERRY (11.23): Mr Speaker, I am not going to oppose anything that facilitates a tidy debate, but I want everybody to understand exactly where they are heading. I am not sure that the contribution the minister has just made assists us that much. I am happy for him to adjourn the debate to a later hour this day, which would give us the opportunity to sit down and try to work out a way forward. I am willing to accommodate any sensible move forward. But I would prefer not to make any moves until I understand exactly the implications of what the minister is doing, and I am sad to say that I am not prepared to take his word for it.

As I said, I am happy for the debate to be adjourned to a later hour this day, during which time we can have a bit of a confab on the approach. On the face of it, I do not have any particular difficulty with that approach because, one way or another, we are going to have to have a goal to work towards. But before we adopt that approach, I would just like to sit down and work out what the effects will be.

Let us adjourn the debate to a later hour today so that we can have a discussion and sort all of this out. Why don’t you just move that the debate be adjourned?

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (11.24): Mr Speaker, could I just clarify that Mr Berry has accepted the offer that perhaps at a later hour today I move all of my amendments in one lot and then bring his individual—

Mr Berry: Why don't we move that the debate be adjourned to a later hour this day?

MR SMYTH: The purpose here is to find a way forward. Mr Speaker, I believe I have majority support for the bulk of my amendments. To make it easier, I am suggesting that all of my amendments be moved together. I am happy that this be done at a later hour this day. I know that Ms Tucker has a few minor amendments that she wishes to move, and on a first glance I can live with those. I understand that Mr Berry would like to make a number of other points.

I think the sensible thing to do would be to deal with the major amendments. I will make officers available for Mr Berry, and he can then work out which amendments he wishes to move. I understand that he would like to move about eight or 10 amendments individually. I think that would be a better way forward. Let us determine where the bill is going. Then the individual tweaking that some of the members would like to carry out could occur at a later hour this day. I would be happy to consider those amendments then.

MR SPEAKER: Thank you. As the Clerk has pointed out to me, this chat is all very well, but there is nothing before the house.

Mr Smyth: Mr Speaker, I've already moved that my amendments—

Mr Hargreaves: No you haven't.

MR SPEAKER: You would need leave to do that. You would have to consider the bill as a whole first.

Mr Berry: You have got to have leave and you haven't got it.

Mr Smyth: I have already sought that leave, Mr Speaker.

MR SPEAKER: Is it the wish of the house to consider the bill as a whole?

Mr Hargreaves: No.

Mr Smyth: Yes.

MR SPEAKER: One voice can sink it, and it did.

Debate (on motion by **Mr Hargreaves**) adjourned to a later hour.

Payroll Tax Amendment Bill 2001

Mr Humphries, by leave, presented the bill and its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (11.27) I move:

> That this bill be agreed to in principle:

This bill amends the Payroll Tax Act 1987 to prevent the potential loss in payroll tax revenue due to a possible loophole in the exemption provisions for apprentices and trainees. This potential problem is the result of changes over recent years by the Commonwealth government to former apprenticeship and traineeship schemes. This issue has been critical in recent months, with an increasing number of employers seeking to claim payroll tax exemptions well beyond the policy intention.

The act currently provides exemption from tax for wages paid or payable in certain specific cases. These include the first 12 months of wages paid in respect of a person employed as an apprentice and wages for a trainee employed under the Australian traineeship scheme and a person employed under an approved group apprenticeship scheme. However, in 1998 the Commonwealth government replaced apprenticeships and the Australian traineeship scheme with a new apprenticeship scheme.

The Commonwealth new apprenticeship scheme, or NAS, creates a number of potential issues that are impacting on the liability of some employers to payroll tax. There is less structure to the courses and the new scheme is available to a wider class of employees. Initially all employees were entitled to be registered as trainees, resulting in almost the entire work force in some companies and industries being registered as trainees, and hence employers may be able to claim exemption for all such employees' wages. There are also grounds for concern that courses now operate for periods longer than 12 months.

As a result of the broad nature of the changes to traineeships and apprenticeships under the new Commonwealth scheme, the ACT payroll tax exemption provisions may be rendered ineffective on policy grounds because, according to legal advice, the exemption provisions may operate to make either all employees under the new scheme exempt or no employees exempt. Neither of these situations satisfies the policy intention of the exemption provisions, which were intended to give a limited class of employees an exemption for a period not exceeding 12 months whilst undertaking competency-based training.

The new apprenticeship scheme is available to both new and existing employees and is potentially unlimited in duration. Both of these features run contrary to the original policy intent underlying these payroll tax exemptions.

The Payroll Tax Amendment Bill 2001 changes the conditions for the classes of wages upon which no payroll tax would be payable in the case of wages payable for first-time employees in the industry or occupation who are receiving approved training.

The amendment is necessary to provide certainty to employers of first-time employees such as apprentices and trainees and to protect the revenue base in cases where the interpretation of legislation may be ambiguous due to change in definitions. As payroll tax is self-assessed, it is important that there be no doubt and that the provisions be easily understood by the taxpayer. In many cases the definitions of the classes of employment and the training schemes are regularly changed, and this can create doubt as to whether employers are excluding the correct classes from their payroll returns.

The amendment removes from the act the definition of "apprentice" and all references to particular training schemes. They are replaced by the concepts of a "new starter" in an occupation or industry and "eligible training" for work in the industry or occupation. Eligible training must be approved by the minister, by disallowable instrument, to accommodate any future changes in the training schemes available to first-time employees.

The effective date for these amendments will be 1 October 2001. This is to allow for an orderly introduction of the new provisions, as payroll tax is calculated on a monthly basis, commencing on the first day of each calendar month.

Mr Speaker, without these amendments, Treasury has estimated that there is a potential for revenue leakage of approximately $5 million per annum, but this figure could be higher due to the potential for tax avoidance. The impact on the revenue base far exceeds the policy intent of the government when making the exemption provisions under the act.

If this bill does not proceed through the Assembly, the ACT revenue base is at risk. I will therefore be requesting this matter be debated during this week's sittings, specifically on Thursday of this week. I seek the indulgence of members to facilitate that. I have indicated to members that I am happy to provide briefings from the Department of Treasury on the effect of this legislation and the harm it is meant to remedy. I commend the bill to the Assembly.

Debate (on motion by **Mr Quinlan**) adjourned to the next sitting.

Postponement of orders of the day

Ordered that the order of the day No 2, Executive business, be postponed to a later hour.

Ordered that orders of the day Nos 3 and 4, Executive business, be postponed to the next sitting.

Defamation Bill 1999

Debate resumed from 23 August 2001, on motion by **Mr Stefaniak**:

> That this bill be agreed to in principle.

Debate (on motion by **Mr Osborne**) adjourned to a later hour.

Land (Planning and Environment) Amendment Bill 2001 (No 2)

Debate resumed from 3 May 2001, on motion by **Mr Smyth:**

> That this bill be agreed to in principle.

MR CORBELL (11.36): Mr Speaker, the Labor Party will not be supporting this bill today. This bill primarily deals with changes to the way in which betterment tax or change of use charge is administered. Whilst a number of provisions in the bill are of relatively minor value, the key change is to permit existing leaseholders to provide their own valuation for the purposes of calculation of change of use charge. That change is, in the Labor Party's mind, unacceptable. The most appropriate role for the territory in determining change of use charge is for it to be determined by the Australian Valuation Office on behalf of the territory.

The argument presented by the government in justifying this change is that it permits for a wider range of factors, perhaps known only to the lessee, to be considered in determining the valuation. The Nicholls report, on which the government relies, highlighted the problem that the Australian Valuation Office was not always able to provide an accurate valuation because it was not aware of all of the factors affecting the lease.

This is not, in the Labor Party's mind, an acceptable argument to justify the lessee providing the valuation. It is Labor's view that if there are problems with seeking the full details of the lease or improvements on a lease they should be addressed through mechanisms that will enable the government to gain that information, rather than simply by relying on the lessee to provide the valuation to be used for the purposes of determining change of use charge. It is, to use a cliche, akin to putting Dracula in charge of the blood bank or akin to individual ratepayers being asked to provide the valuations for their properties that determine their level of rates. It is not an approach which we believe is appropriate. Instead, we should be retaining the provision for the government to be the authority for determining change of use charge valuations rather than the lessee. The Labor Party will be opposing this bill this morning.

MR MOORE (Minister for Health, Housing, and Community Services) (11.39): On every occasion I have stood in this Assembly to speak about change of use charge, I believe I have taken the opposite view to the government. Today I am going to do the same. This is one of the more difficult decisions. At the moment the Australian Valuation Office provides a valuation of a lease. For big leases, that valuation is often challenged by the leaseholder, the person seeking the change of use, and is reviewed by the AAT. On almost every occasion that I am aware of, the change of use charge has been reduced significantly. So there is a sense that the Australian Valuation Office is always challenged.

The government has said that instead of the lessee challenging the government it would be far better to turn the system around the other way. That is consistent with the recommendation of Professor Nicholls. It is also a positive, in that it removes the existing discretion of a minister to grant a remission or impose an increase.

Mr Corbell put the view that this is like putting Dracula in charge of the blood bank. That would be true if the appeal mechanisms were not left in place. We have to make an on-balance decision, as we so often do. Mr Corbell has indicated that the Labor Party will be opposing this bill on balance. I think it is better to oppose it as well. On this issue my view is not as strong as the view I hold on other changes government has sought to make to change of use charge. I recognise what the government is trying to achieve. I can understand why they have gone down this path, but in the end I think it is better not to. So I also will be opposing this piece of legislation.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

Ayes, 8		Noes, 7	
Mr Cornwell	Mr Rugendyke	Mr Berry	Mr Stanhope
Mr Hird	Mr Smyth	Mr Corbell	Ms Tucker
Mr Humphries	Mr Stefaniak	Mr Hargreaves	
Mr Kaine		Mr Moore	
Mr Osborne		Mr Quinlan	

Question so resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Environment Protection Amendment Bill 2001

Debate resumed from 21 June 2001, on motion by **Mr Smyth**:

> That this bill be agreed to in principle.

MR CORBELL (11.45): Mr Speaker, the Labor Party will be supporting this bill today. This bill makes a number of changes to the Environment Protection Act. In particular, it makes changes resulting from a review of the Environment Protection Act, a statutory review which was built into the act when it was first passed in 1997.

The Environment Protection Act is an important piece of legislation. It provides for remediation as well as protection of the ACT's natural environment. It protects against environmentally damaging activities and imposes an environmental duty of care on all citizens of the territory.

The amendments proposed by the government in this bill are mostly minor, but there are a number that I want to draw attention of the Assembly to. The first relates to the change of name of the Environment Management Authority. Most people in the ACT would

probably be aware that we have an environment protection authority, but that is not its actual name. Its name is the Environment Management Authority. Most other jurisdictions use the name Environment Protection Authority. People understand what it means. They understand broadly what the powers and roles of such an organisation are about, and it is appropriate that we change the name. The Labor Party supports that move.

The other changes outlined in the government's amendments relate to the public notification requirements for certain classes of environmental authorisations and agreements. This is an issue that was debated at some length when the Environment Protection Bill was first passed by the Assembly back in 1997. The changes proposed by the government relate to mechanisms to change requirements for public notification, predominantly changes whereby public notification of minor authorisations and agreements will no longer be required.

At the moment the requirement is that public notification occur by way of notice in a daily newspaper. That has led to significant costs being put on the Environment Management Authority. These could be changes as minor as authorisations to conduct activities such as motor mechanic businesses, car airconditioning, refurbishments and a range of other activities such as that.

I understand that since the Environment Management Authority has been notifying everyone of these authorisations and agreements there have been only two occasions on which they have been sought out by members of the public. That is in contrast with the hundreds and hundreds of authorisations and agreements publicly notified as required under the act.

The Labor Party believes it is important that people be aware of what authorisations and agreements are entered into, particularly if they are significant or relate to a significantly controversial or potentially environmentally damaging activity or some sort of environment agreement.

For that reason, the Labor Party will be broadly supporting the government's thrust today to provide for the minister to make regulations to determine which types of notifications and agreements should not be required to be publicly notifiable. I note that that will be by way of a disallowable instrument and the Assembly will have the opportunity to properly scrutinise exactly what classes of authorisations and agreements the minister is seeking to determine do not require public notification. I think that is a satisfactory check on authorisations not publicly notified because the minister determines that they are minor.

In the longer term the Labor Party would like to see issues such as environmental authorisations and agreements all publicly available through facilities such as the government's web site so that the cost to the agency is minor but the public have access to that information.

I should stress that our support for the bill today is very much conditional on the outcome of the disallowable instrument proposed under these amendments and to be introduced by the minister at a later date. If we believe that the government is seeking too broad a range of criteria in relation to which authorisations and agreements should

not be publicly notified, then we will act to disallow that instrument in this place. Equally, we signal our intention that if we find that it is being abused we will remove these provisions from the act.

On the basis of the experience to date that very few of the hundreds of authorisations and agreements that have been publicly notified at considerable expense have been accessed, we think the government's proposal is a reasonable one, albeit one subject to an ongoing review and a watchdog role by this place.

Other changes proposed by the government in this legislation relate to greater powers for inspectors to take video evidence of a potentially environmentally damaging activity when it occurs. At the moment inspectors are unable to use video to record evidence of environmentally damaging activities. They have to obtain a warrant before taking video evidence.

This obviously hinders the ability of the Environment Management Authority to do its job. That environmentally damaging activity in the form of discharge from a pipe or a drain or the dumping of material often happens for only a brief period of time, so you need to capture the evidence at the time the incident occurs rather than seeking a warrant and then going back, hoping that the evidence will still be there.

This is an appropriate measure, one which I do not believe would be abused. It can be used only in circumstances where the authorised officer has reasonable grounds for believing that the environmental damage would be hidden by the time a warrant was obtained. We will be supporting that change.

The final change outlined by the minister in his tabling speech is that commercial sterilisation of clinical waste will require environmental authorisation. This is to take account of the new sterilisation procedures being set up at the Totalcare incinerator and the operation of an electrothermal deactivation device for clinical waste. Obviously that process needs to be covered by an environmental authorisation, and the Labor Party will be supporting that inclusion in the legislation today.

Debate (on motion by **Ms Tucker**) adjourned to a later hour.

Cemeteries and Crematoria Bill 2001

Debate resumed from 8 March 2001, on motion by **Mr Smyth**:

> That this bill be agreed to in principle.

MR HARGREAVES (11.55): This bill allows for cemeteries to be run by the private sector. The explanatory memorandum says in black and white that the government accepted three major recommendations of the NCP review. It accepted the removal of the legislative restriction which limits the right to ownership and operation of all ACT cemeteries to the Canberra Public Cemeteries Trust, allowing for the possibility of privately run cemeteries.

It did not accept the recommendation to limit post-burial tenure to public cemeteries. In other words, private cemeteries will be free to offer a variety of services that reflect market demand. This bill removes the understanding we have that once we go in the ground at a cemetery at Gungahlin or Phillip that plot is there in perpetuity. It says on page 1 of the explanatory memorandum that the government did not accept the recommendation to limit post-burial tenure. It is an either/or situation.

The real issue is that this bill opens up the possibility for privately run cemeteries. Members may not know, but Gungahlin, Woden and Hall cemeteries are publicly owned cemeteries, and the Tharwa Cemetery is on private land. Because Tharwa Cemetery is on private land, unless you are a pioneer of the Tharwa area you cannot be buried there.

Val Jeffery, known to many members here, is the store operator at Tharwa. He has been connected with the pioneering families in the Tharwa area for over 60 years, maybe more. When he dies, his family will not be allowed to bury him in the Tharwa Cemetery. Mr Jeffery is known to some members of my former family who were also pioneers in this district. It is sad that a person who has contributed so much to the Tharwa community cannot be buried there when he dies.

Members may not know that the crematorium was private until 1966, when the Cremation Act was brought in.

I have a fundamental problem with allowing for something as final as death to be run by the private sector.

This bill sets up the cemeteries trust as a board that will operate on a commercial basis. The board will need to make a profit or at least cover its costs. Otherwise it will be sold off. To make a profit, the board will have to increase prices. Lord knows, Mr Speaker, it is difficult enough for people to pay for funerals as it is.

The board will have a controlling interest. It says quite clearly in this bill that if a company does not maintain a cemetery the board will be able to pass a grave on to somebody else for maintenance.

Mr Hird: It is certainly not a dead issue.

MR HARGREAVES: Mr Hird makes light of the bill. I too would like to make light of it, but I will not. I do not think it is appropriate.

The bill talks about a code of practice, but that code of practice will not be available until after the legislation is passed. We do not have a broad idea of what is proposed in that code of practice. No-one has been able to tell me. It is a bit like home detention. We were promised a set of draft drafting instructions for the regulations. They have not surfaced. That is why we have a difficulty with it.

National competition policy is going to the extreme. Cemeteries are not about commercial operations; they are not about commercial monopolies. Even the Prime Minister acknowledges that this is taking things a little bit too far.

In an article published on 8 March in the *Canberra Times*, a government spokesman said that the likelihood of a private operator entering the market in the near future was slim. He did not say it was not going to happen. I cannot accept the word of a spokesman. If the likelihood is slim, why would you bother to go ahead with this sort of stuff? We cannot take anybody's word about things not being privatised. The government said that it would never privatise Actew and it did.

The national competition policy review recommended post-burial tenure. The government said they did not accept that recommendation, and there is nothing stopping private cemeteries from doing it. That means there is a possibility that you will buy a burial plot for a certain number of years, and that is it. There is nothing stopping the private cemeteries from putting more than one casket in the same grave.

Funerals and burials are very expensive. Many people find the costs an enormous impost. People may think to themselves, "This will not happen to me." But we all know damn well it will happen to us. How many of us make specific provisions so that our families or our children do not cop the costs of $5,000, $6,000, $7,000 or $8,000?

It seems as though members in this chamber are more concerned about other issues, so I will not bother to waste any more of the Assembly's time by trying to speak to an issue which is of clearly considerable importance. The opposition will be opposing the legislation.

MS TUCKER (12.04): The Greens will not be supporting this bill, which seeks to impose national competition policy—inappropriately, we argue—on the operation of cemeteries in the ACT.

Firstly, this bill would allow private cemeteries to be established. Our current law permits cemetery operation only by the Canberra Public Cemeteries Trust, although there are no such restrictions on operation of crematoria, and the only crematorium in the ACT is privately operated.

Secondly, it completes removal of government support for cemeteries which began in 1997, after the proposal to buy Woden Cemetery was turned down. Under this bill, you have to pay the costs of having a grave maintained in perpetuity, plus a proportion of the cost of maintaining graves which were already in existence before the cemeteries trust was established. The government has presented the information as though it were always the intention for the cemetery to be self-funding at some point.

Thirdly, private operators—there are not any private cemeteries yet, but this bill opens the door—will be allowed to have a tiered fee structure and to offer a range of tenures on various plots. Because of the privatisation trajectory the government has followed, the cemeteries trust now needs to find money to cover the cost of maintaining grounds and graves in perpetuity, some of which cost the government formerly covered.

The government's plan to achieve coverage of these costs through this bill is for the minister to set a percentage to be taken from all burial fees, which will be paid into a perpetual care trust for the graves that predate the trust.

I understand that debate on this bill is to be adjourned today, but if the bill does not get support whenever we finish debating it, the government should take that as a message to continue to provide some funds for cemeteries in the public interest. My advice for the minister's office is that the trust will not be endangered if this bill is voted down. The Greens believe that essentials services must be kept in public control. Regarding non-essential services, we believe that commercialisation or privatisation of public assets must be subject to social, environmental and economic cost-benefit analyses and appropriate community consultative processes.

The Allen Group, in their national competition policy review, assessed the decision not to sell control of Woden Cemetery as effectively a market choice in favour of the current operator, the cemeteries trust. They missed substantial alternative interpretations of this decision.

The part of this bill which is most objectionable to people is the opening up the way for private operators of cemeteries—for competition. Cemeteries fulfil the role of a place of rest for bodies and ashes of deceased people, which is important to the families and friends of the deceased.

This is another of those debates about the role of government and about what work or tasks in society are properly public roles and what are properly business roles. We are talking about whether it is proper that a cemetery should be run as a business, with competition between different companies, or whether a cemetery should be run for the public good and be for the community as a whole.

The competition policy review which precipitated this bill talked of a freedom to specify and vary tenure conditions. The review recommended that this freedom be offered at public and private cemeteries. The government's bill will offer it only in private cemeteries, which has probably avoided an immediate outcry. However, the same issues remain.

This kind of freedom would be more or less a burden, depending on your financial circumstances. People on low incomes have the freedom to choose cut-price bargain food, shelter and clothes and to make choices between these items. These choices are not acceptable, and I hope that we will see a change from the punishment approach to welfare soon, in recognition of the false choices that are entailed in this approach.

Do we want to set up our cemeteries so that if you are impoverished you or the Public Trustee, who may pay for your funeral, will have the freedom to choose a limited tenure burial plot?

The benefits of cemeteries are not only about the individuals who are bereaved and who will be paying the immediate costs of burial and maintenance of the area. Why are cemeteries important? Dead people often hold meaning for later generations of relatives and for people who come to know of them through their work as artists, musicians, singers, footballers, et cetera. A graveyard, a headstone, a place that is kept peaceful and respectful, may not be the only means of remembering the departed but cemeteries can be important places to those who choose this form of remembrance. They fulfil a spiritual need for people across many religious denominations and for people who do not have a religion. This is not an area which we believe should be open to competition.

We have to think about who the user of a cemetery is, considering the current assumption that a grave site remains where it is forever. A big part of its role is related to a sense of community, history and ties to a place. Descendants centuries later come to see grave sites. ACTCOSS point out that for some ethnic groups it is important to visit the family grave and that Canberra people are often away from their family.

People whose families have come from scattered parts of the world may also have personal experience of the significance of being able to visit ancestors' graves in places which they had never seen before but which nonetheless tell them something about themselves. Could we say that this benefit is not really one that accrues to the user, defined as the family or other close people burying the deceased person, but rather one that accrues to a community as a whole?

The Presbyterian church, which because of the interest they had expressed to me in the past I contacted for comments, have faith that there will not be private cemeteries in the foreseeable future, because there is enough space in the current public cemeteries. For that reason they are not too worried about the bill, mostly being relieved that the recommendation to allow limited tenure in public cemeteries has not been picked up. But I am not so sure. As we saw when an offer was made on the Woden Cemetery several years ago, there is some interest in running cemeteries.

Privatisation does not necessarily mean setting up a new cemetery. It could mean selling the operation of an existing one. I do not know all the ins and outs of the decision not to sell Woden Cemetery in 1997, but it seems that the laws quite likely had something to do with it, given that apparently legislation grants a monopoly to the cemeteries trust. This bill would pave the way for such a transfer and hence new tenure conditions.

How would Health and Community Care choose to exercise their freedom when providing publicly funded burials to people who could not afford to pay for them themselves? I think we could at least suspect that the public authority would not necessarily pay for the in-perpetuity option.

Of course, there are other areas of life which the Greens have argued should not be privatised. Others have not often agreed so readily as they have on this area of life. I hope that people may understand the arguments in future debates on the importance of community benefit.

There are environmental considerations to do with land use. When we talk about areas of land being taken up for graves in perpetuity, we are talking about a lot of land. The Greens would prefer smaller amounts of land to be taken up by cemeteries, but in this case a choice of tenure depending on how much you can afford to pay is not a good way to achieve this end.

Cremation uses less space, which is environmentally better, but is this an argument for introducing fees to encourage cremation? The Greens do not mind at times using financial incentives to change behaviour. However, it must be equitable. In this case there are other ways to address the use of space. For instance, we could look at regulations which could apply to everyone. Also, there is a steady trend towards

cremation rather than burial, most likely because of a shift in the attitude some religious groups have to cremation.

A final problem with this piece of legislation is the now common practice of removing existing regulations without having replacement regulations ready yet. The minister may develop regulations and codes of practice which would be disallowable instruments, but there would be no regulations in force if we were to pass this bill today.

The minister and Allen consultants may well believe that regulations requiring a sense of peace and order and not allowing heavy vehicles to be driven over wet areas to be outdated and overly detailed. But given the importance the cemetery has for many people in our community now and will have for many in the future when we are all gone, it is not a bad thing to have these basics spelled out. The government, my office was told, will work with the cemeteries trust and with cemeteries and crematoria to develop regulations. But this is not a good way for us to manage laws that affect people who may fall into the gap in the mean time.

Another change removes the specified positions on the cemeteries board of trustees which are reserved for leaders of religious denominations associated with particular areas in the cemetery. There is no mention of religious leaders in the bill, whereas the existing legislation makes scrupulous reference to all religions which may have an interest in the site. The new board would not even have one religious/spiritual position on it.

The Allen Group competition policy review argues that setting aside positions on the board for particular religious denominations comes at a cost, perhaps, of financial expertise. This argument really epitomises the ideological shift that this bill represents. To be able to argue that it is less important to have a spiritual perspective on a board overseeing a cemetery's management than it is to have financial expertise is to argue that providing a cemetery is just another business. While we recognise spirituality beyond religions and the necessity of basic, good financial management, this is reversing the emphasis and is not acceptable.

I must admit that the penalties appear to be out of date. For instance, $20 is the penalty for the offence of obstructing or intimidating someone or for wanton damage or disturbance. However, it is not necessary to open cemeteries up to competition to remedy this. I am advised that the cemeteries trust will not fall apart if this bill does not pass today. So, if there is a need to modernise operations and perhaps to improve environmental arrangements, we can do that. Meanwhile, we say no to this change.

Debate (on motion by **Mr Hird**) adjourned to the next sitting.

Sitting suspended from 12.14 to 2.30 pm

Questions without notice

TransACT

MR STANHOPE: Mr Speaker, my question is directed to the chair of the public accounts committee, Mr Quinlan. Mr Speaker, on 21 August the Chief Minister said he would refer to you for your consideration the possibility that a breach of privilege had occurred in the leaking of information given to the public accounts committee at an in-

camera hearing. That was the Chief Minister's assessment of the source for the *Canberra Times* page 1 story "Actew puts in extra $29m" on Saturday, 18 August. Can the chairman of the committee tell the Assembly what steps he took in the process of getting information from the government on this issue?

MR QUINLAN: Thank you, Mr Stanhope.

Mr Hird: This could be a dorothy dixer.

MR QUINLAN: It probably is, to clear the air. I guess this process actually commenced in June this year when there were some rumours and the publication of those rumours in the *Canberra Times*. I think the first whistleblower was Graham Downie of the *Canberra Times*, who wrote under the headline, "TransACT's future uncertain as board members call talks". The article went on to say, "TransACT fully funded: board reassures top company staff." I have to say Mr Downie has now moved to the high moral ground in terms of the commercial viability of TransACT, but he was amongst the first of the whistleblowers.

Mr John Mackay, a board member of TransACT, was quoted as saying the factors contributing to the nervousness amongst senior staff were minor technical problems and the skittishness on the part of the media and the public. He did concede that there had been some increase in costs, mainly related to currency exchange. "Not a major concern, but something we had to deal with," he said.

But the rumours abounded. The CEO was on gardening leave, apparently. A number of senior staff were leaving, not just one high profile senior staff member, and there were rumours that Actew was propping up TransACT with deferred credit of about $2 million a month which was intended to run for about a year.

So, on 20 July I took this issue to the public accounts committee and, as a function of the deliberations of that committee, the committee requested the Treasurer, with representatives from Actew and TransACT—TransACT if they were available—to attend a hearing, which would be held in camera but would be on *Hansard*, for the purpose of scotching those rumours. The appearance took place on 27 July, in camera, and was recorded by Hansard, with the rider that the committee reserved the right to publish *Hansard* should it deem necessary. That rider was incorporated into a written statement which was handed to each of the people who appeared before the committee, who were the Chief Minister and Treasurer, Mr Humphries, the CEO of Actew, Mr Paul Perkins, and Mr John Mackay representing the board of TransACT. That hearing was held and certain facts were placed on the table, I have to say, to some surprise to the committee members.

On 3 August the public accounts committee met again and decided that it ought to write to the Treasurer and suggest to him that he ought to advise the Assembly of the additional funds that had been provided to TransACT. That letter specified the concerns of the committee and was immediately delivered to the Chief Minister's office on 3 August.

On 17 August the PAC determined that the transcript ought to be published. That decision was taken because I, as chairman, was going to be away for the following week and there had been a very strong rumour that a member of the media had intended to publish the full story, whether correctly or not I don't know, on the Sunday. The other members of the committee and I felt that they ought to be able at least to address the question, given that we had taken some interest in it, and had acted in as responsible a fashion as is possible in the circumstances. The decision to publish was taken on Friday, 17 August and on Saturday the story broke in the *Canberra Times*.

Mr Humphries: What a coincidence.

MR QUINLAN: What an absolute coincidence, Chief Minister.

MR SPEAKER: Do you have a supplementary question?

MR STANHOPE: Thank you, Mr Speaker. I must say I think that was probably the best answer given in the Assembly this year. Can the chairman say whether the source for the *Canberra Times* story originated from his committee?

MR QUINLAN: Nothing is certain in this life, but I will point out a couple of things. The *Canberra Times* story on the Saturday morning commenced with a banner headline "$29 million additional funding for TransACT", or something of that order.

MR SPEAKER: Be careful you do not express an opinion, please.

MR QUINLAN: I was quoting from the *Canberra Times*. At the same time I have to say that the figure of $29 million, which I think is equivalent to the Demtel man's line "It's not $10, it's really $9.99", was never mentioned in the committee hearing. In fact the committee meeting we held discussed in many different dimensions a figure of around $30 million. I think it is very significant that the number was refined for the sake of the story, because it is highly unlikely that a committee member leaking the information would have refined it to that point, given the content of the transcript.

Mr Humphries: Methinks he doth protest too much.

MR QUINLAN: I am very confident—

Mr Stanhope: So it was only the shareholders who knew it was $29 million.

MR QUINLAN: That's right.

Mr Stanhope: Only the two shareholders knew that it was $29 million.

MR SPEAKER: Order, Mr Stanhope! Mr Quinlan, I would remind you of standing order 241. Continue, but be careful.

MR QUINLAN: In what regard? I am always reasonably careful, but in what particular dimension or aspect should I be careful?

MR SPEAKER: Standing order 241 says:

> The evidence taken by any committee and documents presented to and proceedings and reports of the committee shall be strictly confidential and shall not be published or divulged by any member of the committee or by any other person, until the report of the committee has been presented to the Assembly: …

That is what I wanted to caution you about.

MR QUINLAN: Let me then clarify carefully for your benefit, Mr Speaker. I am sure you have a personal interest in our attempt to make sure we were not part of the conspiracy. Certainly, the terminology of the leak was inconsistent in a few ways with the way the information was presented to my committee, so I do remain relatively confident that the source of that leak was not the committee. It just happened that it was published on the 18th, the day after we advised the Treasurer that we had authorised publication of the transcript.

Operating loss

MRS BURKE: My question is to the Treasurer, Mr Humphries. I refer to the ongoing issue of the $344 million operating loss inherited from the former Labor government. Has the government supplied Mr Quinlan with the documents used to calculate this outcome? Also, has the government received a response from Mr Quinlan concerning the establishment of another independent audit of the outcome for the 1995-96 financial year?

MR HUMPHRIES: It appears that confidentiality is more or less going out the window today, so perhaps some correspondence between me and Mr Quinlan might be quite appropriate in these circumstances. Mr Quinlan has, as you know, quite a bee in his bonnet about the $344 million operating loss which was left to the Liberal government by the former Labor government.

Mr Quinlan certainly has sought information about that. He has sought information particularly, and I will indicate what it is he has asked me for, on all documents pertaining to the preparation and completion of the territory's consolidated annual report for the 1995-96 financial year and all correspondence to and from the Auditor-General in relation to the 1995-96 financial statements from the time it was decided to prepare them.

A couple of weeks ago, my officers delivered to Mr Quinlan's office the information he required. Several thousand pages of documents bundled up in folders were delivered to Mr Quinlan's office. He has the information there in front of him, so he can start to beaver away on this issue of, obviously, great importance to him.

Yesterday, I received a letter from Mr Quinlan agreeing to the conduct of an independent audit of the $344 million operating loss incurred in 1995-96, and for that I thank him. I am very glad to have confirmation that he will get independent verification of that matter. Unfortunately, the letter is not entirely free of qualification. He says in his letter:

> Since I am the principal disputer of the 1995-96 year, I expect the terms of reference for independent audit to be established according to my requirements. Already you have publicly acknowledged cost as an issue for such an audit. I wish to contain the costs of the audit by confining it to the areas that concern me.

He is happy to have an audit of the $344 million inherited operating loss from Labor done independently, but not, apparently, to the full extent and width of that full question. He only wants the audit to concern itself with issues "by confining it to the areas that concern me".

Mr Speaker, would I be right in suspecting that perhaps the issue which has been raised so many times in this place—was there an operating loss of $344 million in 1995-96?—is not one of the issues that Mr Quinlan actually finds of concern to him at this point? Obviously, he will look at the documents for that year, but not necessarily all of them. Of course, we have had the Auditor-General give an audited statement for that year indicating that in his opinion the operating loss was, indeed, $344 million.

Imagine if a public company wanted its books audited and company officials said, "We do not want you to look at all of our books. Only some of the books are okay to look at, but not all of them." People would be a tad suspicious. Indeed, that is the case here. Mr Quinlan is trying to pull a swiftie in this matter. He wants to get away without having the full matter scrutinised.

Mr Quinlan: I take a point of order, Mr Speaker. Is that parliamentary?

MR SPEAKER: I am just about to check on that.

MR HUMPHRIES: I will keep going while it is being looked up. We have here an attempt to look as though the issue is being addressed without really getting to the nub of the issue. It seems to me that there is only one issue that an independent auditor needs to consider: did the territory make a loss of $344 million in that year? It is pretty simple and I think that an independent auditor would, quite rightly, come to a view about that based on the information which Mr Quinlan now has in his office.

We talk about the $344 million operating loss as if it is an issue in the distant past. Of course, it is not. The issue of what our likely operating losses are going to be in the future are very real if we find ourselves spending beyond our means. I note in this respect that in the undeclared election campaign to date the Labor Party has made commitments totalling over $16 million in recurrent costs and capital costs of $6 million, and the campaign is barely under way.

I will detail those: over $1 million for extra officers and staff for this Assembly and for these MLAs; $5 million in commitments in corrections; $3 million in commitments in the environment; and $7 million at least to restore the former victims of crime compensation scheme. The campaign has not even started yet and we are already finding that Jon's white whale has surfaced.

Gungahlin Drive extension

MR KAINE: My question is to the Minister for Urban Services. Minister, you will be aware that, at a public meeting in Lyneham on 20 August, in connection with Territory Plan variation No 138, the Chief Minister said:

> Nothing will happen between the decision being made—

that is, on the fate of variation 138—

> and the election in October that would prevent a future decision to vary or re-vary the Territory Plan.

That means, pretty explicitly, that a decision now on variation 138 is not immutable.

At the same time, you will also be aware that the National Capital Authority, which will have the final say on this matter anyway, has advised the ACT government that the gazettal of variation 138 should not proceed until after the NCA has concluded its deliberations on this matter, since it affects the National Capital Plan.

Given these two facts—that is, the Chief Minister's public statement and the NCA's position as advised to you—will you give an undertaking that, irrespective of what occurs at a later hour this day, the government will not proceed with the gazettal of Territory Plan variation 138 before the pre-election caretaker period begins on 14 September?

MR SMYTH: The government's position was made quite clearly by the Chief Minister at that meeting, and we will honour the Chief Minister's commitments.

Landfill

MR OSBORNE: My question is to the Minister for Urban Services. It is in relation to the landfill sites. Minister, I received a telephone call in my office today from a gentleman informing me that a business in Yass was dumping their rubbish at the Belconnen tip. Are you able to tell me whether this is legal? We were not sure whether it was. Does the department have a policy on taking interstate rubbish? What rate do the tips charge for interstate rubbish to come into the ACT?

MR SMYTH: We charge for everything dumped at the tip that goes to the tip face. There are some concessions for items that are recycled. In regard to the specifics of Mr Osborne's question, I will have to take them on notice and find out for him.

TransACT

MR QUINLAN: My question is to the Chief Minister. It relates to TransACT. In discussions over Actew's decision to increase its investment—using public money, I might add—in TransACT, little detail has been advanced as to the cause of the blowout of costs of the cable rollout and the need for additional investment. I recollect that newspaper cuttings I have show that in early July Mr Mackay spoke of exchange losses and possibly some problems with rollout. As a shareholder in the shareholder that

committed the lion's share of the additional investment, can the Chief Minister tell the Assembly whether the additional investment in TransACT represents any increase in the overall value of the enterprise?

MR HUMPHRIES: Mr Quinlan has asked me, as he indicated earlier in question time today, for a statement on the position of TransACT at the present time. I have indicated to him that I am proposing to do that. I will do that after question time today. Issues of that kind are going to be covered in that statement.

I do not know whether an increase in investment results in an increase in the value of the asset. It is quite possible that it does not, given that there is an increase, an escalation, in the cost of the rollout, which is not necessarily resulting in an increase in the value of the asset. Fortunately, if you put more money into the purchase of the asset it does not mean that the asset is necessarily worth any more. It would be nice if it did, but it does not necessarily follow.

However, I would like to think that we did secure an existing asset of great value to this territory, an asset which we on this side of the chamber are quite prepared to support and continue to talk up, not talk down, and are prepared to make sure continues to be a harbinger of great promise for this community.

It seems to me that Mr Quinlan is running with the hares and hunting with the hounds at the moment, saying that he is very much in favour TransACT and that they support TransACT because it is a wonderful institution, but being prepared at the same time to talk it down in a very obvious way in things he says in the public arena. He said, for example, on radio today in a 2CC program:

> Everyone, I think nearly everybody, in Canberra have heard rumours weeks and weeks ago about additional funds going into TransACT and there was speculation in the media about meetings and international phone hook-ups and cabinet meetings, et cetera.

There are no rumours or conspiratorial types of cloak-and-dagger meetings going on. The meetings that took place were reported duly in the media because we told the media about them. Suggestions that things were happening secretly behind closed doors and were designed to keep the public in the dark are the kinds of comments about which Mr Quinlan will hold his hand over his heart and say, "These are not intended to do any damage to TransACT." But in fact they do exactly that. They require a succession of headlines in newspapers which can only have the effect of securing further doubt about TransACT's position.

No enterprise is free of doubt, particularly not one that operates in a field like telecommunications. It has an element of doubt, an element of risk, about it. But we believe TransACT has the potential to be of enormous importance to this territory, and we will work to make sure that that is the fact; that we deliver on that potential.

Finally, Mr Quinlan said in his answer today that the story broke in the *Canberra Times* the day after I was advised of a decision by the committee to publish the in-camera proceedings. For his benefit, I was not advised on that day. He made a decision on that

day. It did not reach me until some time the following week. I suggest that you check the date of the letter and the date the letter was sent to me advising me of that fact.

MR QUINLAN: I thank the Chief Minister for his answer and his frankness in telling us that his statement probably does not talk about the value of the asset but that the asset is of great value to the territory. Can the Chief Minister reconcile the fact that some of the money that, by his own answer, had previously been invested was dead money but there had been no write-down of the asset value shareholders were given credit for for the value of their new investment?

If that needs some explanation, the fact is that Actew contributed disproportionately highly in the second wave of investment but still got only a dollar-for-dollar representation in its percentage shareholding, even though some of the previous asset should have been downvalued and our proportional shareholding should have gone up more than it did. Follow that? It is a very important question here, because there is a possibility that we have done very bad business again.

MR HUMPHRIES: Once again, we have on the end of that question exactly what Mr Quinlan says he is not trying to do but in fact has made quite explicit he is trying to do. He says, "We have made another bad investment. TransACT is a bad investment."

Mr Quinlan: You have done it badly. You might have made a good investment badly, Gary.

MR HUMPHRIES: Oh, we have now changed that to "a good investment badly". I think that *Hansard* will show that Mr Quinlan referred to a bad investment. What is that investment supposed to refer to? Investment in the time we took in a cabinet meeting or the time we invested in talking about these issues in this place? No. It is a reference to TransACT.

Mr Quinlan: We have been done in the eye.

MR HUMPHRIES: Mr Speaker, I ask him to listen to this answer that he sought at great length.

MR SPEAKER: Order! Mr Quinlan, you were not here last week, but two of your colleagues were warned, and I will do the same to you this week.

MR HUMPHRIES: You cannot run around referring to TransACT in ways like that, as a bad investment, without it having an impact on its viability in the marketplace. What you are doing is reprehensible. If you have a concern about the way in which the accounting has been handled, then you had an opportunity in the hearings that were taking place in camera in the Finance and Public Administration Committee to inquire of the Actew board as to why that was occurring and why they had made that decision to account for it in that way. You had that opportunity. If you did not take that opportunity, that is your bad luck.

Mr Quinlan: It doesn't matter about public interest. It is my bad luck.

MR SPEAKER: I warn you, Mr Quinlan.

MR HUMPHRIES: The fact is that TransACT has been a matter of enormous concern and attention from this government and from the Actew board over the last three or four months. To suggest that in some way this is a bad investment for the ACT is utterly reprehensible.

Mr Stanhope talks about how we should apply knowledge nation in the ACT. You do not have a knowledge nation—or a knowledge territory, if you like—if you do not invest in something like TransACT. You cannot talk it down during an election campaign and then wonder why the thing is not worth very much after that campaign is over, Mr Stanhope.

Mr Stanhope: I take a point of order, Mr Speaker. The Chief Minister is not answering the question. The question went to the basis on which the Chief Minister made decisions as a shareholder in relation to an investment of significant amounts of public money in TransACT. His answer is not relevant. He should answer the question. The question was about his capacity, his competence and the basis on which his government chose to invest significant additional moneys in TransACT.

MR SPEAKER: The Chief Minister is answering the question as he sees fit. We all know that ministers answer questions in that way.

MR HUMPHRIES: Mr Quinlan's question suggested that Actew had invested to a disproportionately high extent in TransACT and did not have a shareholding to reflect its investment. That is not my impression of what Actew has done. As I said, I will be making a statement after question time which will explain the position of TransACT and explain why I think this territory has an asset of great value and should be proud of what has been achieved by TransACT to date.

It is a sign of the desperation of those people opposite that they are prepared to try to win votes in this election campaign at the expense of the territory's investment and the investment of all the people of this territory in TransACT.

Crime rates

MR HIRD: It is a shame those opposite do not look at standing order 117. They would know what damage they are doing to TransACT.

My question is to the Minister for Police and Emergency Services, Mr Smyth. I refer to the 12 per cent fall in reported crimes across all fences within the territory and the recent debate. Mr Hargreaves stated that, if these results are true ones, then this is a fantastic result. Mr Quinlan claimed that such a reduction was statistically inevitable. Can the minister assure the parliament of the reliability of the ACT crime statistics?

MR SMYTH: I thank Mr Hird for his question because it is an important one. It goes to the trust that we as citizens all have in our local police force. I can assure members that the police statistics that I advised them of earlier this year are an accurate record of the crime trends in the ACT in the year 2000-01 and that they reflect the number of crimes reported by the ACT community.

The total number of offences fell from 55,152 in the year 1999-2000 to 48,715 in the year 2000-01. Significant reductions have been achieved in the main categories of crime in the ACT, including a 24 per cent reduction in home burglaries and a 29 per cent fall in motor vehicle theft. It is a shame that those opposite cannot acknowledge that these results reflect the hard work and the good policing practice of the AFP in the past financial year. Instead, Mr Hargreaves decided to question the truth of the statistics. What he was really saying was that he does not and Labor does not believe the AFP—it is the AFP's statistics that I have tabled. It is typical of the alternative minister for police, who once referred to the AFP as the Keystone Cops.

Mr Quinlan has also played down the results, saying in this place, "We've come off quite a high peak in the past, so a reduction would probably be statistically inevitable."

This government increased funding for police from $51 million in the year 1994-95 to a budgeted cost of $67.5 million in this financial year. Our record is in stark contrast to Labor's, who actually reduced funding for ACT policing from $54 million in the 1990-91 year to just $51 million in 1994-95.

These results point to the success of the intelligence-led approach to attacking crime through operations such as Anchorage, Dilute and Chronicle. Mr Quinlan seems to believe: if outcomes get worse, it is the government's fault; if things improve, it is just inevitable or it is an accident. I suspect he adopted the same approach to the $344 million operating loss that we inherited from the previous Labor government.

Impulse Airlines

MR CORBELL: My question is directed to the Chief Minister. Last week the Chief Minister told the Assembly that Impulse Airlines had indeed missed a major milestone in its agreement with the government when it failed to establish its regional headquarters in Canberra, an initiative that was to have led to the government writing off $1 million of the $8 million it gave the airline in an incentive package. The Chief Minister told the Assembly that, instead, the airline would now build an office in the hangar that is to house its heavy engineering maintenance facility.

Is the Chief Minister aware of a radio report over the weekend that Impulse Airlines has, in fact, cancelled plans for its regional headquarters? In the negotiations between the government, Impulse and Qantas, how does the government propose to vary the milestones to account for this change of heart?

MR SMYTH: Mr Speaker, I will answer that. I have checked with the Chief Minister and he has not heard that report and neither have I.

MR SPEAKER: Is there a supplementary question?

MR CORBELL: Will the Deputy Chief Minister endeavour to find out? My further supplementary question is: can the minister for business tell the Assembly how an office inside a hangar is worth $1 million, the write-off value of the original Impulse milestone, or is Qantas planning to establish a regional headquarters in Canberra?

MR SMYTH: Negotiations continue between the government and Impulse, between Impulse and Qantas and between Impulse, Qantas and the Canberra airport, so there are matters to be resolved.

Let me say that what this government was after when it went into the deal with Impulse was to create jobs in the ACT, to get investment in the ACT, to secure a new industry for the ACT and to build an international airport for the future. Both Qantas and Impulse have assured me that they would still like to achieve all of that and meet the milestones. Some of it is dependent upon further negotiations. I have had meetings with them recently and will continue to push that they meet the milestones or, if we have to, we will ask for the money back.

Kingston foreshore development

MS TUCKER: My question is directed to the Chief Minister in his role as the minister responsible for the Kingston Foreshore Development Authority. Chief Minister, you may be aware that there is a small park outside the old Government Printing Office on Wentworth Avenue which contains six 70-year-old Himalayan cypress trees. These trees were identified as having heritage value in a 1996 heritage assessment of the Kingston foreshores. However, heritage attention at that time was focused on the old power house precinct and no action was taken about the trees.

In 1998 a tree expert, Robert Boden, drew to the attention of the authority the significance of these trees and the area was fenced off to prevent parking under them. In the middle of this year, attention was again drawn to the significance of the trees and the Heritage Council commissioned an assessment by Professor Ken Taylor. He recommended that the trees should be immediately listed in the interim Heritage Register. In the meantime, however, the Kingston Foreshore Development Authority proceeded with the seeking of tenders for the first stage of the development and the chosen tender involves placing buildings where the trees are.

If the trees are listed on the Heritage Register and are required to be retained, the government may face compensation claims from the winning tenderer. On the other hand, if the trees are removed, a part of the foreshore's heritage and aesthetic value will be lost. Can you please explain to the Assembly how you will resolve this dilemma?

MR HUMPHRIES: The government is aware of a number of trees on the site of the present stage 1A of the Kingston foreshore development and it has had some discussion about those trees. My understanding of the history of this matter very recently is slightly different from that of Ms Tucker. My understanding is that the issue of the heritage value of the trees was examined some time ago and there was no view at that stage about their having any particular heritage value. That is the advice I have received.

I understand that the proposal to heritage-list the trees has come much more recently and very late in a stage which is focused on the release of land at stage 1A for the development of that land for the purposes of the Kingston foreshore development getting under way. The government is concerned about the prospect of that process being now derailed by the existence of those trees. I understand that the matter is before the Heritage Council at the present time, that an application has been made to the Heritage

Council and it is considering that matter at the present time. Obviously, the government is watching with interest to see what the Heritage Council decides to do on that score.

MS TUCKER: That was not an answer to my question. My question was: how will you resolve the dilemma between the two potential situations? That was not answered.

MR SPEAKER: Order! Ask your supplementary question, Ms Tucker.

MS TUCKER: My supplementary question is: if these trees were on private land, your government's tree protection laws would apply and it would be highly unlikely that approval would be given to cut down such significant trees. Isn't the potential of these trees being cut down inconsistent with your own tree protection laws?

MR HUMPHRIES: No, they are not, because quite different criteria are applied. With trees on private land, there was no public process to go through at all until Mr Smyth's recent tree protection legislation was brought forward. There was no provision at all to deal with somebody simply going along and cutting down a tree. With respect to trees on public land, there is a very different process at work.

As indicated, these trees are a matter of considerable public attention at the present time and they are afforded the protection of having debate about them, consideration by the Heritage Council and consideration by PALM and the Kingston Foreshore Development Authority, which are meeting, I understand, today to talk about ways of being able to resolve this problem.

There are no equivalents between the two processes. We have quite deliberately not applied the interim Tree Protection Act to public land and my recollection of the debate about the legislation is that no-one proposed that we should apply the legislation to public land. Why? It is because we agreed—I think even Ms Tucker would have agreed—that it makes sense to have a process which is different for public land from that for private land.

TransACT

MR HARGREAVES: My question is to the chairman of the public accounts committee. Three times last week the Chief Minister was asked whether he knew the estimated final cost of TransACT's cable rollout. He said at first he did not know. Then he said it was about $200 million. Finally, he said that he would ask TransACT whether it could give a more precise figure and that if he got a more precise figure he would tell the Assembly, but he said that he did not believe the figure was yet available. Can the chairman of the public accounts committee tell the Assembly whether he knows the expected total cost of the rollout and the source of that information?

MR QUINLAN: Thank you, Mr Hargreaves. During the public accounts committee public hearing we asked—

Mr Humphries: The confidential public account committee hearings.

MR QUINLAN: The transcript of which has since been authorised for publication. You were advised before the meeting commenced that that was a distinct possible outcome. The committee asked the obvious question: what is the expected final cost? We are all grown-ups and we expect that nothing is absolutely certain in life, but a more precise figure than $200 million was given to the committee, a figure that included specific hundreds, tens and units of millions of dollars. It was, I would say, considerably more than the $200 million.

Mr Corbell: He didn't mislead the Assembly, did he?

MR QUINLAN: Certainly, the public accounts committee was advised of a precise figure.

Mr Moore: I take a point of order, Mr Speaker. Mr Corbell has interjected about misleading the Assembly. I think he needs to withdraw that.

Mr Corbell: I asked the question. I didn't make an allegation.

Mr Moore: It is an imputation, Mr Speaker. If you ask, "Have you misled the Assembly?" it is an imputation and needs to be withdrawn.

MR SPEAKER: Mr Corbell, did you do that? If so, withdraw.

Mr Corbell: I withdraw, Mr Speaker.

MR QUINLAN: I did resist the temptation to answer that question. I can say yes, the public accounts committee was given a far more precise figure.

MR HARGREAVES: Thank you very much, Mr Quinlan. At least we got an answer to a question. My supplementary question is: can the chairman of the committee tell the Assembly whether the Chief Minister was present at the hearing when the estimate was provided, and was there sufficient discussion on the particular topic to ensure that everyone present was clear on the figure?

MR QUINLAN: Thank you, Mr Hargreaves. I should have said that in my first answer. Yes, the Chief Minister and Treasurer was present at that part of the hearing, although he was not there for the whole hearing and, yes, there was discussion around this number. There was discussion around what it represented in further capital to be raised.

I was not in the house last week, but I can tell you that the Chief Minister was present when a far more precise number was mentioned and discussed to the point of defining what it represented in additional capital to be raised beyond that which has been raised in the latest contribution or commitments that have been made.

Kippax pool and fitness centre

MR RUGENDYKE: My question is to the Minister for Urban Services. In relation to the Kippax pool and fitness centre, can the minister inform the Assembly whether his department is monitoring the progress of the landlord's action in response to the closure of the centre at the direction of WorkCover, and what work has been completed to bring the centre up to appropriate OH&S standards?

MR SMYTH: Mr Speaker, the information I have here is that the pool and fitness centre was closed recently due to repairs and maintenance issues. PALM has written to the lessee and, in accordance with provisions in the lease, has given six months notice to the lessee to maintain, repair, and keep in repair the premises to the satisfaction of the territory. Failure to repair, in accordance with the lease, could lead to the termination of the lease. We will monitor the situation.

MR RUGENDYKE: I have a supplementary question. Has the landlord of the Kippax pool and fitness centre made any attempt, approach or application to government to vary the use of the lease since the centre was closed?

MR SMYTH: Mr Speaker, I will have to take that question on notice and get the answer for the member.

TransACT

MR WOOD: My question is to the Chief Minister and is on TransACT. Chief Minister, in this morning's *Canberra Times* the chairman of TransACT, Mr Service, is quoted as saying that the government had "been fully briefed" on Actew's further financial commitment to TransACT, yet last week you told the Assembly that cabinet's decision to allow the Actew board to make its own judgment about the investment was based on the inadequacy of the information that was available to you at the time, on short notice, to replace your judgment for theirs. Chief Minister, who is right? Is it Mr Service, who maintains that you were fully briefed, or is it you, having said that the information was inadequate?

Mr Moore: Have you stopped beating your wife?

MR HUMPHRIES: Yes, it is a "when did you stop beating your wife" type of question. I do not have the article in front of me, but I do not think that Mr Service said in the *Canberra Times* today—you might have the article in front of you, Mr Wood, and can check it—that the government was fully briefed as of the end of June when it was asked to make that decision.

Mr Wood: He did, yes.

MR HUMPHRIES: He did, did he? Can you quote that in any supplementary question that you ask? I do not believe that he said that. I read the article as well. It did not seem to me to say that. I am not going to answer the question, with great respect to Mr Wood, on his assertion that the article said certain things unless I have the article in front of me and I can see what it actually said. I do not believe that that is what Mr Service said. If

I am wrong, I would appreciate your quoting from the article directly so that we can see what Mr Service actually said about what the government knew at the end of June.

MR WOOD: That was pretty evasive, wasn't it? My supplementary question is: can you confirm that today's *Canberra Times* story also reveals that the reason Actew was forced to make an additional investment that was disproportionate to its shareholding was that other partners, AGL and TVG, were not prepared to put more in?

MR HUMPHRIES: I am not prepared to accept the assertion that an investment was made which was disproportionate to its shareholding. I am not prepared to accept that assumption or assertion made in the question. I come back to the first part of this question about the state of knowledge. The fact that you have not quoted the article, Mr Wood, proves to me that, in fact, Mr Service made no statement of the kind that you are asserting. We have certainly sought further information from Actew since the original issue was put to us at the end of June. Information has been forthcoming.

Mr Service would be the first to concede that a revised business plan for TransACT has not yet been provided, so I am sure that Mr Service would not be asserting to the government or to anybody else that a full set of decisions is possible to be made about TransACT in the absence of a revised business plan. Mr Service is not so foolish a gentleman, he is certainly not so unastute a businessman, as to make that kind of assertion; so, with great respect, I think that you have twisted what Mr Service said in the newspaper this morning.

Williamsdale quarry

MR BERRY: My question is to the Chief Minister and is in relation to the Williamsdale quarry. In the *Canberra Times* of Monday, 27 August, your office made the statement that the Territory Owned Corporations Act "required the Government to approve joint ventures"—with territory-owned corporations—"but did not permit it to approve the joint-venture partners". Did you approve of this statement? If so, why did you include specific joint venture partners as a condition in your letter of January 2000, which, of course, has been tabled in this Assembly?

MR HUMPHRIES: Mr Speaker, a statement made in my name made reference to the requirements of the Territory Owned Corporations Act. The Territory Owned Corporations Act is quite specific about what is required for governments to do to satisfy accountability to the Assembly. It is quite specific about that, Mr Speaker. Of course the government has fully complied with its requirements under the Territory Owned Corporations Act.

Don't take my word for it. Take the word of the ACT Government Solicitor, which was asked for an opinion about this matter and has tabled that opinion which clearly indicates that the government, Totalcare and the public servants who work for those bodies acted completely within the framework of the law. That is what the advice clearly says. It is backed up by advice from Mallesons, which indicates the same thing.

Mr Berry: No, it doesn't.

MR HUMPHRIES: It does say that, Mr Berry. The question asked was quite unambiguous. Has Totalcare or the government acted within the framework of the law? Has it obeyed the rules required of it under the Territory Owned Corporations Act? The answer was yes, it has, and the degree of disclosure required by the act has been complied with. If you are not prepared to accept that, then you are not reading the words on the page in front of you.

Mr Speaker, I might say this is an indication of the kind of administration we could expect if Mr Berry were a minister in a government after October of this year. You get trapped into a corner and your response is that black is white. No, if anyone asks me, black is white. He keeps insisting on that until people just give up and go away.

But the fact is, Mr Speaker, now we have two sources of people saying that black is black and that Mr Berry is wrong. Mr Berry hasn't got the guts to make that admission. Mr Speaker, in a minute I will table an answer to a question I took on notice last week from him.

The fact is that Mr Berry, at some point or other, needs to acknowledge that he has made a mistake. I have offered Mr Berry the chance to get this matter verified by an independent source—not the ACT Government Solicitor, who might have a conflict of interest; not Mallesons. I have invited you to go to somebody else. What's more, the government will pay for the advice. So are you going to accept that offer, Mr Berry, or aren't you?

Mr Berry: Wait till tomorrow.

MR HUMPHRIES: Tomorrow is about a bill to change the law, Mr Berry. It doesn't help you with the fact that what we have already done has been within the framework of the law. If you want to change the law, Mr Berry, that's fine. But the fact is that you've been caught out on this matter. Are you going to have the guts to say you were wrong? If you aren't will you then allow us to go to somebody else who can verify that you're wrong and thereby clear the reputations of the public servants that you have besmirched in this process?

MR BERRY: One of these days, Mr Speaker, we'll keep an eye on these people when they're answering questions and get them to stick to the "concise and to the point" rule.

Mr Stefaniak: On a point of order, Mr Speaker.

MR SPEAKER: Yes, you will have to withdraw that, Mr Berry; it is an inference against the chair.

Mr Stefaniak: There are two issues, Mr Speaker. Given that I haven't been asked a question, the media guys might like to get file footage quickly, because I'm going to sit down soon. There is an imputation there, Mr Speaker. Also, I think Mr Berry is breaching standing order 188 by giving a preamble.

MR SPEAKER: Withdraw the imputation.

MR BERRY: I think that was a frivolous point of order, an attention-getting point of order, a media-grabbing point of order.

MR SPEAKER: I am saying that you should withdraw any imputation against the chair.

MR BERRY: There is no imputation; it was an expression of exasperation. I think they're allowed under the standing orders.

MR SPEAKER: We could all suffer that, I'm afraid, Mr Berry.

MR BERRY: My supplementary question is directed to the Chief Minister. Was the condition ever withdrawn? If so, when?

MR HUMPHRIES: Yes, in June of last year.

I ask that further questions be placed on the notice paper.

Williamsdale quarry

MR HUMPHRIES: I present the following paper:

> Williamsdale Quarry—Answer to question without notice asked of the Treasurer by Mr Berry and taken on notice on 21 August 2001.

Belconnen Remand Centre

MR MOORE: Mr Speaker, on 23 August Ms Tucker asked me a question about staffing at Belconnen Remand Centre. She particularly asked about a particular person and attempts to visit him and to phone him. Then she went on to say:

> It has been 24 hours since this family became very seriously concerned about the state of the man's mental health. They have been unable to find out what is needed and to arrange it. Can you confirm whether or not there are staff shortages at Belconnen Remand Centre that are causing these sorts of things that happen? If there are, what are you doing to address the situation?

Overcrowding at the Belconnen Remand Centre often necessitates the use of the Magistrates Court cells to house detainees overnight. This operational requirement often results in pressures on staff availability at the Belconnen Remand Centre. Occasionally these pressures result in staff shortages at the remand centre.

ACT Corrective Services is currently training additional custodial staff. That training will be completed in late October and will go some way towards easing staff shortages. Family and friends are allowed to visit detainees on weekends, and on Mondays, Wednesdays and Fridays. In addition, health and legal professionals are allowed to visit on most days, but are encouraged to conduct visits on Tuesdays and Thursdays to maximise the availability of visiting rooms for families and friends on the other days. The number of visits allowed per detainee is usually restricted to one visit per day for one hour due to the operational requirements of the centre, the number of detainees in custody, and the limited availability of visiting rooms.

Detainees' access to the telephone at the Belconnen Remand Centre is becoming a greater problem as detainee numbers increase. The BRC and Quamby management met with NEC recently to canvas options to install a new telephone system that will service both facilities and will provide a more efficient system to manage the flow of calls to and from these centres. These efficiencies are expected to result in improved access to the telephone for residents of the centres. A model of delivery has been developed and is under consideration.

The detainee in question received a visit from a friend on 19 August 2001. Mental health staff also visited him on 20 and 21 August to prepare a court report. On the day in question, 22 August 2001, the detainee attended court. He was refused bail. In the afternoon, upon returning to BRC, he received two telephone calls and made a call himself. None of these calls were with his brother-in-law. The next day, 23 August 2001, the detainee made a formal request not to receive any further incoming phone calls or visits.

Personal explanations

MR QUINLAN: In relation to question time, Mr Speaker: Mr Humphries, in one of his answers, referred I think to my advice to him that the public accounts committee had determined that the evidence taken at an in-camera hearing would be authorised for publication. May I table a letter to Mr Humphries dated 17 August? I would, with your indulgence, Mr Speaker, go one step further and say I have even written a personal note on this to say I understand that at least one press reporter may push the envelope shortly. Let me assure the Assembly—

Mr Humphries: So you knew before you wrote to me if that was the case.

MR QUINLAN: Wait for it. May I assure the Assembly that the press reporter I was referring to is not the press reporter who authored the story in the paper the following day. I seek leave to table that letter.

Leave granted.

MR QUINLAN: Thank you. I present the following paper:

> TransACT in camera evidence—Copy of letter to Treasurer from Chair, Standing Committee on Finance and Public Administration, dated 17 August 2001.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer): Mr Speaker, I take a point of order. Mr Quinlan made an inference about me in question time. There was a clear implication that someone in the government, as a result of receiving a letter from Mr Quinlan on 17 August, had leaked the information to the media about what had gone on in that confidential committee hearing. Now, Mr Quinlan has tabled a letter which concedes that when he wrote the letter to advise me of the committee's decision he made reference in the letter itself to the fact that the media—

Mr Corbell: Is this a point of order?

MR HUMPHRIES: I am asking for a withdrawal. There was a reference in the letter to the fact that the media already knew about what was going on in the committee.

Mr Stanhope: No, no; he said push the envelope. That is what he said.

MR HUMPHRIES: Well, what was that meant to mean?

Mr Quinlan: Probably write an erroneous story.

Mr Stanhope: Running all the rumours.

MR SPEAKER: Gentlemen, please!

MR HUMPHRIES: Running all the rumours? I think not, Mr Speaker. I think, Mr Speaker, that there was an inference in those remarks which is now clearly shown to have been untrue, and I ask that the inference be withdrawn.

MR QUINLAN: I seek leave to make an explanation under standing order 46 as well in response to that.

MR SPEAKER: Please do.

MR QUINLAN: Okay, thank you. First of all in relation to the press reporter, in fact a press reporter had phoned me seeking information that I refused to give and asserting that that person had information. That person even quoted information. The information was not totally accurate, but that reporter intended, I think, to push the envelope with the inaccurate information, and that is the import of the little note. One final point, Mr Humphries: I did not concede at any stage that the story in the *Canberra Times* was a divulgence of the content of the PAC hearing. It just happened to be a statement of what apparently had happened, and I never at any stage said that.

Mr Humphries: Mr Speaker, I sought a withdrawal and it hasn't come.

MR QUINLAN: What for?

Mr Humphries: The inference in Mr Quinlan's earlier remarks was that I, having received a letter from the PAC on the 17th, had divulged the information, or someone in my office had divulged the information, to the *Canberra Times*. Mr Quinlan has clearly conceded now that that did not happen and he should withdraw the inference.

Mr Stanhope: I take a point of order, Mr Speaker. Last week the Chief Minister made the same inference about you, Mr Speaker, and about Mr Quinlan and about Mr Kaine. Last week, in this place, the Chief Minister clearly inferred, Mr Speaker, that either you, Mr Quinlan or Mr Kaine had leaked the information. He is now suggesting that there is an inference against him that perhaps he leaked it. He has not withdrawn the inference against you, Mr Speaker.

MR SPEAKER: Gentlemen, I am tired of this slanging match across the chamber.

Mr Corbell: Well, make a ruling.

Mr Stanhope: We would like a bit of consistency.

MR SPEAKER: Just a moment. Order! If this matter is to be thoroughly investigated it is a question of privilege that should come to me in writing. I will then decide if it is a matter of privilege. I am tired of the slanging that goes on across this chamber when we have a great deal of work ahead of us. I suggest that if anybody in this Assembly believes that privilege has been breached they write to me.

Mr Humphries: Mr Speaker, with respect, the issue before the house today is not a question of privilege, although that is a matter we should look at subsequently. The question is whether or not an inference has been made, and I would argue that it has. The effect of what Mr Stanhope just said is that an inference like that should be withdrawn. That is the way he raised it.

MR SPEAKER: May I ask whether both sides might like to do that then?

Mr Stanhope: I was simply pointing out your hypocrisy.

Mr Moore: On a point of order, Mr Speaker: I think that has to be withdrawn.

MR SPEAKER: Hypocrisy. You can withdraw that.

Mr Stanhope: I will withdraw that.

MR SPEAKER: Thank you. Now, do you both want to withdraw? There are inferences being thrown around. If members think that this is sufficiently important that it should be withdrawn then I would ask—

Mr Quinlan: Mr Speaker, I gave a chronology of events which is based on proof. That is what I gave.

Mr Humphries: Proof that I could not have done what you inferred.

MR SPEAKER: Very well. I will repeat—

Mr Quinlan: Sorry. I'm sorry, but if I stood up in this place and said that on 17 August I gave you some advice, and on 18 August a story broke, I'm sorry I said that.

Mr Kaine: Mr Speaker, speaking on this point of order: if Mr Quinlan was going to be asked to withdraw any inference that he might have made against the Chief Minister, then I require that the Chief Minister also be required to withdraw the inference he made against me. Let's be even-handed about this.

MR SPEAKER: Thank you. This is what I suggested a little earlier, Mr Kaine, as an effort to resolve this, unless somebody wishes to take action in a letter to me relating to privilege. Now, I suggest that both sides might like to withdraw any imputations.

Mr Quinlan: Mr Speaker, I cannot withdraw the facts. I did write a letter on 17 August.

MR SPEAKER: Yes, you did.

Mr Quinlan: The story did break on 18 August. I am sorry, I cannot withdraw that.

Mr Humphries: It is the inference.

MR SPEAKER: No, but you can withdraw any imputations, just as the Chief Minister can withdraw any imputations. I do not know whether imputations exist or not, but it does appear that other members feel this way, precious as they are.

Mr Berry: I reckon they would say something about me too, Mr Speaker, one day. They probably said it before, but I don't get my knickers in a twist about it.

MR SPEAKER: Yes, I agree, Mr Berry. Are we all done? I call Mr Corbell.

Consideration of Assembly Business

Motion (by **Mr Corbell**), by leave, agreed to:

> That Notice No 1 Assembly Business—Variation to the Territory Plan No 138—Gungahlin Drive Extension, made pursuant to the Land (Planning and Environment) Act—Disallowance—be called on forthwith.

Land (Planning and Environment) Act—Variation to Territory Plan No 138

Motion for disallowance

MR CORBELL (3.35): Mr Speaker, I move:

> That Variation to the Territory Plan No 138—Gungahlin Drive Extension, made pursuant to the *Land (Planning and Environment) Act 1991* be disallowed.

This motion has one clear and unambiguous purpose and that is to maintain on the Territory Plan the western alignment for the Gungahlin Drive extension. Mr Speaker, the Assembly should not be debating this motion today because this variation should not have been brought to the Assembly at this time. Construction of the Gungahlin Drive extension, whether on the eastern or the western alignment, is not due to commence until the 2002-2003 financial year and still requires an amendment to the National Capital Plan before it can proceed. In short, either the western or the eastern alignment can be built in accordance with the existing capital works timetable, and Labor has committed to that timetable for the western alignment. The development of the Gungahlin Drive extension will not be affected by a decision of the Assembly today to preserve the western alignment on the Territory Plan.

A variation to the Territory Plan to formally define the route of the Gungahlin Drive extension should be introduced in the next sitting of the next Assembly once the community has voted on this controversial and divisive issue. Their choices are clear and they know where the different parties stand. Most importantly, Mr Speaker, this Assembly should not act today to preclude route options from the next territory government by effectively passing this variation today.

Labor believes that the western alignment is the most appropriate alignment for the Gungahlin Drive extension, not because it has no impact on the natural environment or on residential amenity, because it has, but because in our view it has the least possible impact. The western alignment, the community option, has been identified as far back as 1991 as the best possible route for the Gungahlin Drive extension. Indeed, the key recommendations of the Joint Standing Committee on the National Capital chaired by the former Member for Fraser, Mr John Langmore, highlighted this very point.

Mr Speaker, the community option is a route which impacts at the edge of Canberra Nature Park rather than along the entire length of the Bruce/O'Connor Ridge area. It is a route which has the least possible impact on the cultural, recreational, and environmental amenity of the O'Connor and Bruce Ridge area. This is, of course, in stark contrast to the government's flawed eastern alignment. The western alignment is a shorter and more direct route to the Belconnen Way/Caswell Drive intersection than is the government's alignment. It is not a route, like the government's, which goes to the east to get to the west. Unfortunately, that is exactly what the government is proposing today.

For all of these reasons, Mr Speaker, Labor believes that it must seek to preserve on the Territory Plan the western alignment until the October election and then see a variation to the Territory Plan proceeded with so that the construction of this important arterial road link can proceed according to the current capital works timetable.

Mr Speaker, this road is predicated on the presumption that the percentage of trips from Gungahlin by public transport will be 20 per cent of all journeys. At the moment public transport, as a total share of transport modes, used for journeys to and from Gungahlin stands at around three to four per cent. Even with a four-fold increase in the percentage of trips by public transport, this road will be required. It is a matter of transport equity for Gungahlin residents, and it is the reason why Labor supports the development of the Gungahlin Drive extension.

Labor does not agree with the argument that the road should not be built at all. This argument would seek to deny an important transport leg for Gungahlin residents, with no clear, viable alternative. Improved public transport, including the removal of the discriminatory zone or fare system, and a clear strategy to encourage employment location in the Gungahlin town centre are both firmly on Labor's election agenda. These are issues which should have been addressed by the government years ago. They have failed to do so. But when all these things are said, Mr Speaker, and even with all these things implemented—implemented by a prospective Labor government—there would still be a demand for this important road link.

Labor argues that the Gungahlin Drive extension is required, and it needs to be built on the timetable outlined in the current capital works program. The difference between Labor and the government relates to the most appropriate route. I would like to outline in detail some of these issues today.

Firstly, Mr Speaker, the government has argued that its route has less impact on the Canberra Nature Park area of Bruce and O'Connor Ridge. This argument is simply untrue. The government's alignment travels the entire length of the Bruce and O'Connor

Ridge area. The road travels through existing areas of Canberra Nature Park along the entire length of its alignment between Ginninderra Drive and Belconnen Way. This is acknowledged by the government because it itself, in the variation before us today, is proposing to adjust the boundaries of the area of Canberra Nature Park to make way for its road alignment. The alignment does come directly onto the area of Canberra Nature Park along the length of Bruce and O'Connor Ridge.

The government's alignment will result in a direct impact on the recreational, cultural and environmental amenity of the Bruce and O'Connor Ridge area. This is an area widely recognised for its diversity as a nature conservation area, particularly for a range of bird and wildflower species. These issues were broadly examined during the Standing Committee on Planning and Urban Services' inquiry into this issue.

The reserve is far from the rubbish dump which some people favouring the government's preferred alignment had sought to characterise it as. Indeed, the area used to have a dump, but that area is nowhere near either the western or the eastern alignments. What is near the eastern alignment is an area widely used by cyclists, park care workers, walkers, runners and other athletes from the AIS. The Bruce and O'Connor Ridge areas provide a quiet, peaceful and diverse area of bush in our bush capital. The government's proposal threatens the integrity of this area on all of the grounds I have just outlined.

Mr Speaker, the government has also raised the prospect of impacts on grassland areas close to Kaleen if the western alignment proceeds. The reality is that the western alignment has the room needed to permit variations to its route to avoid this important site. In contrast, the eastern alignment also has an area of endangered grassland which will be affected by the government's alignment. This was highlighted in the Maunsell preliminary assessment at figure 3.2 of their report. Unlike the western alignment, which has a wide enough corridor to avoid the Kaleen grassland area, the eastern alignment is closely confined by its topography and cannot be re-routed to avoid this environmentally important area. The western alignment does have an impact on the Bruce Ridge area, but, in contrast to the government's alignment, the impact occurs at the edge of the Bruce/O'Connor Ridge area rather than along the entire length of the two ridges.

Noise impacts will be confined to the edge of the nature park area with the western alignment, as will the construction impact. Retaining the ridge for the wide range of recreational, social and environmental uses that it currently accommodates, along with the retention of its broader environmental values, can only be achieved by development of the western alignment, and that can only be achieved, Mr Speaker, by the passage of this disallowance motion today.

Mr Speaker, the government has argued that the western alignment will also have an adverse impact on the arrangements for the Bruce complex and the AIS, and on the residents of Kaleen. I would like to address these issues in some detail also.

The alignment for the western community option does impact on some of the car parking area at the front of the AIS, but this area was designated by the AIS itself for future commercial development in its own master plan for the area. This was made clear by representatives of the AIS to the Standing Committee on Planning and Urban Services' inquiry into this issue last year. The AIS itself wants to develop the car parks at the front of the AIS for commercial purposes.

In the longer term, car parking will continue to be accommodated partly in front of the AIS and in the eastern area of the stadium, and through the provision of public transport for major events. This is recognised by the AIS in its own master planning for the area. In short, car parking at the AIS is not an argument for removing the western alignment from the plan.

The issue of the impact of noise on residents of Kaleen can be effectively addressed by either route. The government's own preliminary assessment, prepared by the consultants Maunsell, highlighted the fact that an effective buffer existed between both the eastern and western alignments and that effective noise amelioration measures, such as noise mounds, could be accommodated for either alignment. Kaleen residents would be further away from this road than they would be from the existing Federal Highway or Ginninderra Drive alignments which also border the suburb.

Mr Speaker, on top of these issues is the government's deeper agenda, and that is the agenda to permit a broader scale of development activity in the Bruce precinct. This is an agenda in which the government has a vested interest. The government's vested interest is in precluding the western alignment as an option for the development of the Gungahlin Drive extension. That agenda is specifically tied up with draft variation No 176 to the Territory Plan. Draft variation No 176 proposes to change land use policy which places residential development immediately adjacent to the western alignment. The ACT is a joint party to this draft variation, along with the Fern Hill joint venture and a number of Commonwealth government agencies.

The ACT government has taken the view that development of the western alignment would diminish the development opportunities for the Bruce area. This approach underlies the fact that the government's agenda has more to do with the value of the return it gets for its land assets at Bruce than on broad considerations of the most appropriate and effective arterial road route for Gungahlin residents.

Labor's view is that the arterial road link is the higher and more important land use than the development aspirations of individual leaseholders in the Bruce area. The Bruce precinct can continue to be developed as a mixed use precinct, and the road corridor for the Gungahlin Drive extension would not impact on the overall development of that precinct.

Mr Speaker, the government says it went to the last election with a policy of the eastern alignment and that it should be allowed to proceed with development and passage of this Territory Plan variation today because of that policy. I would like to put the lie to that comment. On 5 November 1997 the now Chief Minister, the then minister for planning, Mr Humphries, was asked a question by me in relation to details about what was then known as the John Dedman Parkway. The Chief Minister said, as part of his answer:

> I can guarantee to members that, when some Minister for Planning comes to consider the building of a John Dedman Parkway, I will be long gone from politics. I promise you that.

The Chief Minister said also:

> I think members need to understand that this Government is not proposing to build the John Dedman Parkway.

Months before the last ACT election there was a clear statement from the responsible minister that the government was not intending to build the road, and there was no intention in anywhere near the immediate future to build the road. The government did not go to the last election on a commitment to build the road on the eastern alignment. The government deliberately avoided the issue. Mr Speaker, the government has no credibility on that issue. *(Extension of time granted.)* I thank members.

Mr Speaker, there is the question of the role of the National Capital Authority in this matter. The National Capital Authority has advised that both the western and eastern alignments meet its requirements in relation to its national capital planning responsibilities. Both alignments, according to the National Capital Authority, are acceptable from a planning perspective. So, why the rush, Mr Speaker? Why the desire by the government to push through with this proposal today when we have heard as recently as question time in this place today that the government will not be acting to preclude the alternative alignment? If the government is not acting to preclude the alternative alignment, why is it seeking to vary the Territory Plan now when it has acknowledged that it will allow change to happen if there is a change of government in October? It is a nonsensical proposal from this government.

Mr Speaker, I would like to conclude by reading some excerpts from today's *Canberra Times* editorial. The *Canberra Times* editorial today is titled "Gungahlin road: let poll decide", and it says this:

> Given the nearness of the ACT election, it does not seem to make a lot of sense for the Government to want to push ahead now with legislation on the Gungahlin bypass. The release of submissions from sporting organisations such as the Australian Institute of Sport, the Canberra Raiders, ACT Brumbies, Canberra Cannons and Canberra Cosmos, all of which support the Government's eastern option, was yet another attempt to justify rushing through this decision ahead of the October 20 poll. Surely, with only seven weeks to go before the vote, the logical thing would be to let the electors decide whether the western or eastern option is preferred by a majority of ACT electors.

The editorial also says, and I will finish on this note:

> If the Government thinks this is potentially one last piece of action by which it will be remembered, or even judged, or if it believes there are votes in it, it is mistaken. The residents of Gungahlin will get a road anyway, regardless of what happens between now and October 20. It is merely a question of which type of road and where it will go. … at this late stage, it should be up to the electorate to decide ...

Mr Speaker, the purpose of my motion today is to ensure that this Assembly does not preclude a future territory government, the government that will be elected after 20 October this year, from proceeding with an alternative alignment. It does not affect the construction timetable, it does not affect the provision of a road to Gungahlin residents, but it will ensure that a future territory government has open to it the road

alignment which is shorter, more direct and less destructive than the proposal put forward by the government today. I commend my motion to the Assembly.

MR MOORE (Minister for Health, Housing and Community Services) (3.55): Mr Speaker, I think Mr Corbell has aptly described the nature of his motion. As is required by the approach we use in the Assembly, he has made a case as to why this variation should be disallowed.

I would like to go back to the history of this process, Mr Speaker, because I hear people constantly saying, "Why are we rushing this process? Why are we pushing ahead with it?" I remember being involved with and putting in a submission to the Gungahlin External Transport Study, which must have been in the mid to late 1980s. So it is simply not true for people to suggest that this variation has been rushed in some way or that there has been inadequate consultation. The consultation may not have gone the way the people wanted or they may think it missed a point that they wanted to make. I think that each and every member here has put in a huge amount of time and effort to ensure that they are informed very carefully on the issues, perhaps more so than on almost any other issue.

Mr Speaker, it is important for us to understand that this decision should be made on factual grounds, not on emotive issues, and I heard Mr Corbell arguing on rational rather than emotive grounds. We ought not make a decision like this on the grounds of cacophony, or on who or which group happens to speak loudest at any particular time. We do not make these decisions on the basis of a cacophonometer reading. It seems to me, therefore, that we should look at the list of factors that support the motion.

I think they can be summed up in terms of the protection of the Bruce and O'Connor Ridge area. That is the essence of the argument that Mr Corbell put. I do not think I need to elaborate on those factors because we have heard them carefully put. We have not heard the arguments on the other side so carefully put, although I heard Mr Osborne on radio this morning putting them in a fairly succinct fashion. We heard about the protection of the grasslands. We heard of the interests of the people of Kaleen, who, although they have not been as active or as vociferous as the people of O'Connor, certainly have an interest, and members must take that interest into account.

There is another interesting argument that I had not heard until recently. In fact an ex-planner from NCDC put it to me. It is that the protection of O'Connor Ridge would be served best by having a hard edge to O'Connor Ridge, and he was advocating the eastern route. The reason why the hard edge is important, he argued, is that if the Bruce precinct is allowed to sit next to O'Connor Ridge as it does at the moment, with a major road on the other side, the pressure over the next 20, 30 or 50 years would be for that precinct to expand into the O'Connor Ridge, and it is far more important for it to have a hard edge.

That is the thrust of the general arguments that have been put and that I have considered. There are many more arguments, Mr Speaker. Recently we have been hearing about the protection of echidnas. The wildlife argument has been put on many occasions.

There is also the argument that Mr Corbell put here—that the government has a deeper agenda about making more money through sales of land, or something along those lines. That may be the case. I am not aware of a deeper agenda. Conspiracy theories always

sound good to people listening to them. I certainly have no deeper agenda in those terms. Indeed, I will not be sitting here in the not too distant future.

Mr Speaker, on the one hand we weigh the balance of arguments. On the other hand we take into account the political aspects and the interests of people here, the Gungahlin residents, the Kaleen residents, the O'Connor residents, the Aranda residents, the Bruce residents, the workers, the users, the cyclists and the environmentalists. We attempt to bring our best decision-making capacity to all of these things as we make these decisions.

Decisions of this type are never easy in an Assembly like this. We are always looking for the least worst possible option, and we are also being sure that we do not simply listen to the most dominant of a particular group that is providing an argument, although they may have the weight of argument.

With that in mind, Mr Speaker, I decided that the most effective thing I could do was to make sure I really understood where this route was going to go. I had looked at it on a map, and on a map it looks pretty self-evident. On a map the western route really looks like the more effective way. Therefore, I took the time to go and traverse the complete route in both directions so that I would understand whether the perception that had been created, that O'Connor Ridge would be destroyed by this road, was true or not true.

The perception that the O'Connor Ridge would be destroyed by this road is simply untrue as far as I am concerned, having walked the route, and that is why I will be opposing this disallowance motion today.

Future events that will flow from the decision today will be interesting. Mr Corbell argues that, following the decision today, Labor will somehow have an opportunity to bring this matter back and turn it over, and that that will happen in a short while. There is going to be, as he suggests, an environmental impact assessment. If there is going to be a reconsideration of the draft variation to the Territory Plan the process is going to take the best part of two years. I repeat, the process will take the best part of two years. The fastest variation to the Territory Plan that I am aware of, that occurred when everybody agreed and the community had agreed, was one that was done with regard to St Andrew's Village. There was broad agreement from the community and all those around, and that variation took the best part of six months. That is apart from the environmental assessments which we would have to do and which would have to be done one after the other.

Mr Speaker, this is an appropriate decision for this Assembly to make. This matter has been going on since the mid 1980s. It is entirely appropriate that we look at what it is that we are doing. Any member who has not walked that particular area ought to get out there and do it because it totally changed my perception. I went out there with the clear idea in my own mind that this was the final little trip for me to make sure that I was comfortable about the issue that I was dealing with in order to support the western route. My perception changed. It is that change of perception that has brought me here today to oppose Mr Corbell's motion, and that is what I will be doing.

MR KAINE (4.03): I will be very brief. Any proposal to build a road of the magnitude of the Gungahlin extension is going to have benefits for some and adverse effects for others. It is going to have social impacts, it is going to have an environmental impact, and it is going to have an economic impact. Our task is to determine how we solve this dilemma, with the greatest benefit and with the least adverse impact.

I have not been out and walked the route. I do not think I need to. I am well aware, over decades, of what that piece of ground is and what it represents to some people, and I do not need to go and walk it and to look at it. I can look at the map and I can see what impact the extension is going to make. Also, I am not much impressed by arguments about putting a hard edge on a nature reserve. The whole concept is ludicrous. Are we going to put hard edges on all our nature reserves and all our parklands in the future because it is some academic in thing?

Mr Moore says that the process that we have been following has taken a long time. Yes, it has. If we have not reached the right conclusion, however, I suggest that we should be extending the process a little longer. There is no justification for truncating a process if the outcome is not the right one.

Mr Speaker, I do not think the process has been the right one. I think the government, in recent months, has made up its mind, for reasons that it has not satisfactorily explained to me, that it is going to follow a particular route, and the views of people who do not accept that, in my opinion, have been written off as having very little value. I think the whole process has been flawed, and that includes the committee process. Substantial evidence given to that committee has simply been set aside in favour of the government's position. I think we have been proud of our committee system in this place for a decade. My opinion of the outcome of this particular committee process is that it has failed. The process has been politicised without doubt, in my view, and we have tried for over 10 years to make sure that that did not happen.

Mr Speaker, I come back to where I started. We have to find a solution satisfactory to the people of Gungahlin, with the greatest community benefit, taking into account social, economic and environmental issues, and having the least adverse impact. My view has been, is, and will remain, that the western route best meets that objective.

I have not been persuaded by the argument that says that we should adopt the eastern route. The argument simply does not stand up. It does not stand up in economic terms, it does not stand up in social terms, and it certainly does not stand up in environmental terms.

Mr Speaker, I think the government's position is wrong. I do not think the government has properly taken into account the views of those people most directly affected by this road. If it goes through on the western route it will be a travesty, and I support the disallowance motion that Mr Corbell is putting before us today.

Mr Moore: I think you mean the eastern route, actually.

MR KAINE: And so ought Mr Moore, who seems to be offering me some advice as to how I should be performing.

Mr Moore: You just said "western", and I think you mean eastern.

MR KAINE: I think Mr Moore has sold out his electorate, and he ought to be reconsidering his position, Mr Speaker.

MR STEFANIAK (Minister for Education and Attorney-General) (4.08): Mr Speaker, I too have walked both routes. I do not think I have gone across the Kaleen paddocks in recent times, but I certainly have walked both routes. I have been in the car park, so it is the western route that you go through, and I have gone around the eastern route and, indeed, further east than that. I have walked virtually all over O'Connor Ridge in recent times, including doing some orienteering once, which was quite enjoyable.

Mr Stanhope: It won't be any more, mate.

MR STEFANIAK: I don't think that will affect it, Jon. Some members already have made points. Let's have a look at the western route first, Mr Speaker. The western route goes close to the suburb of Kaleen, far closer than the eastern route, and there is concern in relation to the grassland. There is, in fact, some extensive grassland up until Ginninderra Drive. The eastern route goes through some scattered trees until it reaches Ginninderra Drive. Then there is the question of how you get across Ginninderra Drive. Are there going to be traffic lights there, or are there going to have to be flyovers?

You then go through the car parks of the AIS, and that, I think, is a particularly important point. Going through those car parks takes the western route very close to the AIS. It cuts though car parks that are used to the north. It cuts through major car parks closer to Battye Street. I think there has been evidence given that some 2,000 car parks are affected. More importantly, that is terribly close to the AIS, and terribly close to the dormitory where children as young as nine and 10 live and reside. The AIS has a number of very young athletes, especially the gymnasts, who reside in those dormitories. The people residing in the dormitories are predominantly young people, and I think that is a very important point to make.

In terms of the AIS, Mr Speaker, I will make a couple of points. I have heard that opponents of the eastern route have suggested that a western alignment is consistent with the AIS' draft master plan. Well, that is disputed by the government. A western alignment would increase the noise impact on the AIS resident buildings as well as on any future residential developments within the Bruce precinct. It would have a much greater noise impact too, in Kaleen, as I have indicated.

As well as that, a western alignment would have an enormous effect on the availability of parking for cars and buses within a reasonable distance of the AIS and Bruce Stadium. You have to add, too, the cost of replacing existing surfaced car park spaces with spaces in surfaced or structured car parks, which has not been included in the comparative cost estimates. I am advised that the Minister for Urban Services has indicated that that is likely to be quite an expensive exercise, adding millions of dollars to the estimated cost of this alternative. I understand he has stated that the cost difference could increase by more than $10 million if structured car parks are required. But it's not just that.

We also have to look at things like ancillary paths and underpasses for pedestrians, which would add to the overall cost of a western alignment. There is also the question about personal safety for people using underpasses under a western alignment, particularly at night, and the considerable inconvenience involved in attending events at the AIS and Bruce Stadium, making that less attractive.

The AIS attracts many tourists and many school groups. It attracts many patrons who go to events such as the Cannons, the Brumbies, the Raiders, the Cosmos, and other events at Bruce Stadium. Not quite so many go to the Cosmos, but people still go.

Mr Speaker, I have said a couple of times, and I will say it again in relation to this debate, that the states would love to have the AIS out of Canberra. They would love to see it somewhere else. The AIS employs hundreds of people. There are a lot of athletes in residence at the AIS. It provides a wonderful service to the Canberra sporting community and the regional sporting community. It is one of the greatest assets in the ACT.

Let's not kid ourselves. There are a lot of people out there in the other states who do not like Canberra. They bash Canberra all the time. It would not take very much for people in the federal parliament, I am sure, to do their best to make sure the AIS got out of Canberra. I think there is a very real chance, if the western route went ahead, that we could see that happen. I do not think that is something that the vast majority of citizens in this town would like.

I am rather amazed that the effect the western route would have just on general sporting activities in the Bruce precinct and in Bruce Stadium has not really dawned on the Labor Party, and that is a party that is supposed to support sport in the ACT. I cannot see how that would assist. All you need to do is have a walk along that path.

Then, of course, we have the problem of Bruce Campus of the Canberra Institute of Technology. The western route starts cutting through bushland. Well, let's face it, both routes do that to an extent. It skirts very close to the Bruce Campus of the CIT, very close to that road that connects Battye Street and provides access into the campus and out to, I think, Caswell Drive. It is very close to the CIT. There would be problems with noise for students studying and further expenses involved there. Is that, again, the most sensible thing to do? Then it joins where the eastern route would come around, and there might be some further problems. I will get to those, Mr Speaker, but you are back to the same basic route.

Have a look at the eastern route. What does it do? Well, I think I have taken it as far as Ginninderra Drive. The eastern route then follows pretty closely the alignment of Tucker Street. It seems to go to the west of Tucker Street, initially, and then effectively follows Tucker Street, takes off a bit of the car park to the east of Bruce Stadium, hooks around through the trees—yes, there would be a number of trees cleared there—heads west behind Bruce Stadium, behind the athletics field, and joins up at the rear of the CIT Bruce Campus, to the south of it. That is where the western alignment would come out. Certainly, some trees would be destroyed there, but they would anyway, once you left Battye Street and went behind the CIT campus, if you favoured the western route.

Some people have said the western route is more direct. Well, basically we are talking effectively of a freeway, as I understand it, with access roads going off it. I do not think people are going to suffer too much inconvenience with that. I am a little unclear, in terms of the western route, as to whether we are having flyovers at Battye Street, which we may well need, and perhaps even in part of the car park there, or whether there are going to be traffic lights there, which I heard someone say, and which I think would be crazy if you went the western route because that would cause all sorts of traffic bank-ups. I assume there would have to be a flyover on the western route in Battye Street. But you do not need that, except for Ginninderra Drive, if the eastern route were to be adopted, and that then hooks around behind the CIT.

Mr Speaker, quite clearly there is a lot in favour of that eastern route. You do not have the same problems with the AIS, the sporting precincts, the car parks, the access and the CIT Bruce Campus as you would if you went the western route.

I think there is some strength in Mr Moore's comments about a barrier, effectively, to further expansion to the east by the AIS. If you had that same barrier in the west that would preclude any expansion that way into an obvious area for expansion. I think that could be a very real happening, and it is something that perhaps a lot of people who favour the western route have not thought of.

I want to make one further comment, Mr Speaker, in relation to this debate. Aranda residents and a number of people have contacted my office, the government and a number of members about problems with the initial proposal in terms of Caswell Drive. On the diagrams people have the road comes out with a flyover or whatever onto Caswell Drive. The suggestion has been made that the route should go down a ridgeline, along a ridgeline, and that there be a flyover some distance to the east of Caswell Drive and skirt about 200 metres to the east of the alignment of Caswell Drive so that Aranda does not have the problem caused by extensive traffic down Caswell Drive.

I have had a look at that route too, Mr Speaker, and there is a lot of strength in that. I am delighted that the Minister for Urban Services indicated that his department is considering that as an option in terms of where the Gungahlin Drive extension goes after it crosses Belconnen Way. From what I can see, I would be supportive of moving the Gungahlin Drive extension about 200 metres to the east on the reverse slope of the Caswell Drive hill so that it would be out of sight and further away from Aranda. I think there is sense in that and I am delighted that the Minister for Urban Services is looking at that. I fully support him in doing so and, on the information I have, I would commend that option. *(Extension of time granted.)* I thank members.

All in all, Mr Speaker, having looked very closely at both routes and the possible and often more obvious ramifications of what would occur with both, I think the eastern route is by far the preferred option. I certainly am very happy in supporting my colleagues in that.

I think the Chief Minister was quite right and proper in ruling out what was causing a lot of people a very real concern up until last year, and that was the spur line that would go through O'Connor Ridge and join up with Barry Drive. That would have had very big ramifications for O'Connor Ridge and for the environment. I think the Chief Minister and the government were right to rule that out in October. I think this eastern option now

is far preferable to previous options, and, on all the evidence that I have seen, far preferable to the western option. I am happy that other members in this place feel the same way.

MR OSBORNE (4.19): Mr Speaker, to me there is no single factor that makes one of the two proposed road alignments better than the other—if there were, this decision would be much easier to make. The challenge I faced was to weigh the comparative strengths and weaknesses of both alignments, and then make an on-balance decision.

In preparing for the vote today I have concentrated my attention almost solely on the western and eastern alignment options. I have given only limited attention to those areas that are common to both routes, as I see the need for a freeway connecting Gungahlin and the Tuggeranong Parkway as not only essential but already long overdue.

In studying the 31-year historical record of some 20 transport studies done in the ACT, I was easily convinced that public transport alone was not going to get the people of Gungahlin to work in the morning and home again at night. In fact, I noted that even with bus patronage set at an optimistic 25 per cent, and with increasing employment in the Gungahlin town centre, just one freeway was not going to be enough. At least one additional freeway to the Gungahlin Drive extension will be needed by the time the township reaches a population of 50,000—a day that will come sooner than most people think. Maybe that is a debate for another time.

Mr Speaker, to better inform myself on the issues in this debate, I too, like Mr Moore, have walked along each of the proposed routes, from where they separate at Kaleen and join again near the Bruce CIT campus. There are a number of features that are common to both routes. Both options are similar in their ability to distribute traffic, coming from Gungahlin away from North Canberra residential suburbs. Both also have similar impacts on the area's geology and water and air quality.

For me, the main difference between the two alignments centres on three things: their respective impact on the environment, their impact on residential and recreational amenity, and the difference in cost. I have to say, Mr Speaker, that cost alone would not be a major factor. In fact, I still think it is only a minor one, but one that we do need to consider.

I do not consider one of those factors to be more important than another, and I will cover each one in turn. Although different, both routes have a distinct impact on the environment. The western alignment travels through the Kaleen grasslands, an area with good conservation value and home to one of those little creatures that seem to gravitate to wherever there is a yellow development sign, and that is the legless lizard. After crossing through the AIS car park, the southern end of this route travels through a hectare or so of good-quality woodland between the AIS running track and the CIT.

The eastern alignment also impacts on the environment, although it does so quite differently. After crossing Ginninderra Drive and Tucker Street, the proposed route travels on top of and inside Masterman Street, before circling around the edge of the main Bruce Stadium athletics track towards the CIT.

I have to say, Mr Speaker, that having followed the debate from the sidelines over the last couple of years and really only now looking at it quite seriously—and this matter has consumed my office for the last couple of weeks—I was amazed when I walked the route to see just how little actual physical damage has been done to the O'Connor Ridge. I think once the government took out the spur, the reality was that the O'Connor Ridge was saved.

I do accept that on this part of the route some woodland will be lost, especially—and I am looking at a picture of the site, which has been my constant companion for the last couple of weeks—behind the AIS track and just behind Bruce Stadium. As an aside, I walked that route with an officer from Environment ACT, who indicated to me that that area of woodland is not endangered and in fact is quite common. He also indicated to me his support for the eastern option because of the issue of a boundary, which Mr Moore spoke of. This meant nothing to me but it was something that he saw would be of benefit.

Mr Speaker, both routes have an impact on the quality of life of nearby residents. An environmental impact study would determine that the western route freeway would have to be diverted around the Kaleen grasslands and this would bring the freeway closer to the residents who eat, sleep and live in Kaleen. Mr Smyth can correct me but the proposed flyover is five metres above Ginninderra Drive and, from what I have seen, this part of Ginninderra Drive is quite higher than the Kaleen grasslands. I am no engineer, but the height of the freeway would have to be increased some significant way back from the flyover and this would negate the effectiveness of the noise abatement suggestions that have been made.

Obviously this would also have an impact on the Australian Institute of Sport and the athletes who reside there. The Bruce CIT campus would also be affected because the western option travels between the AIS athletics training track and the campus. So this route would have a real impact on the day-to-day lives of different people.

On the eastern side, the suburb of O'Connor is protected by the ridge. However, this route would obviously have an impact on the recreational users of O'Connor Ridge. Although noise reduction measures can be used, I think it would be foolish to suggest that noise would not have an impact.

The final consideration—this is by no means the most important; and probably, in the scheme of things, it is the least important—is the difference in cost. The western route is substantially more expensive. There would be an additional cost of $2.6 million to cover the extra expense of the flyover that crosses Ginninderra Drive and the additional flyover at Battye Street.

There could potentially be an additional cost of somewhere between $5 million and $25 million, depending on the option chosen, in replacing lost car parking. It was suggested to me that the AIS could consider tiered parking. I shudder to think of the cost that would impose on that option. While this could possibly be an immediate expense for the Australian Institute of Sport, ACT taxpayers could well be lumbered with the full cost of replacing car parking at some stage in the future.

I have largely discounted various issues that have been raised regarding the AIS master plan. The master plan has no legal standing. It is a document of intent, contingent on further planning approval and, more importantly, it would require substantial federal funding.

Mr Speaker, this is another of those times when the community has been asked to weigh up conflicting factors, the best interests of different groups of residents, the need to protect our natural environment, the financial costs involved and the need to reduce traffic congestion on residential streets. I expect this has not been an easy decision for any of us to make. As I said, Mr Speaker, it has consumed a lot of time in my office in the last couple of weeks. After long consideration of these points, on balance I will be supporting the eastern alignment. I have heard nothing in this debate that would cause me to change my mind.

I have to say, Mr Speaker, that the most difficult thing that we have had to sort out in our office is finding out what was correct, what was the truth and what was not. All the people that I spoke to were obviously very passionate about this issue, but a lot of the information that came into my office was clearly not correct. It has been a battle to try to make a decision based on the facts. I feel I have done that. I accept that, regardless of the final outcome of the vote today, some people will be unhappy because the decision has gone against them. Unfortunately, in matters like this that is always going to be unavoidable.

Mr Speaker, on a final note: I would add that I see merit in moving the point at which the new freeway crosses Belconnen Way and joins onto Caswell Drive. I have sympathy for the argument put up by Aranda residents about the noise impact, and at this stage I support moving the intersection about 200 metres eastward, as they have suggested. But that is a different issue. I had a meeting with the people who are opposed to the road altogether.

I think the worst environmental impact is going to be where Gungahlin Drive goes through the Bruce ridge. So there is clearly going to be damage. However, on balance, after taking away all the emotion and making a decision based on the facts, I feel that I have made the right choice.

MR STANHOPE (Leader of the Opposition) (4.30): Mr Speaker, I primarily wish to reiterate the strength of the argument which my colleague Mr Corbell made in support of the disallowance. Reflecting on the debate that has taken place, I think it is worth commenting on a point that Mr Osborne made—a point that I had intended to make in any event. Mr Osborne said he thought it was important to take emotion out of the debate. I think in matters such as this, the mistake we make is to take emotion out of the debate.

It seems to me that those who argue against the western route talk about the number of trees that will be affected or perhaps an audit of costs and benefits that relates to some simple statistics. There is no regard at all for the sense of violation that putting a road through a nature park imposes. There has been no discussion about the effect of the intrusion of a major road such as this through a nature park. There has been no discussion of the sense of violation that will result from the running of a major road or a freeway through a nature park.

The difficulty we have in debates like this is that issues can be reduced to a simple audit. We need to have some emotional commitment to the idea of open space, nature parks, the environment, and cultural and recreational infrastructure and support. To suggest that we look at this in the cold hard light of day, in terms of non-emotional dollars and cents and the numbers of trees saved or destroyed, reduces the entire discussion in a way that does not lead to the best outcomes for the community.

I get the feeling from listening to Mr Moore, Mr Osborne and Mr Stefaniak that they do not have any commitment to the irreplaceable inherent value of nature parks and the bush—value that makes this such a desirable place in which we want and choose to live. These are values that cannot be measured.

I would like to make a few other points in relation to some of the arguments and suggestions that have been advanced about the impact on Kaleen. This really is something of a furphy. There would be a significant impact on the northern end of Kaleen where John Dedman Drive comes into the Kaleen horse paddocks. At that point the road will run to within 150 to 200 metres of a significant number of houses that border the eastern alignment and Kaleen.

The discussion about the deviation of the eastern and western routes at the intersection of Ginninderra Drive really is not relevant to the impact on Kaleen. That is at least half a kilometre from the nearest house in Kaleen. The real impact is at Kaleen horse paddocks, and I think it is disingenuous to suggest that the western route involves a greater impact on the people of Kaleen than does the eastern route.

The most significant impact is at the horse paddocks section of the freeway. To conjure up an argument about the interests or rights of Kaleen residents at the point of the intersection of Ginninderra Drive really is a little artful. As I say, the intersection of Ginninderra Drive is at least half a kilometre from Kaleen.

I am interested in the ready acceptance by Mr Stefaniak and Mr Osborne of moving the egress of the John Dedman extension—now the Gungahlin Drive extension—200 metres east of Aranda. Once again it reflects a view about the nature park. Of course, I understand that there is some force in the argument of the people of Aranda, and certainly the impact on the people of Aranda is an issue that we need to address and be mindful of. But this suggestion that we can willy-nilly move the Gungahlin extension 200 metres into Black Mountain without any suggestion of or commitment to any environmental assessment of the impact is just a little bit frightening. I note that one of Mr Moore's concerns is that there will simply be no time for an environmental impact assessment of any sort.

I hope the government is not seriously suggesting that it would move the Gungahlin Drive extension 200 metres to the north of Caswell Drive without having an environmental impact assessment. I hope that is not what the government is suggesting in its ready acceptance of that apparent concession. In saying that, I accept the legitimate concerns of the people of Aranda.

It is obvious from the debate today that unfortunately the government has the numbers and that the variation will go ahead and the western alignment will be removed from the plan, and that is a pity. To some extent we are here now basically putting on the record what we perceive to be the flaws in the decision that it seems has been made.

To some extent it is difficult to stand here and respond with gusto, knowing that the deed is done. We can respond, certainly, by expressing serious disappointment. My sense of disappointment is heightened simply by the paucity of argument. There is just no strength to the argument.

We know where the eastern route and the western route are. When you stand the two routes side by side, I simply cannot see the basis on which you can honestly come to a conclusion that this community is advantaged by removing the western route from the plan and persisting with a determination to construct this road along the eastern route.

When we balance up the inherent irreplaceable value of this piece of Canberra nature park against the western option, I just cannot see what the interests are that we are pretending to protect. I cannot see that the values of the western alignment are in any sense—other than perhaps in a dollar sense—greater than the values we should seek to protect in relation to the Canberra nature park into which this road will intrude.

My colleague Mr Corbell went through the values in some detail and it is perhaps not all that fruitless for each of us to stand here and repeat them. Those values are so self-evident. The values that we are protecting along the western route include: the enjoyment of some peace by residents at the AIS; a car park to the west of the AIS and Bruce Stadium; a feeling amongst the football codes that the road would be a real pest; and some developmental opportunities.

What else is there? There is nothing else. That is it; it is as simple as that. When it all boils down, there is nothing else. There are, in the scheme of things, some minor developmental opportunities; a car park; the enjoyment of peace and quiet by some residents of the AIS; and some concept of inviolability of the Bruce precinct. That is it; that is the scorecard.

On the other side of the ledger, of course, is the preservation of a limited amount of remaining bushland. There might be individual views about the bushland and its quality, but that is not the point. It is there, it is finite, it is incredibly valuable, and it is irreplaceable. There is value associated with it just being there. These issues are not addressed by those who support the violation of the nature park. They do not address issues around why we bother having bits of bush in any event. They do not address issues around, dare I say it, the human soul and why it is that we go into the bush from time to time. These issues need to be addressed.

In discussing this sort of issue we should not be afraid to talk about why it is that we preserve bush and why it is that we have nature parks. This is a dreadful decision, and it will be rued by those who support it.

MS TUCKER (4.40): The motion before us today is about disallowing the government's variation to the territory plan that confirms the eastern alignment of the Gungahlin Drive extension. This debate is mostly portrayed as a decision over whether the road should go around the east or the west of the AIS, and that is mainly what has been focused on here in this debate. As I have said before many times, this is a narrow view of the issue.

Let me focus again on the bigger picture. The John Dedman Drive, or the Gungahlin Drive, extension is really just one section of a proposed bigger arterial road from the Barton Highway to Parkes Way. There are environmental and social impacts upon the whole length of this work. Not only that, the decision on this road will set the pattern for transport planning in the ACT for many years to come.

It should be remembered that the Maunsell report regarded the Gungahlin Drive extension as just one road amongst many new roads and upgrades that would be needed to deal with Gungahlin's growth—for example, the four-lane Majura Parkway, the new Monash Drive along the base of Mount Ainslie, and a duplicated William Slim Drive through Belconnen.

Canberra really is at the crossroads regarding how it deals with the transport demands of its growing population. That is why the Greens have always said that this debate should really be about determining the most appropriate transport system for the ACT that meets the needs of residents, particularly in Gungahlin and North Canberra, in the most cost effective, socially responsible, and environmentally sound way. It should not just be a question of where more roads are to go.

As other members have said, the issue of transport links to Gungahlin goes back a long way. It is true that the general layout of a network of freeways through North Canberra was included as part of the original Y plan for Canberra that was released in 1970, and that later planning studies continue to show this network. However, the reasons for wanting a freeway in 1970 are quite out of touch with community attitudes in 2001. For example, awareness of the significant negative environmental impact of city traffic was not as pronounced then as it is now. Back then we did not even know about the greenhouse effect and climate change. The knowledge and technology available to operate efficient public transport systems has also advanced considerably since that time.

The Gungahlin external travel study of 1989 conducted by the former NCDC initiated the planning for the Gungahlin Drive extension. This Assembly needs to remember that a review of this study was carried out by the Joint Parliamentary Committee on the ACT in 1991. The thrust of the JPC report was quite clearly that a range of non-road options be implemented to lessen the need for car-based travel by Gungahlin residents before—and I stress "before"—consideration was given to building more arterial roads through North Canberra. It particularly wanted an investigation to be made of a rapid transport system. The former Labor government started these investigations but the Liberal government then abandoned the whole process in 1995. Since then we have had a policy vacuum on a transport strategy for the ACT.

Another recommendation of the JPC was that the government implement measures to reduce the number of vehicles travelling between Gungahlin and Civic and other southern destinations. Such measures included: providing bus services to the new Gungahlin suburbs as soon as they were built; limiting the level of employment growth

in Civic; encouraging commercial development and jobs in Gungahlin, Mitchell and Belconnen; implementing a detailed commuter cycleway strategy; and introducing measures to increase the number of passengers per vehicle and to spread peak traffic loads.

The government's response to these recommendations has been half-hearted at best and quite contradictory at worst. For example, the ACT government has made no commitment to establish its own government offices in the Gungahlin town centre. In fact, it has encouraged new employment outside of the town centres—for example, Brindabella Business Park at the airport. Under the government's zonal bus fare system, Gungahlin commuters pay double fares to travel to Civic. If the government was serious about helping Gungahlin residents, it should abandon straight away its inequitable fare zoning system.

The Gungahlin external travel study and the JPC report also recommended that consideration be given to upgrading the Majura Road to act as an eastern ring road from Gungahlin to central Canberra, with a connection to the Monaro Highway and the southern parts of Canberra. Nobody seems to be opposed to this road. It would divert traffic right away from North Canberra, and the environment of the Majura Valley is already considerably altered and is unlikely to be used for residential purposes in the foreseeable future because of the airport. The government should have started work on this road years ago.

What I find most appalling is that over the last 10 years the government has been putting off the hard decisions about how to reduce transport demand from Gungahlin. In the meantime, Gungahlin has been getting bigger and bigger and more and more cars have been travelling through North Canberra streets, thus making the Gungahlin Drive extension seem like the only solution available to meet the transport needs of Gungahlin residents. In fact, the timing of the Gungahlin Drive extension has been brought forward because of the huge reliance of Gungahlin residents on private vehicles, assisted of course by this government's public transport policies. In 1997 Mr Humphries said that the road would not be needed for 10 years. Yet now the government wants the road open by 2004. Some Gungahlin residents want it even sooner.

Let me say that this debate should not be about pitting Gungahlin residents against North Canberra residents. In fact, I believe that Gungahlin residents are getting a raw deal as a result of all this focus on the Gungahlin Drive extension. The freeway will not eliminate traffic congestion on North Canberra roads—it will just channel it into new locations. What we should be looking at is how to give Gungahlin residents greater transport choice, rather than just having to rely on using their cars all the time and having to face congested roads in and out of Gungahlin.

If this road goes ahead in whichever alignment, it will be a disaster for the native bushland at Bruce and O'Connor Ridge and for the many residents of the area who use this bushland for recreation and for quiet solitude. The freeway will also generate more traffic on Caswell Drive, thus subjecting these areas to increased traffic noise and fumes.

I have been trying for some time to get the Assembly to examine these broader transport issues. Two years ago I was proud to initiate the Planning and Urban Services Committee inquiry into the Gungahlin Drive extension. The committee had very broad

terms of reference to look at alternative transport options. I was therefore extremely disappointed, as I know many people in the community were, with the superficial report from the majority of committee members. I was even more disappointed about the speed with which the government proceeded with this Territory Plan variation and the refusal by the majority of committee members to have a further inquiry into the variation, even though many doubts had been raised about the credibility of the committee's report and the government's costings of the road.

Given the closeness of election day and the fact that some lead time is required to begin construction, I am amazed that the government has attempted to push this variation through the Assembly in the last week of sitting. I think the whole issue should be left until after the election and after we see what the mood of the voters is on this road.

Another factor to consider is the role that the federal parliament will take in approving this road. I admit that I was originally suspicious of the move by the National Capital Authority to issue a draft amendment to the National Capital Plan that mirrored the government's variation, given that the NCA has had little involvement in this long-running debate. However, I have come to realise that the NCA has a very critical role in this issue, as a significant length of the road on either alignment will pass through designated land of national significance in that the road crosses a part of Canberra's inner hills which form the backdrop of the Parliamentary Triangle.

This is not a case of unwarranted federal intervention. It is something that was allowed for when the ACT was granted self-government. Canberra has always had the dual role of being the national capital as well as the home of many people. The self-government legislation gave the National Capital Plan precedence over the Territory Plan and gave the federal parliament the power to disallow amendments to the National Capital Plan, just as we are now attempting to disallow this variation.

Even if a majority of this Assembly approve this draft variation, it cannot be implemented until the National Capital Plan is amended, and my colleague Senator Bob Brown has already indicated that he is prepared to move disallowance in the Senate. I therefore think the government is wasting its time trying to rush through this variation now before the federal process has been completed.

I think three things could be done now to put off the need for this road: abandon zonal bus fares, upgrade Majura Road and link it across to Gungahlin, and build bus only lanes between Civic and Gungahlin. In the longer term we should revisit the idea of a light rail system to link all of the town centres for which the transport corridors are already marked on the Territory Plan. (*Extension of time granted.*)

Given that it appears I am the lone voice here in promoting alternative transport options to eliminate the need for a road, if I have to make a choice between the eastern and western alignment then I would have to favour the western alignment and oppose the government's planned variation. The western route is shorter and straighter, so it would be more efficient for car travel and better for fuel consumption and exhaust emissions.

The government say that the western alignment is more expensive, but these figures are extremely rubbery anyway, and the percentage difference between the two options is not likely to be greater—probably less, in fact—than the annual cost of the V8 supercar race.

The government said there would be extra costs for the western route from having to move the AIS car parks, but this must be balanced against the unstated costs of the eastern alignment and having to rebuild Masterman Street and Tucker Street. The government says that the AIS will be cut off from the rest of the Bruce precinct, but the AIS' links to the businesses and institutions in the Bruce precinct are not strong anyway. This is also a poor argument when it is recognised that the University of Canberra, which is touted as being a part of the Bruce precinct, is actually separated from it by the four-lane Haydon Drive.

Civic is cut in two by the six-lane Northbourne Avenue, but Canberra residents cope with this. I am sure that we can work out safe ways for people to cross the western alignment to get to the AIS. Also, the government does not seem concerned about cutting off the AIS from Bruce and O'Connor Ridge, which will impact negatively on the recreational and sporting use of this bushland.

Both options will have a major impact on the ecological values of Bruce Ridge, but the government admits that the eastern alignment will require four more hectares to be removed from Bruce Ridge than the western alignment. The argument seems to boil down to what is more important: four hectares of bush or a car park; integrity of a nature park or a car park.

The concern about the impacts of the western alignment on Kaleen residents and on the Kaleen grasslands is also really a furphy. It is true that the area between Ellenborough Street and Ginninderra Drive contains some remnant native grasslands, but this area has been disturbed by past grazing and is not of high quality. The government's own action plan for natural temperate grasslands only rates this area as three on a scale of one to five for botanical significance. This area was not recommended for reservation. The Maunsell report was also dismissive of the ecological value of this area. It noted the grassland was disturbed and had been invaded by phalaris, plantago and paspalum.

Concern about the noise impacts on Kaleen residents has also been raised, especially by Mr Osborne, as a key argument. Of course, we are all concerned in this place about the impact of roads on people who live nearby. There has to be amelioration of sound impacts on residents, and that can be done.

We have the same issue now in Aranda where residents are asking that the road be pushed into the Black Mountain part of the nature park. So we are going to have that same battle there. It is, of course, important to look at social amenity and the impact on people from roads, but we also have to look at the other very broad issues that have been outlined here today.

Mr Moore and Mr Osborne said that they had decided which way they would vote after having walked the two routes. I must say I find that pretty intellectually insulting in view of the amount of time and the amount of work that has gone into this issue. Mr Osborne said he wanted to look at the facts. I hope Mr Osborne reads the submission from the O'Connor Ridge park care group, and I hope he comes back and responds to it. I am speechless. How can you say that you went for a walk and therefore you know it is not going to do any damage?

To help members, I will refer to a very significant submission from a group of people who were prepared to do the work and tap into the expertise. The submission contains a table of bird species. Species which would not normally be found in gardens and depend on the ridge for nesting sites, seasonal passage and refuge are marked with an asterisk. These birds include the common bronze-wing, the black-shouldered kite, superb parrot, Horsfield's bronze cuckoo, the shining bronze-cuckoo, the scarlet robin, the red-capped robin, the eastern yellow robin, the western gerygone, the speckled warbler, the superb fairy-wren, the mistletoebird, the spotted pardalote, the double-barred finch and the red-browed firetail.

This submission was put together in 1997 and since then Freudenberger and the CSIRO have carried out a study on habitat values around Canberra and the impact of fragmentation. (*Further extension of time granted.*) In this project, O'Connor Ridge was assessed very highly for bird habitat, including species vulnerable across New South Wales such as the speckled warbler. So when Mr Moore and Mr Osborne went for a walk, I hope they were thinking about the impact on vulnerable species across New South Wales.

I hope when they went for their walk and looked at where they thought the road was going, they asked themselves what was meant by "hard edge". From now on the precedent will be: if we want to save an area, we will put a freeway through it; it will give us a hard edge. Where is the hard edge from government which respects the ecological integrity of its nature reserves? Where is the hard edge of an approach to planning that respects social and environmental integrity when the government is making planning decisions? Where is the hard edge that comes from responsible government?

When Mr Moore and Mr Osborne went for a walk I also wonder if their estimation of the impact was influenced by projections of the density of residential development in the area in the future—an increase in development which this government, of course, supports; and so do the Greens if it is done in a sensitive way. We will, of course, see increased density around our city.

Mr Smyth: Where?

MS TUCKER: Normally in most cities—and I have not heard the minister say he does not think it is advisable—we see an increase in density around areas that are near particular facilities. We have already seen an increase in density in the inner northern suburbs. Where is the estimation of the needs of the people, the humans, who live there in respect of their access to those wild areas, to those nature parks? When you went for a walk to determine your position, you should have considered the environmental value of birds and flora and, of course, the other less easily understood environmental issues such as the impact of greenhouse emissions on this city, Australia and the world.

There is enough evidence—people are well aware of it, and this came through in our committee deliberations—to show that the more you build freeways, the more you facilitate car usage, the more cars will use the roads. This government, which has picked up and progressed the Greens' motion to produce greenhouse targets in respect of energy use in buildings, has done nothing at all in terms of transport. They speak very proudly of their achievements in greenhouse emission reduction whenever international visitors are here but where does this proposal fit into that plan?

Of course, Labor have said we have to have a road. That is Labor's position. I notice that Mr Corbell pointed out that Mr Langmore's report said, "Before you look at the need for a road, you do this work." That is what the Greens are saying. We are saying what Mr Langmore's committee said. But no-one did it.

Mr Moore talked about there being so many years of consultation. Do we want more consultation? No, we want action. Ten years ago governments were being told, "Do something creative about transport. Don't just build roads. Do something creative about transport and then look at the need for roads." That has not happened.

I could go on but I will have to conclude my speech. I hope that Mr Smyth, in his response, will speak in some detail about the ecological value of the area that has been documented. If he does not do that he will have failed as the minister for the environment—and I believe he has demonstrated such a failure on several occasions in this Assembly.

We have an opportunity in October to elect a government—I hope Labor will reconsider its position on this, but I do not suppose it will—that shows leadership and that moves into this century in a way that demonstrates wisdom and courage. We have an opportunity to turn Canberra into a place that continues to be a good place to live in. We have the opportunity to make the national capital a role model. We do not want to just sit here with a 1960s mindset and continue on this destructive planning course.

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

MR HIRD (5.01): Mr Deputy Speaker, my committee took over the brief on the Gungahlin Drive extension—the brief which Mr Moore's committee had in the Third Assembly. My committee examined in detail the evidence that was given on the issues that are in front of us today. My committee put forward 25 recommendations, and Mr Corbell dissented from recommendation 24, which we are debating today.

What I do find interesting, Mr Deputy Speaker, are the arguments that some members on the crossbenches are putting. They are saying that the government is sitting on its hands and is doing nothing for the citizens of Gungahlin. That is exactly what our recommendations, which with one exception were endorsed unanimously by my committee, address. It is blatantly obvious to me that they have not read, or taken the time to read, this very informative report from my committee. Our report No 67 touches on the—

Mr Kaine: The corruption of the democratic process—is that what you're talking about?

MR HIRD: Mr Kaine was heard in silence, Mr Deputy Speaker, and I would appreciate the same courtesy.

MR DEPUTY SPEAKER: That is a fair point. The debate has been heard in silence.

MR HIRD: Thank you, Mr Deputy Speaker. It appears that I have touched a raw nerve in the case of some people. Let me deal with the facts. The facts are that, at recommendation 17, we talk about IPT routes. We talk about the joining of Horse Park Drive to Majura Road. Indeed, Mr Rugendyke and Mr Corbell know that draft variation 84 sought to move Majura Road 500 metres back towards the city. As well, the federal government complied with a request for an overpass to be constructed. Horse Park Drive, which will come up in 2004, is in the budget this year. So this government is sitting on its hands, is it? Let me tell you that this government is conscious of the needs of Gungahlin, which is one of the fastest growing residential area of Australia, with approximately 4,000 people per annum moving to the area.

Mr Deputy Speaker, I believe that in excess of 30,000 people are already fighting to get out of and into Gungahlin. If anything, the Labor Party in the early 1990s let the team down. They have let down the residents of Gungahlin. The road infrastructure was in place for all the other developing areas of Tuggeranong, Belconnen and Woden. If the road infrastructure had been in place in Gungahlin, we would not be arguing about or debating this matter today. The AIS was developed after the planners of this great city had identified the road system. It is not that we cannot change things, because the developing area of Bruce, Kaleen, Gungahlin and Aranda need adequate road systems.

I do not care what anyone says, Mr Deputy Speaker; the best form of rapid transit in this territory today, tomorrow and in the years ahead is the private motor car. If we want to bury our heads in the sand and say it is not, we are only fooling ourselves. We could look into the future and argue about the transport corridors.

I am sure the Minister for Urban Services is going to say that the rapid transit route that went through O'Connor Ridge and has been removed in this variation is a compromise. Although the government put forward an argument, other detailed submissions were made to my committee. As indicated by my learned colleague the Attorney-General, Mr Stefaniak, the government compromised when it took out the spur which went through O'Connor Ridge. That proposal for a spur road has been eliminated.

We have to take into account that this area has been affected by the development of and improvements to Bruce Stadium, and improvements of the AIS. If the Save the Ridge people are arguing—it is their democratic right to argue, and I will defend that right—that the eastern route, which has been moved an extra 300 metres as a result of a compromise, will be responsible for an unacceptable level of gas emissions, then they should have been arguing that the spur road is the most favoured route because it is the most direct route.

The western option would remove a minimum of 2,000 car spaces which are in walking distance of Bruce Stadium. So what can we do? If we go the western route, those 2,000 car spaces will have to be moved behind the Bruce complex, where the existing car park is. I submit that that would cause even more damage to the area they are concerned about.

The Bruce site has 600,000 visitors a year. If the western route goes in we stand to lose 100,000 tourists a year. The western option would undermine living conditions for 250 elite athletes, and we know of the success that this great country had last year in the Olympics. The adoption of the western route would do little to guarantee a continuation

of this success. I share the sentiments of a colleague who said that the states would pick up the functions performed by the AIS. Indeed, members of the federal parliament, who love to kick Canberra because of the votes this wins in their respective electorates, would grab such an opportunity.

Bob Ellicott, a former Minister for Territories, should always be commended for establishing and developing the AIS. This initiative has rewarded the athletes, Canberrans and Australians. It would be fair to say that the AIS is worth $40 million a year when you take into account the employment it creates and the money that it puts back into the local economy.

The eastern route is the government's option. It also happens to be the option of the Gungahlin Community Council. A large number of form letters from residents of Gungahlin were sent to my committee. Also, a large number of form letters were received from persons associated with the Save the Ridge group, and they have the right to take such action. But the committee also received submissions from the Canberra regional branch of the Bus and Coach Association (NSW); the Fern Hill Park Venture—an assessment was done at their expense by Purdon and Associates; the ACT Academy of Sport; the Raiders; Gungahlin Community Council, which I have mentioned; the ACT Rugby Union Ltd; and the list goes on. All favour the eastern route.

Ms Tucker indicated that Mr Moore and Mr Osborne made their assessment based on what they had seen during a walk of the area. Has Ms Tucker walked and looked at the area? The argument that is being put up that the route will go through the centre of Bruce Ridge is a nonsense, because the spur road has been removed. (*Extension of time granted.*)

The facts are that a number of other recommendations in my committee's report are being undertaken by the government and are in the current budget. I refer to the duplication of William Slim Drive and an investigation concerning Caswell Drive.

Ms Tucker referred to the greenhouse effect. The option put by the government in their submission is that there should be controlled intersections. We recommended that there be overpasses and underpasses, and the government have accepted that. The $10 million which was allocated for the spur road will be now directed to that purpose. There has been no pat on the back for that.

The Save the Ridge group, in a letter which I will table shortly along with other documents, stated:

> Save the Ridge on behalf of its members objects strongly to the Report handed down by the Urban Services Standing Committee Inquiry into Gungahlin Drive Extension, in particular recommendation 24 that GDE be built to the East of the AIS. The Report is biased, has ignored significant new evidence that was put before the committee and has misrepresented the views of Save the Ridge and a large majority of the community who made submissions to the Inquiry.

And it goes on:

> We believe a written explanation from the Committee, specifically addressing the following issues is required.

They raised a number of issues. Our colleague Mr Kaine drew attention to this matter at question time on the day that I received this letter. I undertook to answer those queries in detail. I did so. I will table the letter again so that members can understand the issues and the points that were raised. But the Save the Ridge group do not say that the only issue on which they base their argument to discredit this report is recommendation No 24. There are 24 other recommendations which traverse a wide range of issues, but the Save the Ridge group do not give the committee any credit for that.

At point 7 of my response to the Save the Ridge letter, I said:

> 28. Save the Ridge claims that its position on the GDE and its alignment were 'misrepresented' in the committee's report. Save the Ridge, in Attachment A to its correspondence, provides excerpts from Dr Tanner's oral testimony.
>
> 29: A majority of the committee (Mr Corbell dissenting) does not dispute this testimony but points out that it needs to be set alongside the following passage in the written submission by Save the Ridge dated 31/8/99—

two years ago—

> [page 12 of Part A of that submission]:
>
> "We oppose the proposed eastern extension of the Gungahlin Parkway through Bruce/O'Connor ridge ... In particular, we oppose the eastern spur to Barry Drive. If there must be a road, and we are far from convinced that this is necessary, 'the community option' or western route is preferable on several environmental grounds".

To me it is very clear that some people will not be satisfied with whatever is done. At the end of the day someone needs to make a decision. This issue has been around from the late 60s, 70s, 80s and the time of the Third Assembly. We have made a decision; we have brought in a finding. But because certain elements within the community are not happy with that finding, they do not accept the umpire's decision. I believe that the people of Gungahlin and the people of Belconnen need a road system that will service them, and I will be supporting the eastern route. (*Further extension of time granted.*)

Before I conclude my remarks, I have to raise something that has saddened me. I have been in this place for many years, both as a member of the advisory body and as a member of this place. I have served in the armed services. In all that time I have never said that people should resort to physical violence to get their point across. We all make mistakes and I trust that Ms Tucker made a mistake on the evening of 20 August this year when she made certain remarks at a meeting. A report in the *Canberra Times* stated:

> "Stay strong on the issue," Ms Tucker said.
>
> "There is potential in this community to physically stop this road if that's what we have to do."

Inciting people to break the law is not a trait that should be even contemplated by a member of this chamber. You do not break the law by inciting riots or urging people to use physical violence because you do not get your own way. Even the Save the Ridge

people put the words "Let democracy rule" in their submission. At least they are sensible. Ms Tucker, if what has been written in the *Canberra Times* is true, you owe not only the Save the Ridge an apology but the rest of Canberra an apology, and I look forward to hearing that from you.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (5.19): Mr Speaker, the decision that has been made about the Gungahlin Drive extension is a decision which has occupied my mind for a long period of time. As has been noted already in this debate, during the Third Assembly I served as Minister for the Environment, Land and Planning, and in that capacity I was charged with the responsibility of deciding what ought to occur with respect to what was then the John Dedman Drive, now the Gungahlin Drive extension,. Towards the end of the Third Assembly the government, after a series of processes, a number of studies and other work, came to the view and put the view to the Assembly—and indeed to an Assembly inquiry, as I recall—that a route which took the proposed road to the east of the Australian Institute of Sport was the best way of addressing the issues that needed to be faced up to, issues to do with the environment, to do with the amenity of people who lived close to the road, to do with the functionality of the Institute of Sport and to do with the effective movement of people into and out of Gungahlin from and to other parts of the city.

In making that decision, a question of balance had to be achieved. I say in this debate today, very emphatically, that the argument that there is all merit on one side of this debate and not on the other is simply unsustainable. There are a range of views in this debate which deserve to be taken seriously. I know that people have argued that the eastern route is more environmentally damaging than the western route, but I am pleased to note that there are some in this debate who would be prepared to acknowledge that there are issues of environmental damage associated with the western route as well, particularly associated with grasslands north of Ginninderra Drive and with remnant bushland to the west of Bruce Stadium.

Let me make a couple of points about things that have been said in this debate which simply are not sustainable. It was argued that this decision is being rushed. This decision was very much a decision that was before me and about which I made recommendations to the government and ultimately to the Assembly in the middle of 1997. It is now 2001, and I do not think in any way, shape or form the argument can be advanced that the government is moving faster than it ought to. Indeed, in other circumstances, if the government were to take five or six years over a decision of this kind, a decision with which the rest of the Assembly agreed, we would be held up to ridicule for having taken so long to make a decision.

Mr Smyth, the present minister for planning, proposed to put a draft variation to the Territory Plan on the table in May of 1999. He was gazumped by an Assembly inquiry, and that process ultimately led to the latest version of that variation being tabled in the Assembly earlier this year. There is no way that that process could amount in any shape or form to rushing the decision.

It was also suggested that this decision should be deferred until after the people of the ACT have had the chance to have their say. It needs to be noted in that context that as the then government had put its position very clearly in 1997, it is arguable that the people of

the ACT did have a say on this matter at the election in February of 1998. Obviously that was not the only issue that was considered in that election, but the fact remains that the issue was out there for public consumption. There was no doubt on the part of the people in various parts of Canberra who opposed the eastern route that we stood for the eastern route, and people had the opportunity at that election to pass judgment on that view. If you can interpret their view in any particular way, good luck to you, but it is very difficult to do that in the context of a broad election campaign.

There is one argument I particularly want to focus on in my remarks today. It is an argument about inconsistency. Again, it has been suggested that every argument in this matter is one in favour of the western route and not the eastern route. I want to focus on one of those arguments: the argument about proximity of the western route to the residents of Kaleen. The suggestion has been made that the western route is not deleterious to the interests of people in Kaleen. The suggestion has been made—

Mr Smyth: It is a furphy, Mr Stanhope said.

MR HUMPHRIES: Indeed. Mr Stanhope said that the argument about Kaleen was a furphy. When I suggested recently at a public meeting that the western route took the road closer to Kaleen, or that at that point the road was taken closer to residents anywhere in Canberra than any other alternative part of the route, Mr Stanhope was indignant in his protestations and said that that simply was not true.

It is worth recording that the present western reservation for the road comes to within about 150 metres of the southern end of Kaleen. It also comes quite close to the northern end of Kaleen, but that is the road that of course services both the eastern and western routes.

Of course, it is possible to move that road reservation. I take it from what the Labor Party have said that if they were successful in winning government at the election in October they would move the route somewhat to the east, further away from Kaleen, perhaps along the dotted line which has been indicated in the papers which have been handed around today in this debate.

An alternative western route which has been much discussed is further to the east than the one which is indicated by the road reservation. But that road itself is still only 250 metres from the back fences of the people in the southern part of Kaleen.

Mr Stanhope in this debate said that you could put the road half a kilometre away from the residents of Kaleen. Let me concede in this debate that you could do that. You could create a dogleg in this road so that it skirted right away from Kaleen and came in much closer to the residences of the AIS, and you could probably achieve half a kilometre between the residents of Kaleen, at the southern point at least, and the western route.

But there are two problems with that alternative. The first, on my advice, is that you cut much more closely into the sensitive part of the grasslands to the north of Ginninderra Drive. The environmental impact of that alternative is significantly greater than it is for a route further to the west.

The other problem with that alternative is that it makes redundant the argument that the western route is the quicker route, the shorter route. If you build that dogleg in to save the residents of Kaleen, you eliminate the 300-metre advantage which supposedly the western route holds over the eastern route. The extra time taken to travel and the extra distance taken to travel that other route disappear. In fact, the western route, on my advice, becomes the longer route. So there is an inconsistency there. The proponents of the western route are going to have to work out whether they are in favour of saving the residents of Kaleen from the noise of the road or they are in favour of a route which is shorter than the eastern route. But they cannot have it both ways. It has to be one or the other.

The other point which needs to be made very clearly in this debate today is about another inconsistency in Labor's position. They told a public meeting held last week that they will commission an environmental impact statement under the Land (Planning and Environment) Act before any decision is made to commence work on the road. The environmental impact statement lies at the peak of a variety of environmental assessments that can be done under the land act. It is the most elaborate and most extensive form of environmental inquiry, and it is obviously for that reason the most expensive and the most time consuming.

Generally speaking, EISs that involve public consultation—and we can be fairly certain this one would—take in the order of a year to complete. You might be able to truncate an EIS by cutting some corners, but doing these things by the book seems to be the catch-cry that the Labor Party has brought to this debate. So we would assume that a standard properly conducted EIS would take in the order of a year to complete. *(Extension of time granted.)*

The advice from the Department of Urban Services is that to conduct an EIS, to conduct a further variation to the Territory Plan and to go about the building of the road in a realistic timeframe would make it impossible for the timetable the government has laid down in this matter to be adhered to. Again Labor have to decide whether they are going to say that they are in favour of having an EIS or they are in favour of there being an adherence to the government's timetable for the building of the road, but again they cannot say both.

As I said in debate about this before, this is a matter which will be before the electorate of the ACT in October. The government, by putting forward this variation today and having it voted on, will achieve nothing more than a variation to the Territory Plan, which like any variation to the Territory Plan can be amended. That is appropriate, and the government makes no bones about the fact that it will allow this matter that public airing which obviously it deserves to have in the context of this decision.

I want to make a couple of quick comments about Ms Tucker's remarks. Ms Tucker said we need to be more creative about transport to avoid the need to build a road at all. Ms Tucker clearly believes a road is not necessary in this location at all. For the record, let it be absolutely clear that, even with the most massive investment of ACT taxpayers into public transport in this city, you would be lucky to achieve a public transport take-up rate of, say, 20 per cent. It is about 8 per cent at the moment. With a massive public investment you might be able to achieve 20 per cent. The question is how you avoid the

need for a road when the other 80 per cent of journeys are being undertaken without the use of public transport.

Ms Tucker also said that she supported the need for greater density of housing—urban infill, in other words—in parts of the city so as to reduce the need for greenfields expansion and therefore the need for people to travel in large numbers from outlying parts of the city. That is fine, except that in the six years or more the ACT Greens have been in this place they have not once supported a proposal for urban infill to which any measure of controversy has attached. If anybody at all, anywhere in the territory, was opposing a particular measure for urban infill, the Greens were right there holding their hand. If they are in favour of that way of alleviating the need for more roads, they have not demonstrated it in any way in the course of the last six years that they have been represented in this place.

To conclude, this is a matter for balance; it is a matter of judgment. We have to make judgments all the time in this place about the things we do, and regrettably the decisions we make are very often not black and white. They involve heavy shades of grey. We have to decide whether one factor is more important or less important than another.

It was a sense of balance that led me in November of last year to exclude the O'Connor spur of the Gungahlin Drive extension, going from what would now be the eastern route down to Barry Drive. That view was taken on the basis that there was a strong argument about the environmental impact on a sensitive part of the ACT in slicing through the middle of that ridge. I do not believe the same level of sensitivity applies to the rest of the eastern route. If there is an argument about that, it is at least counterbalanced by other arguments to do with the environment, to do with the amenity of people in Kaleen and to do with the integrity of the Bruce precinct.

On balance, the decision we make today is a sensible decision, one which will serve the ACT community well. I hope that the people of Gungahlin can expect to see some movement towards making a decision on this as a result of the coming election so that some finality about this route and this road can be determined.

MR RUGENDYKE (5.34): I rise to confirm my position. In my view, the eastern route is the appropriate option for the Gungahlin Drive extension, and I will be opposing this disallowance motion. As I have stated in this place before, this issue has dragged on for far too long. Road transport links to Gungahlin have been debated in various forms for three decades, and if this motion is successful today we will be no further progressed than we were at the start of this Assembly term.

The bottom line is that 20,000 people or thereabouts live in Gungahlin and the number is growing by the day. The time for debate has long expired. The people of Gungahlin need a road, and this Assembly would be abrogating its responsibility if it failed to act and instead flick passed a decision to the next Assembly.

Every member of this place is aware that the people of Gungahlin have to endure daily traffic problems that no other region of Canberra has to deal with. They need this road. It is already late and they need it as soon as possible.

More than two years ago the issue entered the urban services committee for consideration. The clear-cut need for the Gungahlin Drive extension was the only fixed position that I took into that process. The case for no road was not an option. But I certainly was open as to which direction the final route should take.

A range of issues and views had to be taken into consideration. These were put on the table in an extremely thorough and extensive inquiry over the past two years. The most vocal contributor to that inquiry was the Save the Ridge group. But this was not the only issue. The western option stands to have increased adverse impacts on Kaleen residents and the Kaleen temperate grasslands.

We have seen echidnas in the O'Connor/Bruce Ridge vicinity recently as the latest reason from the no-road camp to abandon the proposal. I have to place on the record that I in fact discovered a legless lizard in the Kaleen grasslands when the committee inspected the site. Now apparently the echidnas are endangered and, as we know, legless lizards are everywhere.

Mr Hargreaves: Did you stomp on it? Was it alive or was it dead?

MR RUGENDYKE: I picked it up and gave it to the Parks and Gardens person.

Mr Hargreaves: It was already dead though, wasn't it?

MR RUGENDYKE: Yes, it was dead.

Mr Hargreaves: It was put there.

MR RUGENDYKE: The fact remains that those things are everywhere. The place is infested with them. Then there are the potential impacts on the sporting and educational facilities in Bruce from the western route. Further south, in Aranda, either route will have potential impacts.

Gungahlin residents made a compelling call for the road, just as Kaleen residents had totally valid concerns about the western route. Aranda residents provided compelling reasons about the proposal, which is why the Planning and Urban Services Committee recommended:

> that detailed analysis of an appropriate solution to noise and traffic problems affecting Aranda residents commence immediately, and that it include careful analysis of two key options: either lowering Caswell Drive or moving the Gungahlin Drive extension to the east of Caswell Drive.

I understand that the consultation study for road options south of Belconnen Way is scheduled and preliminary work is under way. An investigation of the suggestions put forward by the committee is part of that process. Whatever the outcome of this debate, I certainly stand by the committee recommendation to ensure the identified concerns of Aranda residents are addressed in an appropriate manner.

I note that the Aranda Residents Group proposes that Gungahlin Drive be constructed 200 metres to the east of Caswell Drive. I am certainly supportive of this suggestion. Of course, the eastern route would be more conducive to realising this option.

I return to the crux of the debate: the eastern or western alignment? I too traversed this area with the committee

Mr Kaine: There must have been a real bunch of traffic out there.

MR RUGENDYKE: I am not game to say I walked it, for fear of more derision from those who did not think it was necessary to walk it. I cannot recall what day that was, but I thought the spur to Barry Drive was inappropriate. As I mentioned last time, on 8 September, subsequent to that walk, I met with the Save the Ridge group. Of course no compromise came out of that meeting.

Part of the evaluation process that most members have undertaken was an assessment both routes. What struck me immediately about the eastern route, the one around Bruce Stadium, was that most of it was on the stadium side of the fence, skirting the edge of the ridge. Once you take out the spur, there is no impediment directly on O'Connor Ridge. The road would basically lie on Bruce Ridge. A section of Bruce Ridge is common to both options. I was certainly not convinced that the road would cause the extent of damage that some sections of this debate tried to make us believe. What struck me about the western alignment option was how problematic it would be putting the road through the heart of access to the sporting facilities and the CIT.

When you took all the factors into consideration, the ledger was squarely in favour of the eastern option. It is the commonsense approach.

I will spare members the details put forward in the submission process, but I have to mention one of the complaints raised by the opponents of the eastern route. During the inquiry process, it was claimed that the Bruce Precinct Association, which gave excellent submissions and supported the eastern route, was an unincorporated body. I have received information that in fact it is an incorporated body. The names are not those which appeared on the inquiry submission, but I would like to mention them all the same. To President Leigh Shelley, Treasurer Geoffrey Wasteneys, Secretary David Bagnall and committee members Philippa Rowland and Mark Peoples, I would like to acknowledge the work of the Bruce Precinct Association and their contribution to this debate. The association has been around for 15 or 20 years. You will recall that it made a submission to one study in about 1977.

Finally, I would like to echo the thoughts of the Ginninderra LAPAC, which said in a recent media release that it is time for a decision on Gungahlin Drive.

MRS BURKE (5.43): Mr Speaker, through you, as a matter of courtesy, I would like to acknowledge the presence of those seated in the gallery with us this afternoon. I hope those present accept my comments as a sincere acknowledgment of their effort. Some of these people have spent much time and energy on something they are obviously very passionate about. Indeed, many passionate views are being put forward on this debate today.

As the newest member in this Assembly, and one who has had only a couple of months to hear the arguments and get across the issue, I am fast realising that planning always will have winners and losers. There will always be decisions that will cause upset and dissatisfaction to some, even making some of us quite unpopular.

As I have said, I know how passionate some people are about this issue. It is good that we have in our community people such as these who contribute in a very lively, forceful and energetic way. I respect your position and your point of view.

Mr Speaker, as you know—and this is something those in the gallery might take into consideration—we have to respect the points of view of many people, and at the end of the day are elected to represent many people with many different viewpoints in Canberra, an interesting challenge indeed. We must therefore listen to all sides and, based upon what we hear, must make a balanced decision for the good of the whole of the Canberra community.

I will therefore be supporting the eastern route, a practical and sensible solution for Canberra.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (5.45): Mr Speaker, the government has made it quite clear that we will be supporting the eastern route. We do so on the basis of a large amount of work that has been done over 30-odd years but especially over the last five or six years.

Many arguments have been for and against both proposals. I would like to reiterate just a few on whether the eastern route is better than the western route for noise. The advice I have is that the eastern route will have some impact on recreational users of the O'Connor hills and the Bruce Ridge, but the effects on the residential areas of Lyneham, O'Connor and Turner will be minimal, owing to a large separation.

With the western route, there will a minor increase in noise for recreational users of the O'Connor hills and Bruce Ridge, but there will be a significant noise increase in residential areas in East Kaleen, particularly in Shannon Circuit, Pambula Street, Skardon Street and Delegate Street. It is sad that Mr Stanhope would stand and say that there should be passion about this issue but then be so dismissive as to say that the impact on Kaleen of the western route is a furphy. It is just not so.

We have heard that length and travel time are issues. The eastern route is 5.1 kilometres; the western route, 4.8. At 80 kilometres an hour, the difference in travelling time is 14 seconds.

There are visual impacts. The eastern route will have no significant visual impacts on adjacent residential areas or on the AIS and the Bruce Stadium. It will, however, have significant impact when viewed from O'Connor hills and Bruce Ridge. But the western route will have significant visual impacts for the residents of Kaleen, Bruce and the AIS. So we have these competing arguments.

Many people say they are committed to the Y plan and satellite towns. One of the things we do not do is direct high-traffic flows through the centre of a precinct. Yet that is what the western route would do. To run around the periphery, as the eastern route would do, is entirely consistent with the majority of planning for the ACT.

The comparisons go on. There is impact on the bushland—about four hectares for the eastern alignment and about three hectares for the western alignment. But we will work with the AIS to make sure that we minimise the impact. They have said that they agree with that.

I want to make it quite clear, as other members here have—and perhaps the message has not got out—that we want to minimise the impact the Gungahlin Drive extension will have on Aranda residents when Caswell Drive comes up for duplication. The government supports the Aranda residents association and their preferred route for the Caswell Drive duplication. The Aranda residents association preferred route is the government's preferred route. This has been the government's view for some time, but it would appear that that message may not be getting out to all residents, and I want to make our position absolutely clear. Consistent with what we are doing, we want the Caswell Drive duplication to be as far away from houses as possible, to ensure a balance between residential amenity and environmental conservation.

Much has been said. We know about the process that started seriously under Mr Humphries when he was the planning minister. That passed to me when I became planning minister. The criticism that we have raced hastily into this must be refuted. The government has been working on this for almost six years. It is appropriate to do it now. It is the culmination of the process. If this draft variation had gone out in 1999, as I had intended, instead of this year, the work would have been completed well before this.

Ms Tucker made the point that we should build Majura. When the population of Gungahlin gets to about 50,000 people, we will need both roads. That is how that city was planned. It was planned with this level of access in mind.

We have consulted the public. Starting in 1996, there were workshops, there were site visits, there was a telephone hotline and there was a community newsletter. The work was done. In December 1997 the government, through Mr Humphries, announced that the eastern route was the government's preferred position, and we took that to the last election. It was my intention to put the draft variation out in early 1999, but we had the committee inquiry instead. The committee's report was tabled in March this year, and since then we have proceeded with the draft variation.

Cost is important. People have said in this debate that it is a minor consideration, and perhaps it should be, but it is still important. The cost is $32 million for the eastern route and $34.7 million for the western route. The figure for the western route does not take into account the cost of building extra car parking. That would be between $3 million and $10 million, depending on what you built. Whilst it is easy to say that cost is not important, if the difference of $2.4 million became closer to $10 million, that is a significant amount of money.

Integrity of the bushland will be studied at the detailed design stage and options will be explored. They range from overpasses to fencing, fauna friendly culverts as underpasses and such like. The chosen solution will depend on the types of animals likely to move across the areas and the feasibility of the alternatives. We will be looking to minimise constraints on the movement of the echidna, for example. While echidnas have been shown to range over areas of over 200 hectares, an area of around 50 hectares is accepted as indicative of the usual size of such an animal's range. Studies on echidnas elsewhere have shown that they will use culverts to cross roads. So we can make sure they are protected.

The future transport corridor, with appropriate measures included to provide connectivity and safe access alternatives between the bushland areas, is expected to have minimal impact on fauna movement. The eastern alignment is expected to affect about three or four hectares of bushland, or about 2 to 3 per cent of the total area comprising the O'Connor hills and Bruce Ridge east and south of the AIS. We have consulted with the AIS. To minimise impacts on the Bruce Ridge, the government will ensure at the detailed design stage that the road is kept as close as possible to the southern boundary of the Australian Institute of Sport eastern car park and Bruce Stadium north of the fire trail in that area. The AIS will lose a few car parks, but they also want to make sure that we minimise the impact as much as possible.

South of the Barton Highway and the future Gungahlin Drive, the extension will pass through an area known to contain a small remnant population of the legless lizard. This species is now protected in significant grassland reserves established by this government following its review of the Gungahlin Town Centre.

An issue which is quite important for many people who live near the area is the noise. As I have said, the preferred alignment is well separated from the residential areas of North Lyneham, Lyneham and O'Connor by the O'Connor hills and the ridge. It is much further away from, and will have far less impact on, the residential accommodation at the Australian Institute of Sport than any western alternative will have.

Many opposed to the eastern alignment argue for the west. The western alignment would be much closer to Kaleen. The gap between Kaleen and Lyneham is about 600 metres. If the road were shifted some 500 metres from Kaleen that would put it within 100 metres of Lyneham. When you are planning these things, you have to seek the appropriate balance.

On the issue of the protection of cultural heritage, a detailed assessment of both the eastern and western alignments was undertaken during the preparation of the preliminary assessment in 1997. The government is fully aware of the locations and significance of the recorded cultural heritage sites. Elimination of the Barry Drive link means that three sites of cultural heritage significance are no longer threatened. In particular, an Aboriginal scar tree will now be conserved.

When you do the work, when you consult with the public, when you try to work out what you need to build for the transport infrastructure for a modern city, roads will sometimes go in places where people do not think they should. My job as the planning minister, based on advice and public consultation and taking all matters into consideration, is to work out what works best for the majority of Canberrans. I believe that the eastern route,

as determined by the government in 1997, is still valid now, and I believe that the eastern route should go ahead. I thank the Assembly for their support in validating the government's position.

MR CORBELL (5.55), in reply: It would be fair to say that I and other members of the Labor Party, along with other members who have chosen to support this motion this evening, feel a strong sense of disappointment. That disappointment is reinforced by the fact that this decision today is completely unnecessary. It is unnecessary because we all understand what the process is from here. We all understand that just because the Assembly has given its endorsement this evening to the government's preferred alignment, it in no way means that construction on this road starts tomorrow, although I am sure that in the coming months we will see Liberal candidates suggesting just that. In doing that, they will be grossly misleading people in the Canberra community. The realty is that physical construction of the road does not commence until next financial year, and the bulk of the work occurs in the year after that.

The territory's proposal to vary the Territory Plan must be followed by an amendment to the National Capital Plan, which we all know faces the prospect of having to pass through a disallowance motion in the Senate. We all know that at the moment there is not even a proposal before the federal parliament in relation to a variation to the National Capital Plan and therefore no motion of disallowance.

We all know that the National Capital Authority has said that the territory should not receive gazettal of this variation until its own processes are complete. We all know that the process that the National Capital Authority has to complete will not take place until after the October territory election. So the process the government has pursued up to this point this evening is entirely about political positioning—nothing more and nothing less. It makes no direct impact on the timing of the construction of this road, regardless of its alignment.

I would like to respond to some comments in the debate, first to the comments of Mr Moore. Mr Moore finds it so easy to make decisions when he knows he is not on the ballot paper in October. Mr Moore is the man who stood time and again by the western alignment. He is the man who said, even when the spur road was removed, that he could not support the eastern alignment. He is the man of principle in this place. Mr Moore has done the final sell-out this evening. How easy it is to make decisions when your name is not on the ballot paper. Mr Moore will be remembered for the act of political bastardry which he committed this evening.

Mr Moore suggested that the Labor Party's position to pursue the western alignment would delay the road by up to two years. That was his exaggerated claim. Mr Moore has to say that, now that he has chosen to side again with the Liberals. But we all know that the reality is different. Labor's commitment is clear. The road will be built in accordance with the existing capital works timetable. But that should not preclude the appropriate level of investigation that is needed—leaving all the other issues aside—particularly in relation to the government's signalled intention to now shift the road 200 metres to the east of Caswell Drive, Aranda. Is the government seriously saying they are going to do that without any assessment? That seems to be an issue which they like to gloss over. No, there will not be a delay. No, the road will not be delayed. But the appropriate work can and should and still will be done if Labor is elected to government in October.

Mr Stefaniak raised issues about the AIS master plan. He said he disputed our interpretation of the master plan. He did not go on to say why he disputed it. He did not say that the AIS had said that what the Labor Party was saying was incorrect. He just said, "We dispute it." Perhaps he disputed it because it is an inconvenient reality for him in this debate. That reality is that the AIS' own agenda for the land in front of the AIS and on the western side of the AIS is for commercial development, and car parking will be provided through a variety of means which I outlined in my speech earlier this evening.

Let me raise a prospect that members should be completely aware of before we vote tonight. If we vote to endorse the eastern alignment, and if it eventuates that that alignment is built, have no doubt whatsoever that the pressure will be on—maybe not in two years, five years or 10 years—to build the spur. There can be no doubt about that, because people driving along that road will know that just over through that gully, between the two ridges, is Barry Drive, and they will want to get to it, and get to it quickly. The pressure will be on to build that spur.

The government can give no commitment that that will not happen. It is logical that when the road is placed in that position the pressure will come. If the government was serious long term about protecting the integrity of the Bruce/O'Connor Ridge areas, and if any government was serious about doing that and at the same time recognising the need for an arterial road link, the option that would be pursued would be the western alignment, because then the pressure for that spur road would not come. The link would be clear and unambiguous. It would be to Belconnen Way, linking to Caswell Drive and running down to Parkes Way.

Labor will stand by its position. If elected to government it will seek to develop the western alignment, but it will also commit to ensuring that the road is built on time, because it needs to be built on time. Those will be the principles. Those will be the commitments that will guide us.

We do not know what will happen in the next Assembly. We do not know who the crossbench members will be, and we certainly do not know what their position on this issue will be. But Labor is committed to the western alignment, and Labor is committed to the provision of an arterial road link on time. Those are the two issues that will guide us.

Mr Stanhope made the point very eloquently that too often we do not take account of the broader and deeper issues that surround such a debate. Yes, it is about a balance. Yes, it is about deciding between conflicting options. The Labor Party has never suggested that it is a black-and-white argument, but on balance we believe the western alignment is the better one. We stand by that decision. As Mr Stanhope said, we need to think a little with our hearts as well as our heads in making these decisions.

MR SPEAKER: Just before I put the question, Ms Tucker would like to make a personal explanation under standing order 46.

MS TUCKER: Mr Hird might have misrepresented my position on community response to the road going on the eastern route. It is correct that I said at a public meeting that it could be physically stopped. For Mr Hird's information, if he is not aware, there is a long history in this country of peaceful protest to stop particularly offensive developments. There was quite an important one in Tasmania that Mr Hird might have heard of. I know he has a very excitable imagination. I remember when we had the debate on the tip and contaminated soil being dumped there, he thought I was going to be irradiated and glow in the night. It is a bit like that one. I put it on the record that I do not support violence. I do support peaceful protests, and I do support blockade.

MR STANHOPE (Leader of the Opposition): I seek to make an explanation under standing order 46, too.

MR SPEAKER: Proceed.

MR STANHOPE: A statement I made in my presentation in relation to the road and its alignment adjacent to Kaleen has been grievously misrepresented by members of the government in some of their responses. The government misrepresents the truth in relation to the road and its alignment against Kaleen. At the northern end of the road, where it crosses the Barton Highway into the Kaleen horse paddocks, it will come within 150 to 200 metres of Kaleen. Once it passes that position, once it crosses Ellenborough Street, at no point will it road again get within 200 metres of Kaleen, irrespective of whether it is the eastern or the western route that is utilised. At no point after the Gungahlin extension crosses Ellenborough Street will it get anywhere near the 200 metres that it gets before it crosses Ellenborough Street. To suggest, as the government has been suggesting, that the western route brings this road closer to Kaleen is simply not true. At the point where the western alignment crosses Ginninderra Drive—

MR SPEAKER: Mr Stanhope, you are making a person explanation. You may not debate the issue.

MR STANHOPE: It is a personal explanation. At the point—

MR SPEAKER: I will sit you down if you continue to debate it.

MR STANHOPE: I have made the point that—

MR SPEAKER: I think you have.

MR STANHOPE: I live in Kaleen. I know the route of this road intimately.

Question put:

> That **Mr Corbell's** motion be agreed to.

The Assembly voted—

Ayes, 7		Noes, 8		
Mr Corbell	Ms Tucker	Mr Cornwell	Mr Rugendyke	
Mr Hargreaves	Mr Wood	Mr Hird	Mr Smyth	
Mr Kaine		Mr Humphries	Mr Stefaniak	Mr Quinlan
		Mr Moore		
Mr Stanhope		Mr Osborne		

Question so resolved in the negative.

Sitting suspended from 6.10 to 7.40 pm

Papers

Mr Speaker presented the following papers:

Study trips—

Report by Mr Wood MLA—Meeting with Labor Arts Ministers and Shadow Ministers, and The Director of the Queensland Performing Arts Trust—Brisbane—July 2001.

Report by Mr Wood MLA—Meeting with the Director of the Northern Territory Art Gallery and the Conductor of the Darwin Symphony Orchestra—Darwin—July 2001.

Mr Moore, on behalf of **Mr Humphries**, presented the following papers:

Public Sector Management Act, pursuant to sections 31A and 79—Copies of executive contracts or instruments—

Long term contracts:

Gordon Lee Koo

Aidan O'Leary

Martin Hehir

Contract variations:

Christine Healy

Gail Winkworth

Jeffrey Mason

Executive contracts
Statement by minister

MR MOORE (Minister for Health, Housing and Community Services): Mr Speaker, I seek leave to make a statement in relation to the executive contracts.

Leave granted.

MR MOORE: Mr Speaker, instead of making the normal statement that the Chief Minister would make, and with which I think members are now familiar, I ask them to respect that.

Territory Owned Corporations Act
Papers

Mr Moore, on behalf of **Mr Humphries**, presented the following papers:

> Totalcare Limited—Statement of Corporate Intent for Totalcare Limited for 1 July 2000 to 30 June 2004, pursuant to subsection 19 (3).
>
> ACTTAB Limited—Statement of Corporate Intent for ACTTAB Limited for 1 July 2001 to 30 June 2002, pursuant to subsection 19 (3).

Capital works program
Paper and statement by minister

MR MOORE (Minister for Health, Housing and Community Services): Mr Speaker, on behalf of the Treasurer, I present the following paper:

> Capital Works Program—June Quarter Progress Report on 2000-2001 Capital Works Program

I ask for leave to make a short statement on behalf of the Treasurer.

Leave granted.

MR MOORE: The report provides information on quarterly and full year expenditure on all projects included in the 2000-01 capital works program. The report also provides details of all project variations and deferrals that have occurred in the 2000-01 program.

Mr Speaker, as one would expect for capital works, the final quarter of the year saw an acceleration of expenditure within the capital works program. Territory departments incurred expenditure on capital works of $34.811 million in the June quarter. This takes the total full year expenditure to $89.299 million. The original budget for the 2000-01 capital works program was $82.166 million. In addition, the territory departments were carrying deferred financing and underspends from previous years of some $25.262 million.

I am pleased to note that in broad financial terms the government has not only delivered the 2000-01 capital works program but also has made some inroads into the underspends carried over from previous years. Mr Speaker, there may well be some projects from the 2000-01 program which got delayed due to unforeseen circumstances. However, due to the initiatives and reforms introduced by the government, for example, the supplementary program, the overall financial targets of the 2000-01 were well managed.

The Department of Urban Services was the largest contributor to the capital works program in the June quarter, with expenditure of $19.546 million. This takes the year to date expenditure for the department to $40.353 million, or 96 per cent of funds available for expenditure.

Mr Speaker, there are some projects from the previous years which continue to experience delays. Approximately $20.860 million has been deferred in relation to such projects. Major projects contributing to this shortfall in total expenditure include the Belconnen Pool, the Aboriginal and Torres Strait Islander Cultural Centre, and the Woden Joint Emergency Services Centre, along with several other smaller projects.

A number of major projects also reached completion during the year. The stage 2 works at East Row, Alinga Street, Mort Street intersection; the Dickson precinct stage 2 refurbishment; the Gundaroo Drive extension, from Rolfe Avenue to Gungahlin Place; the replanning of non-inpatient clinical areas at Calvary Hospital; the refurbishment of the pathology building at the Canberra Hospital; and the Building 7 refurbishment also at the Canberra Hospital were all completed.

During 2000-01, reform and improvement to the capital works program continued. A formal project acquittal process was introduced with the development of project completion reports—a one-page summary outlining the basic details of projects, and financial outcomes in greater detail.

Capital work reporting through the annual report process has also been addressed, with a requirement for agencies to now include a "Statement of capital works income and expenditure" which outlines both the budget and actual capital works financing and expenditure. Agencies are also required as part of this process to provide variation explanations and identify the main projects contributing to the program's underspend.

Mr Speaker, I commend the 2000-01 capital works program's fourth quarter and full year report to the Assembly.

Mr Kaine: I take a point of order, Mr Speaker. Can we assume that Mr Moore has overthrown the Chief Minister and has already moved into the Chief Minister's role?

Mr Hargreaves: You have always wanted that seat, haven't you.

MR SPEAKER: Mr Kaine, no more than Mr Hargreaves has overthrown the Labor opposition.

Mr Kaine: No, he is sitting in his own seat.

Mr Hargreaves: I take a point of order, Mr Speaker. I am not sitting in the glorious chair. I know Mr Moore has always wanted to, and I congratulate him for the overthrow.

MR SPEAKER: Order! I find myself faced with very few members of the Assembly, but we accept that, and I thank you, Mr Hargreaves, for moving up to the Leader of the Opposition's chair. Mr Moore, proceed, please.

MR MOORE: Mr Speaker, I think Mr Kaine may not have realised, so I will reiterate that I did say that I did this on behalf of the Chief Minister. Although I do only have a couple of days left to make my move, I am intending to do it any time now. I am having trouble getting the numbers. I have got one so far, Mr Kaine. If you will go with me, that will give me two.

Financial Management Act—Instrument of transfer
Paper and statement by minister

MR MOORE (Minister for Health, Housing and Community Services): On behalf of Mr Humphries, I present the following paper for the information of members:

> Financial Management Act—An instrument of transfer issued and a statement of reasons for giving it pursuant to section 14.

I ask for leave to have the tabling statement incorporated in *Hansard*.

Leave granted.

The statement read as follows:

> Mr Speaker, as required by the *Financial Management Act 1996,* I table:
>
> An instrument issued under Section 14 of the Act and a statement of the reasons for the transfer of funds between appropriations by direction of the Executive.
>
> Transfers under the *Financial Management Act 1996* allow for changes to appropriations throughout the year within the Appropriation limit passed by the Assembly.
>
> This instrument relates to the 2001-02 financial year and is tabled in the Assembly within three sitting days of the authorisation as required by the Act.
>
> The instrument provides for the transfer of $123,000. from the Chief Minister's Department to the Department of Treasury.
>
> This appropriation was originally provided to Chief Minister's Department for an executive salary. The funds have been transferred from Chief Minister's Department to the Department of Treasury to enhance the executive capability of the Department of Treasury.
>
> Mr Speaker, I commend these papers to the Assembly.

Call tender report
Paper and statement by minister

MR MOORE (Minister for Health, Housing and Community Services): Mr Speaker, for the information of members I present, on behalf of the Treasurer, the following paper:

> Capital Works Program—Call Tender Report for the Australian Capital Territory 2001-02 Capital Works Program.

I ask for leave to have the tabling statement incorporated in *Hansard*.

Leave granted.

The statement read as follows:

> Mr Speaker, I present to the Assembly for Members' information, the Call Tender Report relating to the 2001-02 Capital Works Program.
>
> As well as being a useful tool for the Government in monitoring progress of the capital works program, the Schedule has been provided to key industry groups such as the MBA, HIA and Property Council of Australia. It will inform these groups of proposed tender and construction dates for projects being undertaken by the ACT Government in 2001-02. In turn, these groups will be able to pass this information on to their members for their own planning needs.
>
> Mr Speaker, the response from the construction industry following the re-introduction of the Call Tender Schedule in previous years has been positive. I am confident that these users will again find it a valuable tool in their annual and long term planning and budgeting.
>
> Mr Speaker, I commend the 2001-02 Capital Works Call Tender Report to the Assembly.

Ministerial statement

MR MOORE (Minister for Health, Housing and Community Services): Mr Speaker, there was also a possibility of a statement by the Chief Minister, but we will postpone that until tomorrow.

MR SPEAKER: Thank you for advising me of that.

Papers

Mr Smyth presented the following papers:

> Land (Planning and Environment) Act pursuant to section 229A (7) (b)—Statement in relation to a revocation of application No 20011811.
>
> Cultural Facilities Corporation Act pursuant to subsection 29 (3)—Cultural Facilities Corporation Quarterly Report 1 April-30 June 2001.

Tree management and protection—Tree Management Protection Policy for the ACT, dated September 2001.

Tree management and protection—Proposal for a Significant Tree Register, dated September 2001.

Tree management and protection—Government response to the Public Comments on the Tree Management and Protection Policy for the ACT.

Tree management and protection policy
Statement by Minister

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services): I seek leave to make a short statement on the tree management and protection papers.

Leave granted.

MR SMYTH: Mr Speaker, it gives me great pleasure today to table a tree management and protection package which includes a tree management and protection policy for the ACT, a proposal for the establishment of a significant tree register, and the government's response to public comments received on the draft tree policy and significant tree register.

Members will recall that on 2 May 2000 the Standing Committee on Planning and Urban Services released its report on tree management and protection in the ACT. The government tabled its response to the committee's recommendation in the Assembly on 29 August 2000, supporting the general thrust of its 27 recommendations. In particular, there was agreement to the preparation of a comprehensive tree management and protection policy for the management and protection of trees in the ACT, including a significant tree register.

The tabling of this package today comprehensively responds to the recommendations made by the committee's report. The tree management and protection policy for the ACT has undergone extensive consultation with the community, and comments received were both supportive and constructive. The tree policy contains policy statements and implementation strategies covering all aspects of tree management and protection in the ACT. Current policies are stated, policy gaps identified, and both current and future implementation strategies are outlined. Implementation of the tree policy will be reported on annually in the Department Of Urban Services' annual report, with a full review every five years.

Mr Speaker, this policy will result in improved coordination between ACT government agencies on the management of trees through the establishment of a tree management network, which will be chaired by Environment ACT. It will include major ACT government stakeholder agencies, and expert community representatives will be invited to join.

The development of the tree policy has led to improvements to tree protection provisions in the revised ACT Code for Residential Development which will soon be released as a draft variation to the Territory Plan. As a result of the development of the trees policy,

ACTCode has had the performance criteria strengthened to address community concerns regarding the protection of trees during development and the provision of adequate space for trees to grow.

Mr Speaker, improved customer service is an important element of the trees policy. The Environment ACT information desk and helpline will act as a one-stop shop for the public on all issues relating to the management of trees in the ACT. Opportunities for community involvement are also outlined. To improve the quality of the maintenance of public trees in the ACT, the trees policy will ensure that the standard tender and contract specifications used by ACT government agencies for tree maintenance and services will require tree surgeons working on public trees to be properly trained and industry accredited.

A central element of the trees policy is a significant tree register for the ACT. Public comment received on the draft proposal for the register indicates broad community acceptance of the concept and the criteria proposed for listing a tree on the register. The government has responded to the standing committee's recommendation that a blanket tree preservation order not be introduced.

I am pleased to announce today that a scoping study for the significant tree register is about to commence. This study will identify a candidate significant tree list and develop a database for the register. Eventually the community will be able to inspect the register, and even nominate trees for the register using the Internet.

Overall, I believe that with the release of this tree management protection policy the government has taken a positive step in ensuring that the community can feel confident that the territory's trees are protected for future generations, and that ACT government agencies are managing those trees in accordance with the highest standards of best practice.

Subordinate legislation

Papers

Mr Moore presented the following papers:

Subordinate Laws Act, pursuant to section 6—

Road Transport (General) Act 1999—Revocation and Determination of Fees—Registration of Motor Vehicles and Trailers—Instrument No 249 of 2001 (S62, 27 August 2001).

Stadiums Authority Act 2000—Appointment to the Board of the Stadiums Authority—Instrument No 250-252 of 2001 (S62, 27 August 2001).

Redevelopment of Deakin soccer oval
Discussion of matter of public importance

MR SPEAKER: I have received a letter from Ms Tucker proposing a matter of public importance for discussion, namely:

> Irregularities in the Government's agreement with the Croatia Deakin Soccer Club over the redevelopment of the Deakin Soccer Oval.

MS TUCKER (7.57): I have put forward this matter of public importance today because I want to place on the public record before the Assembly finishes a number of issues of concern about the proposed redevelopment of the Deakin soccer oval that have been raised with me by the Deakin Residents Association.

After a number of FOI requests and other investigations, they believe that the agreement between the government and the Croatia Deakin Soccer Club to allow the club to redevelop the oval has been made against a background of disregard for, and even manipulation of, the requirements and intentions of the land act. The dealings in the Deakin soccer oval appear to have given a substantial benefit to the soccer club at the expense of the public interest.

This matter has some urgency as this agreement was made at the end of last year, and development applications for redeveloping the oval and placing housing on the adjacent land are currently under appeal in the AAT. I think the concerns raised by the Deakin residents deserve a fully independent investigation, and I do not want this delayed by the election. I have already passed on the documents given to me by the Deakin residents to the Auditor-General for his examination.

It needs to be made clear up front that while the agreement that the government has made is with the Croatia Deakin Football Club, this club is just a paper organisation that was created by the real club, the Croatia Deakin Soccer Club, that has used this oval for many years and has a club building opposite the oval complete with bars and poker machines. The only members of the football club that are allowed under its constitution are the directors of the soccer club. In fact, one of the directors of both clubs is also a director of Landco, the company doing the development work on behalf of the club.

The football club was registered as an incorporated association in 1998 when discussions were starting to occur about redeveloping the oval. At the instigation of the soccer club, the lease of the oval was transferred from the soccer club, who held a sublease on the oval from the ACT Soccer Federation, to the football club. Under the agreement with the government, this lease was surrendered, and new leases for the oval and the adjacent block were issued to the football club, not the soccer club. The government, and even the club itself, regularly got confused about which club they were referring to, as the words "soccer club" and "football club" were used interchangeably and often incorrectly in documents.

Why was this confusing situation between the two club names created? So that the soccer club, which had a liquor licence and access to a steady revenue stream, could gain a concessional lease over the oval, at a rent of $50 per week, against the intent of the land act. Under section 163 of the Land (Planning and Environment) Act, a concessional

lease can only be granted to a community organisation that does not hold a club licence under the Liquor Act. The soccer club does have a liquor licence, so it could not get the lease over the oval. The football club, however, has no liquor licence, so the oval lease was put in its name, even though it is a paper organisation controlled by the same directors as the soccer club. To me, this is an unethical manipulation of the land act to gain a concessional lease that the soccer club would not normally have been entitled.

What is even more concerning is that this contrivance was clearly done with the knowledge of officials, and perhaps even assistance. I have asked questions of the Minister for Urban Services about this before and his response was that as long as an organisation complies with the letter of the act and the criteria for granting concessional leases then it is okay. I think this is an abrogation of his responsibility to ensure that the ACT's land assets are managed in the public interest.

As an aside, I suspect that there are many other sporting clubs in the ACT who have concessional leases and liquor licences in breach of the spirit of this part of the land act. I suspect that they have been able to get away with it because most of these leases were granted before self-government and have just carried on without alteration. However, in my investigations I have found that at least one club, the Hockey Centre in Southwell Park, Lyneham, was granted a concessional lease by this government in 1993 when it was expanding its fields at the same time that it had a liquor licence. I call on the minister to investigate this breach of the land act and to review the holding of concessional leases by clubs with liquor licences as the spirit of the land act is obviously not being complied with.

Returning to the Deakin Oval, a number of other concerns have been raised regarding how commitments made by the soccer club in getting the agreement of the government to redevelop the oval have been modified over time to the club's benefit. The redevelopment proposal was discussed with the Burley Griffin LAPAC at an early stage. An important basis for the original LAPAC support of the proposal, which was also mentioned as a positive feature by Mr Humphries when he had responsibility for asset management, was that part of the original oval lease would be developed and maintained as a public park by the club at no expense to the government. In return, the club would be allowed to use the park for training activities. This requirement that the maintenance of the park be the responsibility of the club was subsequently removed, and it appears that the cost to the club of developing the parkland, of at least $200,000, has been balanced out by compensation paid to the club by the government.

At the same time that the club was granted a new concessional lease over the oval for $50 per week, the government gave the club $220,000 as compensation for the club's so-called improvement on that part of the original oval lease that was to become public open space. This included such things as an extension to the existing pavilion, an amenities block, canteen, sheds, fencing and irrigation. I say "so-called" because the club had admitted itself that the infrastructure was in poor condition, no longer needed by the club, and not viable to maintain. The facilities were going to be demolished anyway, so in effect they had no value to the club. It also appears that these structures were built without the prior approval of the government, and, under the conditions of the original lease, compensation was not payable for unapproved structures.

It is also the case that under subsection 173 (7) of the land act the amount of any compensation payable is meant to be reduced by the expenditure incurred by the government in the surrender and re-grant of land, which was never done. It is also curious that the Australian Valuation Office estimated that the value of the Commonwealth improvements on the block, such as the original pavilion, was $77,000, but the club was never asked to pay compensation for taking over these improvements.

The government also gave further assistance to the club through improving its facilities for the training of junior players. The club originally said that the upgraded oval was only going to be used for local teams, but there have been regular reports that the club is seeking to enter the New South Wales state league. Consistent with this desire, the club expanded the size of the oval to a 1,000 seat facility, which reduced the area of public open space from the club's original proposal and made it less attractive as a soccer training area. Again at public expense, the government erected floodlighting at the Yarralumla Oval so that the soccer club could use this oval for training. Many residents in Yarralumla objected to this new floodlighting, but their concerns fell on deaf ears as the deal had already been done with the soccer club.

Another irregularity that reflects poorly on the government is that the agreement with the soccer club was made despite it being inconsistent with the Territory Plan. The oval is currently zoned as restricted access recreation, but the agreement allows the club to develop the northern part of the block next to Adelaide Avenue into housing, which is not allowed under its current zoning. Despite this, the original lease has already been surrendered and the land subdivided into three new blocks, one for housing, one for the oval and one for the public open space, before a draft variation to the Territory Plan was even released.

The government seems to have forgotten that it is the Assembly, not the government, that ultimately approves variations to the Territory Plan. The government thus made an agreement that it did not have the power to deliver, or perhaps it just assumed it would get its way with the plan variation by making the club's proposal seem like a fait accompli. I believe that the government has sought to put pressure on the Assembly to approve the variation by linking the approval of housing in the variation with the declaration of part of the former oval site as public open space. If the variation is not approved, then the area designated as public open space would stay as restricted access recreation.

The Deakin residents also raised a number of concerns about the two development applications that have already been lodged, one for the housing on the adjacent block and one for the relocated oval and public open space. These are now subject to an appeal to the AAT, so I will not go into details. One disturbing claim, however, involves irregularities in how the applications were determined by the Commissioner for Land and Planning, which, if true, would call into question the integrity of that office. There is evidence that the approvals were either rushed through or backdated to fit within the six months statutory timeframe which the commissioner has to approve an application. One approval was not even signed by the commissioner but by one of his staff, without stating whether he had delegation to do so.

To conclude, there are many details to the claims I have raised today that are too complicated to explain in this MPI, but I know that the Deakin Residents Association has researched this issue thoroughly and can provide documentation from government files to back up its claims. Unfortunately, all this information has come out late in the life of this Assembly and it may be up to the next government to pick up the pieces. Regardless of who this is, may I remind members that when dealing with developers outside the competitive process there is a need to ensure that there is an observable and significant public benefit from these dealings and a proper accounting for public assets. In the case of the Deakin soccer oval, as with many other projects of this Liberal government, attention to detail and a duty of care appear to have been overlooked in the rush to get private sector development happening, regardless of the public cost.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (8.08): Ms Tucker has raised a matter of public importance regarding irregularities in the government's agreement with the Croatia Deakin Soccer Club over the redevelopment of the Deakin soccer oval. This has been of some interest in the Assembly previously. I think much has already been canvassed.

For the information of members, the original proposal developed by the Croatia Deakin Soccer Club involved an upgrade to the oval formalising parking arrangements and construction of 50 to 60 dwellings to the south and west of the soccer pitch. This proposal was entirely within the confines of the club's existing lease on section 36. The Burley Griffin LAPAC was not supportive of that proposal because they considered it to be an over-development of the site. They also expressed concerns about its effect on the local geographical feature known as the anticline and the lack of open space in the area. The LAPAC was, however, supportive of the club's intention to provide a higher quality soccer venue.

In September 1998 the Burley Griffin LAPAC made representations to the territory to the effect that they supported the upgrading of the oval, a return to the community of some open space, and a more moderate level of development. To help facilitate this improved community outcome, the LAPAC suggested the direct sale of the adjoining residential site on block 2 section 33, Deakin. The approach suggested by the LAPAC required the club to surrender its lease on block 5 section 36 and apply for a direct sale of a part of section 36 and the adjoining block 2 section 33. The original block 5 section 36, owned by the club, was subdivided into three parcels. One portion is proposed to be a smaller oval site but maintains its restricted access recreational land use, one other portion is proposed to become urban open space, and the remaining portion is proposed to be residential, and a draft Territory Plan variation has been released for public comment.

Mr Speaker, when parties surrender their lease they have a right, under section 173 of the land act, to be compensated for the improvements on their land for which they have received the government's consent. The territory has records indicating that the substantive improvements were approved. In this case the Australian Valuation Office determined the value of the lessee's improvements to be approximately $220,000.

However, while no explicit record giving consent to the installation of irrigation and turf replacements is available, section 214 of the act clearly enables the territory to accept the surrender of a lease on such conditions as the executive considers appropriate. In this case not only would the club lose the improvements to the pitch; they were also surrendering a substantial piece of land to the community. In addition, it should be noted that a deed of agreement was put in place requiring the club to expend $200,000 on upgrading that part of its land which the club gave over to open space for the use of the community which the club has surrendered to the territory.

Ms Tucker, I think, seems to be under the misapprehension that it is not necessarily a grant just under section 163, which relates to community organisations which must not hold a liquor licence. A lease may be granted under paragraph 161-1-6, concessional, for the various purposes and to the various kinds of lessees. Similarly, one section of 164 allows a direct grant of a special lease for market value. All direct grants are reported to this Assembly.

Mr Speaker, the government believes that the approach that has been taken in proceeding with the direct grant to the club is the correct one. The approach addressed a concern that the redevelopment should not generate a windfall gain for this concessional lease, and the increased value of the land should be captured by the community. Indeed, I think this was an approach that was broadly supported at the time. The advice I have from the department, Mr Speaker, is that the process that has been followed is an appropriate process, and that there are no irregularities here, as Ms Tucker would contend.

MR CORBELL (8.12): Mr Speaker, the issue that Ms Tucker raises today in the matter of public importance reinforces the concerns which have existed since the commencement of self-government, and, indeed, prior to self-government, in relation to the proper administration of the leasehold system.

Before I turn to the particular aspects of the Deakin Soccer Club proposal, I think it is worth putting on the record that the proper administration of the leasehold system has been the subject of a number of inquiries over the period of self-government and prior to self-government. The key inquiry during that time was the inquiry into the administration of ACT Leasehold, otherwise known as the Stein inquiry. The Stein report made a wide range of key recommendations about the appropriate management of the leasehold system. First and foremost amongst those was the importance of having a level of expertise available within the ACT administration to ensure that the leasehold system was being effectively administered, and administered in a way which coordinated with the activities of the planning agency.

Ms Tucker raised a number of issues in relation to the Deakin Soccer Club. Some of these issues have been aired previously, others have not. The issues are complex, and I do not think any member here would claim to have a full understanding of the regulations and other legal requirements that relate to the assigning and transferring of leases such as that held by the Deakin Soccer Club.

I was interested in the documents Ms Tucker provided from her office, particularly the advice from the Environmental Defenders Office to the Deakin Residents Association. It is the general comments at the end that strike me as most significant. The representative of the Environmental Defenders Office says in these general comments, “I do not offer

an opinion as to the validity or otherwise of the process. I would consider that the documents raise sufficient doubt about the process and its outcome for the matter to be referred to the Ombudsman and the Auditor-General for fuller investigation of the process." I understand that this matter has been referred by Ms Tucker to the Auditor-General, although I am not sure about the Ombudsman.

Mr Speaker, a number of these issues were raised with my office by representatives of the Deakin Residents Association. We looked into a number of those issues. My office at one stage felt very strongly, and I felt very strongly, that there had been some irregularity in relation to the proper transferring of the lease. However, further investigation by my office managed to locate a number of documents that were not present in the Registrar-General's office but for some reason were instead held by Planning and Land Management.

I think the most appropriate course of action here is to allow the Ombudsman and/or the Auditor-General to pursue this matter. Clearly there are concerns which should be properly investigated. The Labor Party is of the view that all leases should be properly managed, and all assignment and transferring of leases should be done in an appropriate fashion. If there is any doubt as to the process that is being conducted, the Auditor-General is an appropriate mechanism to have those issues reviewed. We will look closely at any report the Auditor-General provides on this issue. We will continue to take a watching brief on the issue to ensure that the administration of leases has occurred properly in accordance with the land act and in accordance with the relevant conditions of the leases concerned.

MR SPEAKER: Order! The discussion has concluded.

Workers Compensation Amendment Bill 2001
Detail stage

Debate resumed.

Proposed new clause 3A.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (8.18): Mr Speaker, I move amendment No 2 circulated in my name, which inserts new clause 3A *[see schedule 2 at page 3475]*.

MR SPEAKER: Which colour code is that, Mr Smyth? The white one?

MR SMYTH: Mr Speaker, perhaps I could explain. There have been negotiations over the break. There is a running sheet provided. I believe the majority of the amendments that will be moved have the support of the majority of members, which will make the evening run somewhat more smoothly. There are a number that will be decided here on the floor of the house. In the interest of brevity, in the case of amendments that I understand have majority support I will simply move them without speaking to them.

MR SPEAKER: Thank you, Mr Smyth. Nevertheless, I need to know the colour code because there are a number of them.

MR SMYTH: This is on the white one circulated in my name, Mr Speaker.

MR SPEAKER: Thank you. Are we clear about this? We are dealing now with proposed new clause 3A, which is amendment No 2 on the white sheet.

Amendment agreed to.

Clause 4.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (8.20): Mr Speaker, I ask for leave to move amendments 3 to 10 and 12 to 14 circulated in my name together.

Leave granted.

MR SMYTH: Mr Speaker, I move amendments 3 to 10 and 12 to 14 circulated in my name *[see schedule 2 at page 3475]*.

Amendments agreed to.

MR BERRY (8.21): I move amendment No 2 circulated in my name on the yellow sheet *[see schedule 3, yellow sheet, at page 3540]*.

Mr Speaker, this goes to the 80 per cent rule. The first thing I want to refer to in relation to this matter is a report of a committee that inquired into the workers compensation system in the ACT. The members of the committee were myself, Mr Osborne and you, sir, so I am sure you will recall vividly every word of this report.

MR SPEAKER: Mr Berry, may I interpose, please? You have asked for an assistant to be with you, and the minister has also asked. I ask the Assembly: is permission granted for both the minister and the opposition spokesman on this matter to have people to assist them at their desks?

Leave granted.

MR BERRY: Thank you members. That will grease the rails, I think, and ensure that less goes wrong. Mr Speaker, the 80:20 rule was adopted for incorporation into the Workers Compensation Act as a recommendation from the inquiry into the workers compensation system which reported in May 2000. So it is not that old. It is important that we go to the issues around this.

The first thing I would say personally about this is that this completes a very clear picture to anybody interested in workers compensation about who should be covered and who should be paying premiums. That is the first rule. There are many other rules within the proposed act which cover this particular position, and it is being said that this may well widen the net. I hope so. When there was a committee of inquiry into this the major concern of people in business, in insurance, in government and amongst the work force was that the pool was inadequately provisioned because people were avoiding their responsibilities insofar as premiums were concerned or under-declaring their work force.

This rule is about preventing the tendency for employers to not provide adequately for workers compensation for their employees. It is also about preventing, hopefully, the push for individual contract arrangements for people who are nominally employees.

Let me give you an example of a young person who spoke to me who applied for a job with a fencing contractor. I think this person was an employee and would have been covered as an employee by other provisions of the act, but the 80:20 rule would have assisted both of them in understanding their obligations. This young person applied for a job and was told by the person who was employing him, "Look, I would love to give you a job, but I can't afford to put you on as a wage earner. I can put you on for 20 bucks an hour. You will have to insure yourself. If you turn up I'll supply the tools and the palings. You just turn up for work and you look after your own insurance."

I think that was probably unlawful. I think they were probably covered by the legislation. Nevertheless, this goes on, and those who are ignorant of the rules cop it because they need a job.

In this case the young person said, "Stick it, I'll go and get a real job." In the event that such a young person is injured, in many cases they would say, "Well, I knew the rules when I started up. They are decent people. I didn't insure myself. I'll just have to cop it and Medicare will have to look after me. I'll go onto benefits if I can't go to work." In other cases they are a bit wiser than that and they go after their workers compensation entitlements. The matter ends up before the courts and people go bankrupt. Then the nominal insurer ends up with the bill and those sorts of things.

This presents a clear picture to everybody, the 80:20 rule. If you get 80 per cent of your income from the one employer then you are obliged to be covered.

Mr Speaker, I want to go to the government's response to this because I think there are some important issues which need to be addressed. This is a response that I think has been circulated to most people. They try to draw the comparison that this is something the same as the tax system. It has its origins in the Ralph reports on business taxation as a means of classifying people for taxation. It was put to my then committee that this would be a good way of dealing with workers compensation, and it was found to be so. But what the government tries to create is the impression that this is something the same as taxation and that it might apply in the same way as, say, the people who were recently demonstrating from among couriers around the country. This is about couriers' incomes being affected by having to pay too much tax.

I will bet you that if those couriers were covered for workers compensation by someone who was nominally their employer they would be very happy because they would not have to pay it themselves. That is where the difference is. They would get proper coverage for workers compensation and they would properly contribute to the pool. That is the difference. They would properly be covered and they would properly contribute to the pool.

Mr Speaker, the government also draws attention to a person who is an IT contractor, a sole trader and owns his or her own business. The business contracts with another company and the IT contractor works full time for that company for a period of four weeks, then full time with another company for an eight-week contract, and then full

time with another company for 12 weeks. Well, I reckon they should be covered by workers comp, and I reckon they should be contributing to the pool. Why shouldn't they? They are employees in the ordinary meaning of the word. They are workers, or they should be workers, and if they are not covered under the provisions that are currently in the legislation then the legislation is inadequate and it needs some help. That is why the 80:20 rule ought to be included.

The 80:20 rule is a simple test that everybody will understand. The provisions in the legislation which describe what a worker is are less easy to understand and would serve some employers to form a view that they can get out of it, and for some employees to think that their employers are legitimately getting out of it. Mr Speaker, this creates a coverall which makes it very clear to everybody.

When this matter was being examined we called ACT WorkCover, a reasonably influential and sensible group in the ACT who know a little bit about these sorts of things. They said, "It would certainly make the deemed worker definitions more clear and take away some of the greyness, because at the moment it is by case precedent. Every time we take it to court we get a little bit more precedent, but it is difficult in each case so it takes time." The government will say, "Well, we will build some of that case precedent into the legislation," but not all of it, and this helps to clear up the matter entirely.

The Insurance Council of Australia, who have been contributors to this debate all the way along, noted the benefits of the 80:20 rule, not only for the efficient operation of their business but also for the viability of the scheme. The council noted that this would significantly improve the insurers' chances of obtaining full declaration from an employer who regularly employs subcontractors with a subsequent benefit to the scheme and premium pool. That is what the Insurance Council said. It is not unusual for an insurer to receive a declaration showing one full-time employee. However, during the year four or five claims may be lodged from different workers, probably subcontractors.

The CFMEU also indicated support for the 80:20 rule, so we have a cross-section there. We have the government, the insurers and the unions saying the 80:20 rule is a good idea as a classification test regardless. Of course, the committee went on to recommend that the 80:20 rule be adopted for incorporation into the Workers Compensation Act 1951.

The government will say, of course, "We have upgraded; we have picked up all the case precedent," as I said before, but nothing is clearer then putting a rule on it like 80:20. Of course, the government will say that that will widen the umbrella. If it does, that is good, because it will prevent people using the exploitative individual contract to create the impression that workers are businesses. They are not. You may recall that in my speech when this legislation first came to this place I drew attention to the history of workers compensation and how, in the end, it was seen to be socially just to cover workers for their workers compensation and to provide benefits for them.

MR SPEAKER: The member's time has expired.

MR BERRY: I think I can speak a couple of times.

MR SPEAKER: You have a second opportunity.

MR BERRY: Yes, sure. I will leave it there and see how others respond and deal with that in due course. I think I touched on most of the issues in any case.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (8.32): Mr Berry has touched on many issues. Unfortunately he does not offer a chronology or a reference to what he is talking about when he is referring to those issues. Let me give you a case.

He referred to WorkCover and said that WorkCover talks about case precedent and gives you the definition. Well, that's interesting, because WorkCover was referring to the current act, not the bill that we have put forward.

He then quoted the ICA and said that the ICA agrees with the 80:20. That again was at a different point of time well before the government put forward its definition of what a worker is. You can put these things forward and you can say that people said this then or people said that, but you have to tell people when it was said in the chronology of the debate and the development of the bill. Mr Berry either refers to the existing bill, which we are not talking about, or to a point in time before the government modified or extended its definition.

He talked about the 80:20 rule coming from the new tax system. Indeed, it does. It is derived from provisions under the new tax system. It allows the Taxation Office to consider the income source of a company to assist in determining whether a company is a genuine contractor.

There are two very important things to take into account here. First and foremost, what Mr Berry proposes adds nothing to the extensive new definition of worker in the government's bill. Secondly, and more importantly, it has the potential to affect somebody who is operating as a sole trader, a sole person in the company structure, who has gone out and got workers compensation. Under Mr Berry's attempts here that person will be covered twice, once by their own company structure and again by the business engaging their services. So to include his amendment here will add to the confusion. It will add to the delay and it will add to the legal cost.

He cites the example of a young fellow who turns up and is told: "We will pay you 20 bucks an hour. We will give you the goodies, but you have to get your own insurance." Under our act that would be covered by the nominal defendant. The nominal defendant would protect the worker. But the nominal defendant would then go after the individual who has broken the law because that person should be insured. We agreed with that. To make it tough on that person we will recover three times the awarded premium.

What Mr Berry puts here is a collage of ramblings from different points of time in the development over the last three years of what we are attempting to do here tonight. I think it is unfortunate that he chooses to take that path. What the government offers is clarity. We will be opposing the amendment.

MS TUCKER (8.35): On the 80:20 rule, this bill has been drafted in many ways as an echo of the Commonwealth legislation in which the test of regular and systematic employment has been used. The argument that the 80:20 rule should also apply is immediately appealing. It seems reasonable.

In fact, though, as drafted, it is our belief that Mr Berry's amendment will create some double-ups, so that people who are covered by their own workers compensation would also need to be covered by people who engage them. There will be complications where contractors are engaged by a number of organisations more or less at the same time, raising questions about what 80 per cent of what time period and so on.

There is an issue in regard to catching as many people as possible in the workers compensation regime. I believe that we need to maintain rigorous oversight of its operations in order to amend the act when and if we find people are falling through the net.

The 80:20 rule, as the tax system has demonstrated, is not easy to apply or as resolved as we would like. In the interests of putting the scheme in place with maximum goodwill from all parties, I will not be supporting Mr Berry's amendment.

MR BERRY (8.36): People have been caught up in this idea that people will have to pay twice. Who would ever pay twice if they do not have to? That is the point that I make. To put that misleading proposition to this place is extraordinarily disingenuous. This will prevent scheming operators from creating individual contractors out of their employees to try to avoid their responsibilities. I heard of a case that is in the offing in the ACT where a sizeable employer is about to make all of their employees individual contractors to do low-paid work, but they will have to buy their own insurance and so on. It will be interesting to see whether this legislation covers those workers, and I will be watching that situation with great care.

Ms Tucker draws some comparisons between this and the taxation system. I hoped when I spoke earlier that she might have understood that this is not a tax. This is a payment by the employer to insure the worker against risk. It is not a tax. The scheme which failed the couriers was one which lessened the courier's income because they went into a higher tax bracket because of the 80:20 rule. In fact, the 80:20 rule would be beneficial to couriers because they would not have to pay their own insurance. That is the point that I make. I will bet that if the 80:20 rule was applied to them in relation to their workers compensation they would not have been rallying in Canberra about it as they were about their tax, because they would have been better off. That is the point that has to be understood about the 80:20 rule in relation to the couriers. By not supporting this you encourage more individual contracting and scheming operators to avoid their responsibility and fail to contribute to the premium pool.

One of the reasons why premiums for employers are going up is that the pool is too small. Mr Smyth stood up here and said that in some way I was trying to mislead people by saying that I had failed to put a chronology on it. I object to this and I want to make this point. No, I got up here and I told you exactly when the committee reported, and I also said that the government would say that they have picked up all the case precedent. So do not misrepresent what I am saying here. What I am saying is that picking up all the case precedent is not good enough. That is the point that I make.

I will go on a little search. If this amendment does not pass, each time I find somebody on an individual contract who has to pay for their own insurance because their scheming employer wants to avoid his workers compensation responsibilities, I am going to go to your office minister. I will go to your office and I will make you completely and utterly aware of it. I will ram it down your throat until you recognise that something has to be done about these people.

If you want to avoid your responsibilities on this one you go for your life, but this is a clear and easily understood way of making people understand their responsibilities out there in the community and to make sure that workers, low-paid workers many of them, are adequately covered by workers compensation, not by some personal tax arrangements which do not deliver the goods for them and do not deliver the sorts of benefits which apply in this workers compensation levy.

I know there are business supporters of the government who would like the option to opt out. I saw some reports in the paper on the weekend about people concerned about workers compensation premiums, and they have a right to be concerned. I think that the insurance companies are making it pretty tough for employers in the ACT—there is no doubt about that—but encouraging them to opt out is not the answer.

Question put:

> That **Mr Berry's** amendment No 2 be agreed to.

The Assembly voted—

Ayes 6		Noes 9		
Mr Berry	Mr Stanhope	Mrs Burke	Mr Rugendyke	
Mr Corbell		Mr Cornwell	Mr Smyth	
Mr Hargreaves		Mr Hird	Mr Stefaniak	
Mr Osborne		Mr Kaine	Ms Tucker	Mr Quinlan
		Mr Moore		

Question so resolved in the negative.

Amendment negatived.

MR BERRY (8.45): I move amendment No 3 on the yellow sheet, which is circulated in my name *[see schedule 3, yellow sheet, at page 3540]*.

Mr Speaker, this is another recommendation of the workers compensation select committee in May 2000, a little over a year ago. This is about ensuring that the host employer in a labour hire arrangement has the responsibility for workers compensation. I will go to the evidence that was brought before the committee to give members an insight into the evidence that came before us. It hasn't dated. Nothing has changed much, Mr Speaker. First of all I will go to the evidence that was submitted to the committee by the CFMEU. They said this:

> … our experience with labour hire companies is that they do not train people. They advertise for what we call skilled labour. They do not do any inductions or on-site training because they are not actually based on site; they just respond to an employer ringing up requiring casual or permanent part-time for whatever the contract period is. They supply little, if any, safety equipment and, in our experience, their track record on rehabilitation is virtually non-existent.
>
> … If someone gets injured at work, their attitude is, "Give us a call once you are fit and healthy again and we may be able to find you some work". That is all putting stress and pressure on the scheme, because we need to ensure that employers do act responsibly with workers if and when they get injured. Rehabilitation is a very important fact and also is induction.

Mr Speaker, during an inquiry by the Estimates Committee the Urban Services Department was asked about their labour hire operations. I think at the time there were something like 130 workers taken on by urban services from labour hire companies. We asked them what happened when a worker got injured. The minister may recall this. Essentially what they said was: "Well, we need another one. Send us another one." In other words, this one's broke; we need another one. What happens to the worker? Well, they go back to the labour hire company and the labour hire company says, "Come back and see us when you are ready for work. We haven't got a job for you."

This is a sorry state of affairs with recent developments out there in the work force. Labour hire companies have become more and more a part of employment arrangements out there in the workplace. More and more, as the evidence shows us, employers are using them as a risk minimisation affair, using labour hire employees instead of their own.

Further information from the CFMEU was as follows:

> [the first week] is the most dangerous period and that is when most accidents actually happen. So, you have got these labour hire companies who are continually referring people to what I would describe as foreign, strange or new work environments on a regular basis and they are exposing these people to a far greater risk than people who employ them directly.

So if one of these workers is injured the employer does not bear the responsibility for increased premiums as a result of a bad accident record. Somebody else does, but not the employer. I say it is the employer's responsibility to look after his or her own workers.

ACT WorkCover, again contributing to the committee, relayed a story about a tragic death on a New South Wales work site. A person was killed when a bulldozer rolled onto him. WorkCover noted that a contributory factor in the accident was the fact that the worker, a labour hire contractor, did not have the faintest clue what they were doing. They were not licensed to be handling the machinery. The union argued that there should have been a 25 per cent premium applied on this for labour hire companies.

Interestingly, the Recruitment and Consultancy Services Association construed the situation differently, arguing that they have little or no control over workplace safety. That is the point that I make here. Their workers compensation premiums are affected by the poor performance of their clients or host employers. So even the association representing these people said that these premiums were affected by the poor

performance of host employers. The host employers did not have to worry about it. The committee heard that, effectively, some companies are using labour hire organisations as part of their risk management policy, devolving workers compensation costs and at the same time abrogating their workplace safety responsibilities. That is why we need to do something about who has responsibility for workers compensation payments when they are using labour hire employees.

The association argued that there is no incentive for a host employer to improve the safety of their operation when the increase in workers compensation premiums falls not on them but on the labour hire company. To remedy the situation, the association told the committee what they would like to see. I quote:

> We would like to see their [host employers] workers compensation policy to be affected also by accidents that happen on their work sites. We accept that they are also our workers and therefore we cannot totally absolve ourselves from responsibility. However, currently the host employers are absolving themselves from that workers compensation responsibility and we would like to have some mechanism implemented whereby there is an incentive for that host employer also to get involved.

Well, I found the incentive: give them the responsibility for the premiums. The committee notes evidence provided by the government that the act, as it currently stands, creates uncertainty about where the responsibility for workers compensation costs lie. The government noted:

> … it can be argued that the companies or individuals employing staff from labour hire companies are also required to provide workers compensation cover for these individuals under subsection 6 (3):
> "where a contract to perform any work exceeding $10 in value (not being work incidental to a trade or business regularly carried on by the contractor in the contractor's own name, or to perform any work as an outworker, is made with the contractor, who neither sublets the contract, nor employs workers, the contractor shall, for the purposes of the Act, be deemed a worker employed by the person who made such a contract.

So then, under the old act, the government was saying that it might have been the case that they should be covered, but what this legislation does is completely clear the decks and makes sure that labour hire employees are not covered by the host employer. They make it very clear in this legislation. If you have a look at the flow chart in the legislation, it makes it very clear that labour hire employees are not covered by the host employer; and that is what this committee recommended—that to solve the situation, the host employer ought to wear the responsibility.

The select committee went on to recommend that the Workers Compensation Act be amended so that costs expended by a business on the provision of workers by labour hire companies can be considered as a wage and salary cost and used in the calculation of insurance premiums; and that the Workers Compensation Act be amended so that workers employed through labour hire companies be deemed employees of the host employer.

The government agreed in part to the committee's recommendation No 3. It said:

> Proposed legislative changes to the definition of wages/salaries and other remuneration will clarify the amount on which workers compensation premiums should be calculated. The responsibility as to who should hold the workers compensation policy will be clarified in the modernisation of the definition of a "worker".
>
> In the case of labour hire firms the responsibility for workers compensation insurance lies with the labour hire firm. The responsibility for the provision of a safe workplace and the effective management of occupational health and safety in the workplace lies with the host employer.

My word they clarified it. They made sure that the labour hire companies were responsible for their own workers compensation payments, not the host employer. So, instead of going forward, they went backwards.

Mr Speaker, this is an issue which is fundamental to workplace safety—that is, making sure that employers who injure their workers are responsible for the penalty that comes from a bad safety record on the job. There is no argument to avoid having the host employer responsible for premiums and workplace rehabilitation as far as I can make out.

Members should also be aware that the provision which has been included in relation to labour hire arrangements also goes to the issue of—

MR SPEAKER: Order! The member's time has expired. You may take your second period.

MR BERRY: Okay. I also make provision for the motion which was passed in this place to cap the premiums for training companies, at subsection (3). However, the regulations may exempt the individual on principle from this section. So, Mr Speaker, there are provisions to deal with those matters in there. I will leave it there and if I need to come back to it I will in due course.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (8.55): Mr Speaker, the government will oppose the change because what it does fundamentally is alter who is responsible for workers compensation in the labour hire arrangement. Mr Berry is seeking to make the host employer responsible for workers compensation for people that they have no employment relationship with. Although the labour hirer is the employer, the liability for the workers compensation will rest with the workplace when the hired labour is placed. It is like saying that when a person rents a car the responsibility for the compulsory third party insurance is with the person who rents the car, not with the person who owns the car.

I think the change represents a misunderstanding of the difference between the responsibilities under workers compensation, which are absolutely inherent in the existence of an employment relationship, and those responsibilities to provide a safe workplace, which of course should be addressed under the Occupational Health and Safety Act. The government's position on labour hire firms and workers compensation is

consistent with every other jurisdiction in Australia. Therefore the amendment is not supported.

MR BERRY: I seek leave to speak again.

Leave granted.

MR BERRY: That was a most curious response. In fact the government said to the workers compensation committee that it can be argued under the act that they are covered, and what you have done is reverse the situation. I accept that labour hire companies, host employers, were not paying their premiums, but the government argued that they could have been covered. What the government has done here is to make it absolutely clear that labour hire organisations will be able to allow employers to avoid their responsibilities for premiums and workplace safety for workers from labour hire companies.

Look, I can give you an example of a young person who has taken a job, because they have to, as a result of all of the new employment arrangements with a labour hire company. They turn up and are told: "Righto, front up here. We've got a little job for you down at a warehouse." They go to the warehouse. The labour hire company is getting 27 bucks an hour for them; the worker is getting about $15 or less. People on the job are getting more than the labour hire worker. The worker gets injured on the job. He has to go home on workers compensation for a couple of days. He rings up to go back to work and the organisation where he has been doing the work says, "Sorry, we got a new one; ring up the labour hire company." He rings up the labour hire company and they say, "How are you going? Well, when you are better, give us a ring and we will see if we can find you a job." That is just extraordinary, and that is the sort of stuff that this government, and anybody else who supports this particular approach, is going to support well into the future.

Mr Smyth says that all the other jurisdictions support it. That does not make it right. What it does tell us though is that they are opposed to employers taking responsibility for their workers too, and that is a backward step. It might have been coincidental that up until recent times they were all Liberal administrations, or many of them were.

Mr Speaker, this is a question of employers taking proper responsibilities for their workers. I know that Liberal philosophy would have it that labour hire is a good idea because it weakens the worker and makes it difficult for them to organise and to get better wages and working conditions. That might be a nice thing for the Liberals to do, and they might think, in their scheme of things, that that is socially just; you know, "Make everybody responsible for everything that happens to them and we will give them as little as possible, and some of us will get rich and some of us will get poorer."

That philosophy is not sensible in the scheme of things. You should not let your ideological preferences interfere with your judgment when it comes to workplace safety. Workplace safety ought to be the responsibility of the host employer or the direct employer, and if there is a bad performance in the safety area and if there are increases in penalties the host employer, or the employer at first hand, ought to be taking responsibility. We are abrogating our responsibility on this if we ignore that obligation.

Mr Stanhope: You could make them independent contractors, I suppose, Mr Berry?

MR BERRY: Independent contractors might be a good idea. I think there will be a few of them thinking that in all of this we can have them as independent contractors and they can pay for their own. Some employers, the good ones, are doing the right thing, but the duds and the crooks are trying to avoid their responsibility for workers compensation and any other payment. They even go broke and refuse to pay their workers. So, let's not pretend. By and large most of the employers are good to their workers, but there are a few duds and crooks out there that need to be wrapped up in sensible legislation to ensure that workers are not disadvantaged by them. By allowing them to avoid their responsibilities and adjust their risk management by using labour hire companies in the way that they propose, I think we assist them in that course.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.02): Mr Berry talks about the government saying something in the act. There is no act except the existing act. What he refers to is something in the act that we seek to replace. Why do we seek to replace it? Because it's inadequate.

What Mr Berry forgets to tell the Assembly is that in the new act that we, the Liberal government, want to put in—he ought to take off his ideological blinkers—there is return to work for workers. Proposed new section 10ZA is headed "Employer must provide suitable work for full-time, part-time and casual workers", and proposed new section 10ZB is headed "Employer must provide suitable work for contract workers". He refers to the failings of the old act which this government, a Liberal government, is seeking to fix here. The government will oppose his amendment.

MR STANHOPE (Leader of the Opposition) (9.03): The position that the minister put is nonsense. What this is about essentially is redefining "worker". We all know what this is about. We are not stupid. You are trying to create a class of worker and pretend they are not workers, just through this sophistry. That is what it is. A worker is a worker. You are trying to redefine them. It is the same basic contract of employment that we are talking about. You are simply repackaging it to the disadvantage of genuine workers and to allow employers to abrogate their responsibilities. It's as simple as that.

MS TUCKER (9.04): I am finding this one difficult. We are not big fans of labour hire companies. Labor is correct in saying that in the way they are being used to remove responsibility and accountability, but I am also interested in seeing more responsibility taken by them. I think there is an argument that if you impose these responsibilities on the labour hire companies you will improve their performance. I think this is something that we are going to take an ongoing interest in, because I am not totally convinced that it is right.

Question put:

> That **Mr Berry's** amendment No 3 be agreed to.

The Assembly voted—

Ayes 6		Noes 9	
Mr Berry	Mr Quinlan	Mrs Burke	Mr Rugendyke
Mr Corbell	Mr Stanhope	Mr Cornwell	Mr Smyth
Mr Hargreaves		Mr Hird	Mr Stefaniak
Mr Osborne		Mr Kaine	Ms Tucker
Mr Moore			

Question so resolved in the negative.

Amendment negatived.

MR BERRY (9.08): I move amendment 4 circulated in my name on the yellow sheet *[see schedule 3, yellow sheet, at page 3540]*.

This clarifies the issue of outwork. Outworkers, the duties they carry out and the exploitation of them have been a growing problem in this country for some time, especially in the footwear and clothing industry, but in other areas as well. IT has now become an area where there are some outworkers as well. There are also people running call centres and those sorts of things. So outworkers have become a reality and need to be covered.

I submit that this proposal will, remove any doubt and, as it says:

> … the fact that the treatment or manufacture of articles or material, or the performance of services, takes place on premises not under the control or the management of the principal does not affect the determination of—
>
> (a) whether the outworker is a worker for this Act; or
>
> (b) if the outworker is a worker for this Act—who is, or who is taken to be, the outworker's employer for this Act.

It stands on its own and speaks for itself. I would be surprised if any socially just person would oppose this. Mind you, I have been surprised a couple of times so far.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.10): Mr Speaker, rather than oppose the amendment, the government will go better. If Mr Berry refers to proposed section 5B (2), he will see that it goes further and supports an ever-expanding group of workers in this new environment. Our section removes any doubt as to their inclusion and their entitlements in the provision. We are being more generous to workers than the restrictions Mr Berry would put in place. We will oppose his amendment.

Amendment negatived.

Clause 4, as amended, agreed to.

Proposed new clauses 4A and 4B.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.11): Mr Speaker, I move amendment 15 circulated in my name, which inserts new clauses 4A and 4B *[see schedule 2 at page 3475]*.

Proposed new clauses 4A and 4B agreed to.

Clause 5.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.11): Mr Speaker, I move amendment 16 circulated in my name *[see schedule 2 at page 3475]*.

Amendment agreed to.

Clause 5, as amended, be agreed to.

Clauses 6 and 7, by leave, taken together and agreed to.

Proposed new clause 7A.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.12): Mr Speaker, I move revised amendment 17 circulated in my name on the green sheet, which inserts new clause 7A *[see schedule 7, green sheet, at page 3549]*.

MR BERRY (9.13): This amendment goes to the issue of when a worker stops being entitled to compensation under section 8D. It describes those circumstances as follows: when the worker stops being totally incapacitated; when the worker returns to work; for a worker who at the time of the injury being compensated was two years younger than pension age, when the worker reaches pension age; for a worker who at the time of the injury being compensated was two years younger than pension age or older, two years after the work first became entitled to compensation under this section; or when the worker dies.

These provisions are fundamentally fairer than those which are provided for by the government, and I urge members to support the amendments which have been put forward on the gold sheet.

MR SPEAKER: Mr Berry, are you formally moving an amendment to Mr Smyth's amendment?

MR BERRY: I move amendment 1 circulated in my name on the gold sheet *[see schedule 4, gold sheet, at page 3542]*.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.14): The government will be opposing this amendment. Mr Berry's amendments to proposed new sections 8C (4) and 8F are identical. They seek to introduce a sliding entitlement to workers compensation as a person approaches retirement age, 65 years. The amendment will allow a person who is older than 63 years of age but less than 65 years of age to access an entitlement to compensation for a period of two years from the date of injury. The effect will be that a person, say, 64 years old will be entitled to compensation for a period of two years until the age of 66.

There is more than ample provision and certainty in what the government has already provided. This amendment will simply add to the costs without improving the outcomes of the scheme. We will oppose the amendment.

MR BERRY (9.15): You say that a worker stops being entitled to compensation under this section if the worker reaches pension age. My amendment says:

> (c) for a worker who, at the time of the injury being compensated, was more than 2 years younger than pension age—when the worker reaches pension age;
>
> (d) for a worker who, at the time of the injury being compensated, was 2 years younger than pension age, or older—2 years after the worker first became entitled to compensation under this section;

We are saying that there is a guarantee of two years of workers compensation if you are injured close to pension age.

Mr Smyth said that my amendment will not improve outcomes. It will for the injured person. They will get benefits for two years. Mr Smyth says that it will increase costs. Of course it will, because if you pay workers more it costs more. Funny, that. If it is a fair payment, then I think it is okay to pay it. If somebody is injured within two years of being entitled to the pension, they should be entitled at least to a couple of years worth of benefits. That is only fair. I think it is pretty miserable to say that if you get injured a month before your pension it all cuts out when you get to pension age. That is a bit rich. It is a bit mean spirited. I know it would increase the cost, and that would be hard.

Question put:

> That **Mr Berry's** amendment No 1 to **Mr Smyth's** amendment No 17 be agreed to.

The Assembly voted—

Ayes 8		Noes 7	
Mr Berry	Mr Rugendyke	Mrs Burke	Mr Smyth
Mr Corbell	Mr Stanhope	Mr Cornwell	Mr Stefaniak
Mr Hargreaves	Ms Tucker	Mr Hird	
Mr Osborne		Mr Kaine	Mr Quinlan
		Mr Moore	

Question so resolved in the affirmative.

Amendment agreed to.

MR BERRY (9.21): I move my amendment No 2 on the gold sheet to Mr Smyth's amendment No 17 *[see schedule 4, gold sheet, at page 3542]*.

This goes to the same issue in relation to partial incapacity, so I do not think I need to repeat myself. It is essentially the same as the earlier amendment but it is for partial incapacity. If somebody hurts themselves and is entitled to workers compensation within two years before pension age, then they are entitled to workers compensation benefits for the full two years.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.22): This amendment is illogical. If a worker aged 64 and 11 months injures himself, under Mr Berry's amendment they are entitled to compensation for two years.

How then does the employer, under the act, come up with a return-to-work plan for somebody who has retired? The employer would be saying, "I am going to give you compensation for doing work, but under the law I am obliged to give you a return-to-work plan. But you are not going to come back to work." This amendment is illogical, because it flies in the face of the return-to-work provisions in the act.

This will add to the cost of the scheme. Even Mr Berry has said that we need to work on bringing premiums down. Yet he is saying that it is okay for the employer to carry this cost, but at the same the employer will be unable to make good his obligation under the act, which is to make sure that the injured worker has a return-to-work plan. The worker is going to retire. The worker should be covered for the period up to 65, and then they would be covered by pension provisions.

The government will oppose this amendment, as it opposed the last. I ask those who voted in favour of last amendment to consider the illogical nature of that which Mr Berry puts here. Under the act an employer has to put together a return-to-work plan for somebody who is never coming back to work. How does an employer find work for them? How does the employer put together a plan for them? But an employer is to be forced to pay for them anyway. The government will oppose the amendment, as we did the last one.

MR BERRY (9.24): Mr Speaker, this is unbelievable. I accept that this is an increased cost. When I was speaking to the last amendment, I said that I understood this was an increased cost. People do not get injured a month out from retirement just so they can get two years worth of workers compensation. It is not a very pleasant experience being injured at work, I can tell you.

A worker who at the time of the injury being compensated was two years younger than pension age gets two years worth of benefits. But if they get injured six months or a year before reaching pension age, you are going to withdraw everything just because they retire. Yes, of course it is an additional benefit for older injured workers, but they are after all injured. I know that in your scheme of things they are merely a resource for industry, but they are people.

Mr Smyth: You are so distasteful when you do that, and you know that it is wrong.

MR BERRY: I go back to something you said in your early documentation. You compared an injured worker to a hired car. Do not wince when I draw your attention to that. You are the one who drew the comparison. You are the one who describes people as a resource. Mr Speaker, this is merely fair play for older worker who get hurt.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.26): Mr Speaker, I have just consulted with staff. The other anomaly that Mr Berry does not address is that workers under this legislation—if it is passed—have to comply with a return-to-work plan. So you have to return to work even though you have retired. It is illogical. Mr Berry is making bad law, as he often does.

MR BERRY: I seek leave to speak again.

Leave granted.

MR BERRY: Mr Speaker, it does not say "retires". It says "reaches pension age". You do not have to retire. It does not say anything about retiring. There are workers who keep going at 65. We have such a worker here in Mr Kaine.

Mr Stanhope: Just imagine if Mr Kaine had to go at 64 and 11 months.

MR BERRY: We would have lost the benefit of his skill, care and attention in this place years ago, and you would have lost the benefit of his skill, care, attention and advice years ago.

Mr Speaker, this is not about workers who retire. This is about workers who reach pension age, pension age being 65 years. You are suggesting that all workers retire at 65. They do not.

Mr Smyth: Some retire earlier.

MR BERRY: Some retire earlier, but they would not get injured at work if they retired earlier. That is the point we are trying to make. This is unbelievable. Of course they can go through all those processes. I do not mind if they get injured just before pension age. Your job is to get them well again.

Question put:

> That **Mr Berry's** amendment No 2 to **Mr Smyth's** amendment No 17 be agreed to.

The Assembly voted—

Ayes, 8		Noes, 7	
Mr Berry	Mr Rugendyke	Mrs Burke	Mr Smyth
Mr Corbell	Mr Stanhope	Mr Cornwell	Mr Stefaniak
Mr Hargreaves	Ms Tucker	Mr Hird	
Mr Osborne		Mr Kaine	
Mr Quinlan		Mr Moore	

Question so resolved in the affirmative.

Amendment agreed to.

MR BERRY (9.32): Mr Speaker, I move my amendment 3 on the gold sheet to Mr Smyth's proposed new clause *[see schedule 4, gold sheet, at page 3542]*.

This amendment goes to the actuarial matter which I referred to earlier. There was some confusion about the issue. It might have been because I did not explain it properly. This actuarial review is for soft tissue injuries, permanent impairment of the back, permanent impairment of the neck and permanent impairment of the pelvis.

The amendment also goes to the requirement of the minister to "commission a report from an actuary who has expertise in workers compensation insurance about the actuarial effect of the amendments made by that Act to this Act and, in particular, the actuarial effect of the inclusion of the disallowable items in schedule 1". The reason the disallowable items are mentioned is that they are an additional and possibly substantial increase in the cost of the legislation. I think we as legislators are obliged to know what that increased cost is.

This legislation must come back to the Assembly before 1 February so that the disallowable items, or any other matter arising from the actuarial review, can be dealt with in the Assembly if members so decide. The amendment does not delay the implementation of this bill. This bill will not take effect until 1 July. The amendment merely puts in place a scheme to ensure that there is an actuarial review of this legislation so that legislators in this place can determine a way forward for these important laws on benefits to workers in the community.

The government have said that they cannot respond to this demand, because they cannot get information. I know that WorkCover is preparing information by the day as a result of the committee which I chaired and the recommendations which came out of that committee. I have seen the information. A long time ago, when I was a minister, I was able to get mountains of information about workers compensation to demonstrate where premiums and various costs were going. Information is much more refined now than it was then. Information you get today will not be as good as that you will get in five years times, but you need a baseline upon which to work.

Any person with experience in this area will be able to make some reasonable determinations and assumptions about the cost of this scheme if they are given the opportunity to do so by way of an independent actuarial assessment of this legislation.

To deny this would be an abrogation of our responsibility to the community, to workers, to business and to the insurance industry, who are screaming for information about our workers compensation provisions all the time.

It is also important to the community that their legislators, as far as possible, make decisions on the basis of the facts of the matter. I draw attention to the fact that there is no actuarial assessment of the possible costs of the benefits and provisions in this legislation. The government has made no effort to bring forward any information in relation to the legislation which it has put before this place.

Without that sort of information, it would be irresponsible of us to ignore our obligations to know and understand fully where we are headed with this sort of legislation before it comes into effect. This legal obligation on the government requires that the Assembly know about this on or before the first sitting day after 1 February 2002. This particular provision expires on 1 July 2002, so the government has from February to July 2002 to make decisions in relation to it.

I hear that the government is going to talk about one, two or three years on from then. I do not particularly care about that, but not as a replacement for this particular provision. This provision should happen at the earliest moment to give legislators in this place some idea of where the workers compensation provisions are headed. I have no objection at all to later actuarial reviews. Better quality information will become available in time, and you will be able to make more refined assumptions. But that is not a good enough reason to give up on doing this sort of assessment in the first place. Many people, because they do not understand the possible costs of the provisions of this legislation, are concerned at the level of costs which might flow from the legislation.

Members will recall that in earlier versions of this legislation I included psychological impairment in the provisions, because there is a level of illness and injury resulting from psychological impairment. It was at first considered that we might be able to apply lump sum payments to those sorts of provisions, but because we did not know what the possible costs would be, for the time being that has matter been put aside. That is not to say that it is not an issue for consideration in the future, but it has been put aside for the moment.

For those matters which the government has brought forward, I think we deserve to know and fully understand what the costs are. That is what this actuarial report will tell us. I urge members to support the amendment. I should say in closing that if this is supported we may have to revisit an earlier decision of the Assembly in relation to recognition of this particular provision in the commencement date of the legislation.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.39): Mr Speaker, the government agrees with the intent of this amendment, but we do not agree with the timing. The reason we do not have much data on this is that the majority of these cases currently go straight to litigation. In fact, the only people who would benefit from Mr Berry's amendment may well be the lawyers, because it forces insurers to defend cases.

The Liberal government want to give workers access to the table of maims now, and we want to do the actuarial study after we know how the scheme has worked for a couple of years. Then, and only then, will you be able to do an objective analysis of whether or not the scheme is working.

What we have here is the potential to reduce the costs of the scheme. Rather than force people into litigation, we are saying they should have access to the table of maims. We want to give the workers a vote.

Mr Berry is saying that we should do a study now. We tried to do actuarial studies, and the actuaries told us that we would be wasting our money, simply because the data we had up to date was so soft and so that fuzzy that it was impossible to do a reasonable analysis of how this scheme would work. That is why we are collecting information in the database. That is why when the bill is passed and it comes into being we will continue to collect data, and at the end of a reasonable period we will assess that data and its impact.

But during that period we want workers not to go the litigation route. We want them to have access to the table of maims and to benefits they might be entitled to. The intent of the amendment is exactly what we want. The application certainly is not. I believe that we should oppose this amendment.

The actuarial study should be based on an analysis of the scheme one year after its operation. We are asking actuaries to do a study of a scheme that has not commenced, with data they do not have, to determine an outcome. We need to wait for a year to ensure that the data used to make the assessment is derived from the new database managed by WorkCover rather than from insurer data estimates and assumptions as to the possible performance of the scheme. For these reasons the government does not support this amendment.

MR OSBORNE (9.42): Mr Speaker, I was a little confused earlier today, but having listened to Mr Smyth I can understand why some people were confused. He clearly got it wrong. No-one is trying to stop workers accessing this scheme. It does not come into play until the middle of next year. Mr Berry is proposing that you go away and do some sort of costing and give us something on what you are proposing. It is not going to affect implementation of the legislation unless someone moves for disallowance. Clearly Mr Smyth is attempting to muddy the water here. Mr Berry is not attempting to stop anyone accessing the new scheme. Surely somebody could give us some figures on what it is going to cost.

I think it is quite a reasonable suggestion on the part of Mr Berry. When Mr Smyth stood up, I thought, "What on earth is he talking about?" No-one is trying to stop it. Mr Berry's date is 1 February, isn't it?

Mr Berry: That is for delivery of the report. The starting point to the legislation is July 2002.

MR OSBORNE: Yes, exactly. Mr Smyth is confused. He proposes to do it after 12 months. That may well be sensible. Whoever is here in the next Assembly deserves to have some figures from whichever government it is on just how much this scheme is going to cost.

MR BERRY (9.44): I think you may have inadvertently misled us, Mr Minister, because the commencement date for the legislation is 1 July 2002, except for schedule 2, minor amendments. Under the proposal I put forward earlier in the piece—and we are not talking about that at that stage, so I have jumped the gun a bit—commencement, other than for section 80A, which we are talking about now, is 1 July 2002, so nobody is denying anybody anything. What we are trying to do is get an early baseline assessment.

MR RUGENDYKE (9.45): I feel the need to speak on this amendment. I believe that we spoke about this about a dozen hours ago. On that occasion, I must admit to some confusion. Yesterday I had a briefing that did not include this aspect. I did give the government some commitment. I was wondering why confusion existed around discussion earlier today. The reason is that this aspect was outside the briefing I had. A comment was made that data cannot be obtained. For that reason, I voted against this provision.

On this occasion, now that it has come back, I will be supporting Mr Berry's amendment. I sought independent legal advice on this aspect. I asked my legal adviser for his gut feeling.

Mr Kaine: Who gave you the legal advice? Mr Osborne?

MR RUGENDYKE: No, a lawyer. His gut feeling was that you cannot be criticised for asking for more information. I do not know whether the data is available. Ms Plovits of WorkCover, a person for whom I have a great deal of respect, churns out a lot of those graphs that appear on our desks from time to time showing such things as the retail sector having more injuries. Am I on the right track, Mr Berry?

MR SPEAKER: Order! Address the chair, please.

MR RUGENDYKE: I beg your pardon, Mr Speaker, but I have to get this clear. I apologise for the confusion that was around this morning. I now feel that I have a clearer picture, and I will be supporting Mr Berry's amendment.

Mr Kaine: Perhaps Mr Rugendyke can clear the matter up for the rest of us, Mr Speaker. I am still unclear.

MS TUCKER (9.48): I am still unclear, too. I can see particular injuries that have been pulled out—back, neck and pelvis injuries. There is a fear in some sections of the community that this whole scheme is set up to fail because it is going to cost so much. I do not want to see these injuries excluded because of the results of some actuarial assessment. I would like clarification, because I am still not clear, nor is Mr Kaine. Apparently Mr Rugendyke is clear now. I would like to know clearly—

Mr Rugendyke: Don't confuse me.

MS TUCKER: You might be clear. I am not going for you. You did not talk about this bit.

MR SPEAKER: Order! If you want to have a talk, go outside, please.

MS TUCKER: Mr Smyth, I am assuming that the government is committed to these particular injuries being covered.

Mr Smyth: Yes.

MS TUCKER: Right. As I understand it, Mr Berry came up with the idea that an actuarial assessment be done before so that we have an idea of the costs. In response to that concern, Mr Smyth—we are trying to work cooperatively—came up with a proposal for an actuarial assessment after the fact so that we have more understanding. But no-one is saying that they think these should be pulled out, so it is just a question of when the information is collected. I do not understand why it is so significant to collect it before, if everyone is totally committed to this. Why can we not just collect the information? I am happy for Mr Berry—I am sure we will give him leave if that is necessary—to put the other argument. But I do not understand why we have to have it now if everyone is committed to these injuries staying there, which for me is the most important issue.

MR BERRY: I seek leave to clarify that.

Leave granted.

MR BERRY: The disallowable provisions, which go to those injuries which you referred to, Ms Tucker, default to inclusion, so if nobody moves to exclude them they are in. The actuarial assessment will assess their cost—they have not been assessed to this point—and members will make a decision about the inclusion of these injuries in the table of maims. There are still injuries in respect of which workers might pursue other legal recourse, say, at common law but they are not included in the table of maims.

Superficially, the government's move to include them in the table of maims is a very attractive proposition, but there has never been any assessment of the cost. What everybody wants to know is what the cost of these things will be. If it is reported back to the Assembly that the costs would be bearable, then I am sure nobody will move to exclude these injuries. If it is reported back to the Assembly that not only these costs but lots of other costs would be huge, then legislators here have a few things to worry about before 1 July.

When you come back into this place—those of you who are fortunate or unfortunate, as the case may be, to be re-elected—you will have a job in front of you: to assess the benefits for workers. A report in February will give you as much information as is available at the time. That is a sensible way forward. The starting point does not happen until July. It is not about the exclusion of these particular injuries. It is about finding out what the cost will be, no more than that.

If there is no need to move to do anything about them, I frankly think this is a good idea, but I want to know what it is going to cost. We are always told that when you want a benefit you have to work out the cost of it. This is a classic example of responding to that call.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.53): Mr Speaker, I never thought I would see the day when I heard somebody from the Labor Party say that if we got an actuarial study back that said the cost was too high we might take a benefit away. We do not know who will form government after 20 October. You may get somebody who chooses to move disallowance to deny workers access to compensation for these three injuries in the table of maims.

Mr Berry said that we should do some work. It is illogical. It is speculation. It is bookmaking with compensation payments to injured workers. You are going to do some work on a scheme that does not exist, using some data that is absolutely vague, because we have never had these three injuries in the table of maims. What are we going to do? We are going to force injured workers to go to common law and fight this out in the courts. That is what this amendment has the potential to do.

What do we say? We say we should put them in the table of maims. Get some data down the track and do an objective assessment when you know what you are talking about. We will oppose the amendment.

Question put:

> That **Mr Berry's** amendment No 3 to **Mr Smyth's** amendment No 17 be agreed to.

The Assembly voted—

Ayes, 8		Noes, 7	
Mr Berry	Mr Rugendyke	Mrs Burke	Mr Smyth
Mr Corbell	Mr Stanhope	Mr Cornwell	Mr Stefaniak
Mr Hargreaves	Ms Tucker	Mr Hird	
Mr Osborne		Mr Kaine	
Mr Quinlan		Mr Moore	

Question so resolved in the affirmative.

Amendment agreed to.

Proposed new clause 7A, as amended, agreed to.

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

Proposed new clause 11A.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (9.57): Mr Speaker, I move amendment 18 circulated in my name, which inserts new clause 11A *[see schedule 2 at page 3475]*.

MS TUCKER (9.58): I move my amendment 1 on the purple sheet to amend Mr Smyth's proposed new clause *[see schedule 5, purple sheet, at page 3546]*.

This adds the word "reasonable" to "obligations" in terms of personal injury plans. One distinctive aspect of this scheme is that it puts pressure on workers to comply with personal injury plans. My amendment ensures that they do not have to comply with something that is unreasonable.

Amendment agreed to.

MR BERRY (9.59): I move my amendment No 5 on the gold sheet to Mr Smyth's amendment No 18 *[see schedule 4, gold sheet, at page 3542]*.

My amendment seeks to substitute proposed new section 10ZI. Mr Speaker, I want to go back over the history—the history as I understand it and as I have experienced it—of the termination provisions in ACT workers compensation legislation. Private sector workers compensation in the ACT did not have a termination clause. A termination clause is a provision whereby the insurance company—or anybody else for that matter, but in this case the insurance company—can terminate, under certain conditions, the benefits flowing to a worker. For many years there was no provision for this in the ACT. Insurance companies had to go to the courts and argue their case if they wanted to terminate benefits. It was argued that because of this, insurance companies were slow to agree to claims which came before them.

The argument about this went on for many years. Eventually there was agreement reached on a range of changes to the Workers Compensation Act provisions in the ACT. One of those was the inclusion of a termination clause on the basis of the insurance companies agreeing that they would process claims more quickly—that is, workers would not have to wait long periods for their claims to be assessed. This removed a problem for the insurance companies in that the presence of a termination clause would not always require them to go to the courts.

You will find in the many speeches made on this matter that the Labor Party agreed to this proposal on the basis that there was going to be more of a commitment by insurance companies to approve claims more quickly. Anecdotally, I have to say that the evidence I have indicates that they are just as slow as ever. I know there are provisions in this legislation which will speed up assessments, but I do not think the insurance companies have lived up to their side of the bargain. Even if they had, I do not think they would deserve to have termination provisions any more rigorous than those that are in the current legislation.

Mr Speaker, subsection (3) of my amendment states:

> A worker's entitlement to weekly compensation stops under subsection (1)—

(a) if the notice under subsection (2) is given less than 1 year after the day the claim is given to the insurer—8 weeks after the notice is given to the worker; or

(b) if the notice under subsection (2) is given 1 year or later after the claim is given to the insurer—when the Magistrates Court orders the entitlement to stop under this section.

Of course, that is contestable as well in the Magistrates Court.

These termination provisions were the subject of long negotiations. I know that the insurance companies would like to have easier termination clauses. But put yourself in the worker's position. Less than eight weeks is not much time for you to prepare yourself for a change in benefits. It is not much time in which to organise your affairs, and so on and so forth, in the knowledge that you are going to lose, for example, your sickness benefit.

Mr Speaker, the government position, as set out in subsection (2) of Mr Smyth's amendment, is as follows:

> A worker's entitlement to weekly compensation does not stop under this section until 1 week after the day, or latest day, the insurer gives written notice to the worker and to the Minister that the compensation will stop.

The minister then becomes in charge of the appeal; he receives the appeal. Somebody said to me, "Well, that wouldn't be the minister. It would be his delegate. It would be perhaps Ms Plovits, or somebody else like that, who would make the determination." Why on earth are appeals on these matters coming back into government? It is not government's responsibility to look after these issues. Indeed, how does government provide a judicial or quasi-judicial function in relation to benefits which have ceased as a result of this process?

Mr Speaker, I think this is a completely illogical approach to the issue. I do not know why the minister would want the responsibility anyway of dealing with stopped payments. What if something in relation to this matter gets bogged down in the department or the minister's office?

I think the conditions that apply in my amendment to cessation or termination of benefits are adequate—that is, benefits are terminated after eight weeks if notice is given less than one year after the day a claim is given to the insurer; and if notice is given one year or later after a claim has been given to the insurer, the Magistrates Court has got to sort out the matter. This part of the legislation relates to the stopping of payments. We ought to be concerned about this serious matter.

There are certain provisions which relate to this issue. The minister's amendment uses language such as: if the worker unreasonably fails to comply with a requirement under this chapter, including the worker's personal injury plan; fails to take part in or make reasonable effort to take part in a vocational rehabilitation or return-to-work program; fails to attend an assessment of the worker's employment prospects; fails to undertake and so on.

According to the minister's amendment, a worker is not entitled to weekly compensation if that worker fails to do any of these things. So if the process gets bogged down somewhere we could end up with a injured worker without any benefits at all to live on because the insurance company decided that that person failed to do something. Under my amendment, workers would have to be given eight weeks notice and at least they then would have time to challenge the decision in the courts if there was something wrong with it.

The government wants to stop workers receiving benefits and create the impression that this will give workers an incentive to comply with the back-to-work programs. That is an unfair incentive because it would have the effect of throwing them off benefits at very short notice without appropriate avenues for appeal and without sufficient time to settle their affairs if they decide not to take the matter to the Magistrates Court. So, Mr Speaker, I ask members to support my amendment.

MS TUCKER (10.07): Proposed section 10ZI, which deals with compliance by workers to rehabilitation and personal injury plans, is contentious. Mr Berry has taken a very different approach to that taken by the government. The government allows insurers to cease weekly compensation payments much more promptly. Such action involves the minister and is signed by WorkCover, with government reserving the power to direct insurers to continue payments. Labor, on the other hand, requires the insurer to give workers eight weeks notice or just leaves it up to the court to have payments stopped.

The Greens have problems with Labor's approach . It has been generally agreed that the increased focus on return to work, injury management and rehabilitation, and the collection of information and statistics are key features of this scheme and will in some way counterbalance the cost of reasonable income support for people who are injured or permanently incapacitated. But the extended procedures that Labor's regime would deliver and the fact that it does not discourage game playing or involve WorkCover is a concern.

The government's amendment gives workers only a weeks notice. I have an amendment which seeks to extend that time to two weeks and involve WorkCover. I will not be supporting Mr Berry's amendment.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.09): Mr Speaker, the government will also be voting against Mr Berry's amendment. However, Ms Tucker's amendment will have our support.

Mr Berry's amendment would remove the ability of insurers and employers to ensure compliance by injured workers with their agreed injury rehabilitation plan. It does this by removing the immediacy of the action that is integrated into the compliance scheme by taking the appeal right from one week to an eight-week period. This means that you would get on a merry-go-round where you have non-compliance for up to eight weeks and you come back to a week of being a good person, and then you go back off again. The injured worker can then recommence their compliance and there would be absolutely no penalty applied. These provisions both encourage and condone exploitation of the scheme.

The delay in ensuring compliance with an injury management plan caused by the need to proceed then through the compensation court would render the provision absolutely meaningless. This is also in conflict with the general thrust of the legislation, as it removes from the injured worker the incentive for complying with injury management programs and early return to work. So this really goes right to the heart of what it is we are trying to do here.

Further, where an injured worker believes that the insurer is acting unreasonably, the amendment removes the automatic right of appeal by the injured worker to the minister against the notice to cease benefits and continue payments. Ministers do not make those decisions. It would be a delegated power and in this case it would be delegated to the regulator, the independent commissioner, and I am sure she would exercise this power wisely.

MR BERRY (10.11): I find this concept where people think all workers are cheats when they are injured—

Mr Smyth: Nobody said that.

MR BERRY: That is the impression you are trying to create. It is being argued that if you give them little to sort out their affairs then they will comply more. This is just extraordinary. Subsection (2) of the amendment to be moved on behalf of the Greens by Ms Tucker states:

> A worker's entitlements to workers compensation does not stop under this section until 2 weeks after the day ...

Well, that is generous, isn't it! After two weeks, you get nothing.

Workers who are on the statutory benefit, whatever it is, or have been ill for some time, are not going to have a lot of money to throw around. What will happen if they are ill and the time within which their compensation is stopped is reduced under the government's or Ms Tucker's amendments? Under section 10ZI the insurer gives the worker and the minister notice in writing that a worker's weekly compensation will stop.

Proposed section 10ZIA states:

> (1) This section applies if an insurer gives the worker and Minister notice under section 10ZI and stops the worker's weekly compensation.
>
> (2) If the Minister considers that stopping the weekly compensation may have been unreasonable, the Minister may do either or both of the following:
>
> (a) ask the insurer, in writing, for further information about the stoppage—

how long do you reckon that will take, Ms Tucker?—

> (b) direct the insurer, in writing, not to stop paying the weekly compensation, or to continue to pay the weekly compensation, for a stated time that is not longer than 1 month.

(3) If the Minister considers that stopping payment of the weekly compensation is unreasonable, the Minister may—

(a) tell the insurer so in writing; and

(b) direct the insurer, in writing, not to stop paying the weekly compensation, or to continue to pay the weekly compensation until the Minister otherwise directs or the claim is settled or decided.

(4) The insurer must not, without reasonable excuse, contravene a direction under this section.

Maximum penalty: 10 penalty units.

If the insurer stops payment in these circumstances, how long is it going to take a court to deal with the matter? If a worker can argue successfully that the insurer contravened the provisions of the legislation, the penalty would be 10 penalty units or a thousand bucks. That is the maximum fine for cutting off a worker's benefits for what could be months. Who makes the decision? This is done by the minister. What qualifications does a minister in this place have to make judicial decisions in relation to cutting off benefits? What qualification does a minister have to act as the appeal agent? This is just extraordinary.

If Ms Tucker supports what the government is doing, she should support it all the way. Do not get involved in tokenism by giving workers two weeks. The fact of the matter is that the whole process is unreasonable. Ms Tucker, you are one for process, and I accept that. But the process is bad because it gives the responsibility to somebody who is not qualified to deal with the situation and it encompasses potentially a more cumbersome approach than the one that is available under the provisions which I propose.

Amendment negatived.

MS TUCKER (10.15): I move my amendment No 2 *[see schedule 5, purple sheet, at page 3546]*.

Mr Speaker, I have spoken to this amendment and people understand what it seeks to do.

Amendment agreed to.

Proposed new clause 11A, as amended, agreed to.

Clause 12.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.16) : Mr Speaker, I move amendment 19, circulated in my name *[see schedule 2 at page 3475]*.

MR BERRY (10.17): I move amendment No 6 *[see schedule 4, gold sheet, at page 3542]* to Mr Smyth's amendment 19.

This amendment to proposed section 11D relates to the six and three years controversy which we have had to confront. The government reduced the period for compensation claims from six to three years. The problem with this, as far as I can see, is the occurrence of latent diseases. One classic which comes to mind is mesothelioma but other cancers and other illnesses and injuries could, of course, emerge some time after they occur.

The government argued that there was provision for workers to proceed with workers compensation claims in respect of illnesses that emerge later in a person's life. My view is that we should include something that basically says that, rather than relying on an anticipation that the courts will allow workers to proceed if such a matter were brought to their attention. My amendment seeks to include subparagraph (ii), which reads:

> if the worker was not aware of the injury when it happened—within 3 years after the worker became aware of the injury; or

I understand the government has agreed with this; I think the government has agreed with this; I used to think they agreed.

MR SPEAKER: Minister, you are being asked a rhetorical question.

MR BERRY: I think you agree with this.

Mr Smyth: Sorry. I think the answer would be yes.

MR BERRY: Well, that was pretty definite.

Mr Berry's amendment agreed to.

MR BERRY (10.19): Mr Speaker, I move my amendment 7 *[see schedule 4, gold sheet, at page 3542]*, which seeks to omit proposed new section 11E in Mr Smyth's amendment 19.

Mr Speaker, what I am seeking to do is remove proposed section 11E, which used to be regulation 93. So that members understand what the issue is about, I will read proposed new section 11E. Under the heading "Time for making claim under pt 4.4", the proposed section states:

> (1) A claim for compensation payable under part 4.4 (Compensation for permanent injuries) in relation to an injury may not be made earlier than 2 years after the injury.
>
> (2) However, the claim may be made earlier than 2 years after the injury if—
>
> (a) the Magistrates Court allows the claim to be made; or
>
> (b) the injury has stabilised.
>
> (3) The Magistrates Court may allow the claim to be made earlier than 2 years after the injury only if satisfied that an early application is justified by the severity of the injury or the prospect of the worker's imminent death.

(4) The worker's injury is taken to have stabilised if—

(a) the worker was returned to work for the worker's pre-incapacity weekly hours (the previous work hours) or longer; and

(b) the worker has been working at least the previous work hours for at least 3 months.

(5) However, the worker's injury may have stabilised even if the worker has not returned to work.

Mr Speaker, if I am not mistaken, this goes to the table of maims. This proposed section seeks to deny a worker right of access to the table of maims for two years unless the Magistrates Court allows the claim or the injury has stabilised—and I do not know who will make this determination.

Mr Speaker, I will go to the issues. If somebody loses a leg above or below the knee, it is not going to grow back, it is not going to get better. This outrageous provision will deny workers access to the table of maims when they most need it. You can tell when a finger is missing. You can tell when an eye is lost. You are not going to get these functions back.

Why does the government see this provision as some sort of incentive to get workers back to work? How can it be that a worker who has lost an arm, or some other part of their body, needs to have the approval of a Magistrates Court or a decision from somewhere that the injury has stabilised before they can get access to the table of maims? I just see that as plainly ridiculous. How does that improve the lot of a worker? How does it get them back to work more quickly?

Workers are entitled to compensation from when they lose their leg, not at some time later. They are entitled to it from day one. They are going to get the money anyway. Why delay it? Somebody who loses a part of their body or a function will want to get on with life. There will be back-to-work programs and all that sort of stuff. Access to this sort of money is not going to change their view; they will want to get better. It is ridiculous to suggest that they ought to wait for a couple of years.

Mr Speaker, this will not encourage people to return to work. Is it suggested that it will be easier to get people back to work if they do not get a cash settlement for the loss of a leg, some brain damage, or something like that? Minister, it is access to the table of maims that we are talking about?

Mr Smyth: Yes.

MR BERRY: I just cannot understand how you think this would improve back-to-work performance. I just cannot see why you would have to go to a Magistrates Court to determine it. It is pretty easy to see whether a person has lost a toe or other parts of their body. Like everybody else, I can count and I would know whether a person had lost two joints of a finger. I think this provision is ridiculous.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.24): Mr Speaker, quite clearly, if you are never to return to work then you should have immediate access to the table of maims. That is the government's intent in the entire act. What we are saying, though, in this particular section is that where a rehabilitation plan is put in place, that rehabilitation plan should be used; and that where you can sustain a durable return to work, a three months return to work, we think that is the path to go down.

This goes to the heart of what were are attempting to do here. Those who are injured and will not return to work should, of course, receive what they are entitled to. But where, through proper management, through proper rehabilitation, through a proper return-to-work plan, people can return to work, then they should do so.

The proposed section provides that a claim cannot be made until after a period of two years has elapsed since the date of injury. The focus here is on injured workers returning to work rather than on the amount of money they may receive. They still should receive compensation if it is duly entitled to them, as per the table of maims, but the number one priority is to get people rehabilitated and back to work where possible. That is the entire intent of this bill; that is the entire purpose of this proposed section. We will oppose Mr Berry's amendment.

MR BERRY (10.26): This is not about rehabilitation; it is about claims. Of course you would have rehabilitation programs. How do you say to a bus driver who has lost the sight of one eye that he is not entitled to make a claim for compensation until the Magistrates Court allows the claim to be made or the injury is stabilised—that is, "the worker has returned to work for the worker's pre-incapacity weekly hours" and "the worker has been working at least the previous work hours for at least 3 months"?

The entitlement does not change. What do you gain by restricting the entitlement? How does it benefit the employer? Who does it benefit? The only person who loses out is the injured worker. What incentive would there be for an injured worker to come back to work if they have got a part missing from their body that prevents them from doing their work? It is just extraordinary that you would deny them that. They are going to get it anyway.

You seem to be suggesting that a person who is entitled to $100,000 or something for the loss of a leg should return to work and struggle for at least three months to maintain their previous work hours just so they can get the benefit which they are entitled to anyway. That is just extraordinary. You do not access the table of maims for the fun of it. Something serious must have happened.

A whole range of injuries—foot injuries, bowel injury and so on—are covered under the table. Permanent brain damage is a classic example of such injuries. Under the heading "Brain damage" in schedule 1, "permanent brain damage if not, or not completely an injury otherwise compensable under this schedule" attracts a maximum amount payable of 100 per cent. So you cannot get access to compensation for permanent brain damage until you have "returned to work for the worker's pre-incapacity weekly hours" and "the worker has been working at least the previous work hours for at least 3 months". You have got to be kidding. The proposed section talks about the injury being stabilised. Come on. I do not believe that you would go down this path if a person had lost a leg.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.28): Mr Berry makes the comment that this is about claims and not about rehab or anything else. The whole bill is about rehabilitation in the workers compensation process. You cannot deal with one part of this bill in isolation from the other.

Mr Berry talked about an injured bus driver. What he does not talk about is that for the first 26 weeks this person gets his pre-injury income, including overtime; that he gets a rehabilitation plan; that he gets a return-to-work plan. What you have to attain first is three months durable return to work. There is a single test in the case of the brain injured worker and a court would clearly say the injury of maims payment should be made immediately.

Let us not confuse the two. The whole purpose of the bill is to move, where possible, towards rehabilitating workers back to a durable return to work. That is what this achieves.

Question put:

> That **Mr Berry's** amendment No 7 to **Mr Smyth's** amendment No 19 be agreed to.

The Assembly voted—

Ayes, 7		Noes, 8	
Mr Berry	Mr Quinlan	Mrs Burke	Mr Moore
Mr Corbell	Mr Stanhope	Mr Cornwell	Mr Rugendyke
Mr Hargreaves	Ms Tucker	Mr Hird	Mr Smyth
Mr Osborne		Mr Kaine	Mr Stefaniak

Question so resolved in the negative.

Mr Berry's amendment negatived.

Suspension of standing order 76

Motion (by **Mr Moore**) agreed to, with the concurrence of an absolute majority:

> That standing order 76 be suspended for this sitting.

MS TUCKER (10.34): I move amendment No 3 *[see schedule 5, purple sheet, at page 3546]* to Mr Smyth's amendment No 19.

This simple amendment, which relates to paragraph (2) (b) of proposed new section 11H, seeks to insert the word "ignorance," before "mistake" to ensure that ignorance of a workers compensation scheme or requirements does not preclude a worker from reasonably pursuing a claim, even if a notice of the injury was not given at the time.

MR BERRY (10.35): Minister, are you going to agree to put the word "ignorance" in the legislation?

Mr Smyth: Yes.

MR BERRY: Have you had any legal advice on this? Ignorance of the law is okay?

MR SPEAKER: It hasn't stopped anybody in this chamber.

MR BERRY: We had some preliminary advice which said that the courts can deal with this. If somebody cannot read and they have not been given adequate advice, that is fair enough. But I am curious to see the word "ignorance" put forward. I understand why Ms Tucker is doing it—there are people out there who might not understand the law. I suppose that if the government thinks it is a good idea, who am I to complain?

Ms Tucker's amendment agreed to.

Mr Smyth's amendment, as amended, agreed to.

Clause 12, as amended, agreed to.

Clause 13 agreed to.

Clause 14.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.36): Mr Speaker, I move amendment 20 circulated in my name *[see schedule 2 at page 3475]*.

Amendment agreed to.

Clause 14, as amended, agreed to.

Clauses 15 to 22, by leave, taken together and agreed to.

Clause 23.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.38): I move amendment 21 circulated in my name *[see schedule 2 at page 3475]*.

Amendment agreed to.

Clause 23, as amended, agreed to.

Clause 24.

MR BERRY (10.39): I move amendment No 5 on the yellow sheet circulated in my name *[see schedule 3, yellow sheet, at page 3540]*.

Mr Speaker, I know that there are competing arguments: the minister wants an advisory council appointed by himself; Ms Tucker wants the OH&S Council to set up an advisory council and she specifies suitable expertise and so on.

I think the current arrangements for the OH&S Council have been working satisfactorily for a long time. There has never been any suggestion that they do not work. The fact of the matter is that the OH&S Council is, under its own legislation, empowered to set up committees—for example, the workers comp committee—and it decides on the relevant experience necessary to deal with an issue. I think that function ought to be left to the OH&S Council. I suppose I will just have to see how this proposal travels.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.40): Mr Speaker, the government will be opposing Mr Berry's amendment and supporting Ms Tucker's amendment, which we believe is a better and far more favourable model.

MR RUGENDYKE (10.40): In the interest of expediency, I, too, will be supporting Ms Tucker's amendment in relation to this issue.

Amendment negatived.

MS TUCKER (10.41): I move amendment No 1 on the pink sheet circulated in my name *[see schedule 6, pink sheet, at page 3548]*.

This amendment ensures that the minister takes advice from the OH&S Council in regard to the development of regulations for the act. It makes clear that the council can invite people with appropriate expertise onto an advisory committee in order to formulate advice.

The argument has been put that a specific advisory body with appropriate expertise would be a better solution. However, one of the functions of the OH&S Council is to advise government on matters relating to workers compensation. It is a well established bipartite body, a subcommittee of which, in fact, forged most of the agreements which underwrite this bill. Rather than setting up another committee to advise the minister, we would rather consolidate the expertise in the oversight of the operation of the act.

The amendment proposes that the council may set up an advisory committee with appropriate expertise seconded onto it. Obviously the council would have the capacity to organise advice in this way, and chances are that it would. I guess I will be a little more reassured when I know that the legislation indicates that as a course of action.

MR BERRY (10.42): Mr Speaker, I know that the OH&S Council has employer and employee representation, but that will be missing from this subcommittee because the only examples of suitable expertise are legal or medical expertise. I am not quite sure how they will be able to set up a subcommittee without anything other than members with legal or medical expertise. Is that right?

Mr Smyth: You are free to appoint anybody. It is only an example. It is in the notes; it is not part of the act.

Mrs Burke: Yes, it is just an example. There can be more.

MR BERRY: But there are no other examples. I hope you are right.

Mr Smyth: A physio, a lawyer—how many examples do you want?

MR BERRY: Is it inclusive or exclusive? I do not know.

Amendment agreed to.

Clause 24, as amended, agreed to.

Clause 25.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.43): I ask for leave to move amendments Nos 22 to 24 circulated in my name together.

Leave granted.

MR SMYTH: Mr Speaker, I move amendments 22 to 24 circulated in my name *[see schedule 2 at page 3475]*.

Amendments agreed to.

Clause 25, as amended, agreed to.

Clause 26.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.44): Mr Speaker, I move amendment No 25 circulated in my name *[see schedule 2 at page 3475]*.

MS TUCKER (10.44): Mr Speaker, I move amendment No 4 on the purple sheet circulated in my name *[see schedule 5, purple sheet, at page 3546]* to Mr Smyth's amendment No 25.

This amendment ensures that transitional arrangements apply and remain clear for a longer period. There will always be cases that take a few years to emerge and apply to injuries incurred under the old scheme. Given that a note will be attached to the legislation to advise people that transitional arrangements may apply once this chapter has expired, it is probably sufficient to extend the expiry date from one to two years.

Ms Tucker's amendment agreed to.

Mr Smyth's amendment, as amended, agreed to.

Clause 26, as amended, agreed to.

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

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.45): Mr Speaker, I ask for leave to move amendments 26 through to 47 circulated in my name together.

Leave granted.

MR SMYTH: Mr Speaker, I move amendments 26 to 47 circulated in my name *[see schedule 2 at page 3475]*.

Amendments agreed to.

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

Clause 2—reconsideration.

Ordered that clause 2 be reconsidered.

MR BERRY (10.47): Mr Speaker, I seek leave to move amendment No 1 on the yellow sheet circulated in my name *[see schedule 3, yellow sheet, at page 3540]*.

This amendment relates to commencement provisions in the context of new section 80A and to actuarial assessment.

Amendment agreed to.

Clause 2, as amended, agreed to.

Clause 3, as amended—reconsideration.

Ordered that clause 3, as amended, be reconsidered.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) (10.49): I move amendment No 1 circulated in my name *[see schedule 2 at page 3475]*.

Amendment negatived.

Clause 3 agreed to.

MR SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services): Mr Speaker, I seek leave to make a statement before the debate is concluded.

Leave granted.

MR SMYTH: I want to thank members for taking part in this debate. I think the intent was that we all wanted to put on the table and pass this evening a better set of workers compensation legislation to protect the workers in the ACT. I am very pleased to say

that, as the minister for the last three and a bit years who has had responsibility for this issue, I am glad that we got to the stage we reached tonight.

I think we have taken a tremendous step forward in putting in place a system to look after and protect workers, to ensure that they get back to work, to give them the assistance that they deserve, to give them the compensation that is necessary, and to make sure that all players take seriously the part they play in this process.

Mr Speaker, I would like to thank a few people, most of whom are here in the gallery this evening. I refer to Tony Thew, Craig Simmons, Sean Moysey, Ron Kirk, Ken Horsham, Colin Adrian and, of course, Brad Page, who has assisted so well. The ladies and gentleman of the department, particularly the gentlemen I have just named, have done a tremendous job in putting this together today. They have done a tremendous job in shepherding all MLAs through the deliberations today and this evening to make sure that we achieved a good outcome. I would also like to thank James Lennane from my office, who has also assisted tremendously in making this happen.

The people from the Parliamentary Counsel's Office also deserve a tremendous vote of thanks. We had a raft of amendments from many members and we received more amendments today. Of course, your staff, Mr Speaker, put out running sheets to make sure that our consideration of the legislation worked as smoothly as it has this evening. I thank all who were involved.

I am sure that the outcome of this legislation will be better protection of and better rehabilitation for workers. I hope that employers, employees and those who provide assistance to workers who find themselves in trouble will take their obligations seriously. I would simply like to say thank members of the Assembly for their support.

MR BERRY: Mr Speaker, I seek leave to make a short statement.

Leave granted.

MR BERRY: Mr Speaker, I want to particularly thank the Parliamentary Counsel's Office for their assistance with drafting. I think nine versions of my amendments were circulated to members, and they were of such quality that the government eventually picked up most of them. The Parliamentary Counsel have to be thanked for their effort, particularly in view of the pressure that was caused by this legislation being considered in the last sitting days of the Assembly. Of course, other members had amendments drafted as well.

At all times staff of the Parliamentary Counsel's Office were available and willing to put their shoulder to the wheel in relation to this complex legislation. As late as this morning I was on the phone to the Parliamentary Counsel and they were able to come up with the goods in relation to amendments which have been carried in this place. I do not know how they measure their performance, but we should bear in mind that many of the amendment they drafted successfully found their way into this legislation.

I want to thank those members who supported some of the initiatives that were put forward in the legislation. I will not say too much about the initiatives that they opposed. I would also like to thank the government officers who provided us with briefings—I am

not going to thank them for dumping a whole heap of amendments on me last night. I just found that too hard but I will survive, and so will the rest of us.

I agree with the minister that we have a comprehensive piece of legislation and, I suppose, we will have to wait and see whether it stands the test of time. We will hear more about that in due course when the actuarial assessment takes place.

I would also like to thank the secretariat for the running sheets that they prepared. I just could not believe that they would be able to get around to doing that. I must say that this morning it looked as though it was going to be just a wee bit difficult to work our way through the legislation. But they made our task so much easier, as did the staff in my office, who helped throughout this consideration. They attended the round table conference and all those sorts of things, and helped keep members briefed. So thanks to everybody who has helped us in relation to this matter.

MR SPEAKER: I would have thought this was not the appropriate time to have been making those comments. Never mind, we have allowed that to happen. My only regret is—and this is not a criticism of the officers, who are still in the building—that these remarks were not made earlier than 5 to 11 tonight. It is a great pity that these things had not been sorted out a little earlier.

Bill, as amended, agreed to

Rehabilitation of Offenders (Interim) Bill 2001

Debate resumed from 21 August 2001, on motion by **Mr Stefaniak**:

> That this bill be agreed to in principle.

MR HARGREAVES (10.57): I would like to express my appreciation to the staff of Corrective Services who have been sitting upstairs for hours and hours waiting for this bill to come on. Mr Speaker, the Rehabilitation of Offenders (Interim) Bill 2001 is, by my judgment, the first in a suite of legislation which will, I hope, set a new standard of corrective services in Australia. We have an opportunity in the ACT, in embarking on a new prison and now on a new service of home detention, to put together best practice, to put together good policy and to implement a restorative justice philosophy.

Essentially, Mr Speaker, the Labor Party fully supports the notion of home detention. If we have had some concerns over the past few days, much to the minister's angst, it has been because we did not want to make a mistake. We believe that this is an incredibly important piece of legislation. It is our first step down this path and we naturally are concerned to get it right.

I will make a couple of observations, Mr Speaker. We saw in the budget a provision of some $300,000 odd for this program, so I assume that in calculating that we started to consider just how the program is going to work. I am assuming that much of the detail has been known to Corrective Services officers for some time.

It was a little disappointing that we had to be brought on board so late in the piece, but, notwithstanding that, Mr Speaker, I want at this point to pay credit where it is due. I pay credit to the minister for the openness with which he has sought to find his way through difficulties that we have had and to his officers who have tried their best to provide us with information when we have asked for it. I think if we had all had our druthers, Mr Speaker, we would have liked a little bit more time to do it.

I do have some concerns. The Rehabilitation of Offenders (Interim) Bill would work in a rehabilitative and restorative justice sense if the notion of home detention was at the tail end of the sentencing regime. It could be an inducement to successful progression through restorative programs. I am not so sure of it being a good remand option. I am not so sure that it is not a method of flicking some of the overload at the Belconnen Remand Centre out to the home. I am not overly convinced about that.

The reason I am not overly convinced about that is that there are two types of remandees. One type is comprised of those who have been convicted and are waiting to find out just how long the sentence is going to be. We can start those people on their road to recovery. There are also those remandees who are awaiting appearance before the courts. The Corrective Services staff at Belconnen Remand Centre know only too well just how difficult it is to get those people to cooperate in anything except talking to their lawyer. So I do not see how this can apply in a rehabilitative sense to those types of remandees, but my worries about that, Mr Speaker, are not sufficient that we would want to hold up the legislation.

I understand that we cannot compile legislation to deal with that tail end of the sentencing continuum until we have a prison of our own because we are still reliant on New South Wales for the administration of the longer sentences. I look forward to the day when legislation comes forward which will enable our judiciary to use home detention as a longer term sentencing option relevant to our own prison. I will be watching that particularly closely.

Some of the concerns we have had over the last few days centre around the regulations. I understand that you cannot do the regulations until you have done the bill. I want to express my appreciation to the minister's office and to the department for giving us a look at the drafting instructions, albeit late in the piece. They, in fact, have raised quite a number of issues which cause us concern.

One off the top of my head is that we are treating young people pretty much the same as adults, like, for example, being responsible for the cost of calls. That has not been worked out yet, but it looks as though that is the way it will work. I am aware that the minister has undertaken to work through the regulations collaboratively, and we will take him up on that, but there are quite a number of issues to do with the regulations.

Mr Speaker, the $300,000-odd is for approximately 10, but nowhere in the legislation does it say that the judiciary are going to be stopped when they get to No 10. The question I pose is what happens when the court thinks No 11 is eligible and there is no money there? I would hope the government of the day would find the money. It would be terrible if we had a really crash-hot program that was producing the goods and it was limited in its effectiveness by a budgetary limitation.

I think home detention, if designed properly, should be a huge benefit to a number of prisoners, in particular eligible female prisoners. One of the great angsts I have had in looking into prisons is the distress and the anxiety women go through when they are separated from their families, no matter what they have done, and I think this possibly is a compassionate way out.

Mr Speaker, I want to foreshadow an amendment. I raised this at the round table and it has been struck off the minister's list of amendments. I am hoping, however, that he will see fit to support the amendment. It relates to part 2.4, clause 21. Essentially, the idea is that the police, on reasonable grounds, can arrest somebody if they have breached the home detention order. I do not have a problem with that, even without a warrant. A police officer, knowing that there has been a breach, can arrest somebody, just as a police officer can exercise the right to arrest somebody if the officer thinks that person has been shoplifting. That is not a problem.

I have no problem at all with clause 22, which says that if a judicial officer is satisfied by information on oath he or she can issue a warrant for the apprehension of a person. Clause 23 talks about a corrections officer. If a corrections officer believes it he has to tell the court, and then the court, on information on oath, issues the warrant.

Where I have a problem, Mr Speaker, is clause 21, because it refers to a police officer who believes that somebody might breach the home detention order. I think that's a bit stiff. My amendment will seek to remove that part of that clause which talks about the possibility of a breach. I think that if our assessments are done properly these people basically are reasonably trustworthy. If the information given to me by the department is right, and I suspect it is, there is not a great percentage of people who breach home detention orders, and that is largely because of that element of mutual trust. I think we are putting in a proviso that will hardly ever be used, and I do not think it is necessary. I do not think we need to infringe people's liberties.

I foreshadow, Mr Speaker, that we will be supporting the government's amendments in their entirety, and I would ask the minister, in the spirit of cooperation, to reconsider his position with regard to that amendment that I will propose.

Essentially, my concern about the regulations is that we have no idea when they are going to be gazetted. The minister is departing from this place and that means we only have two months. The problem is that if they are gazetted and introduced they will be, in practical terms, in operation for six months before anything can be done about them if there is a problem. We will all be working towards making sure there isn't one, but we are only human, and the ACT will be a special jurisdiction.

Mr Speaker, the opposition will be supporting the bill in principle, and I have foreshadowed the amendment that I will move. I would like to place on the record that it is nice to see us moving forward on a social issue, something which is going to do some real good for a lot of people. It is going to take a lot of the pain out of a lot of people's lives. It is to the credit, I think, of the Corrective Services people and to the minister. We have had our rows in the past. I had some rows with his predecessor. We just want to make sure this gets done properly. I remember the minister saying at the round table that one of the reasons for speed is that he has only been in the portfolio for a short while.

When it comes to this piece of legislation, and only this one, I wish he had been the minister a damn sight earlier. I will leave it at that, Mr Speaker.

MR RUGENDYKE (11.09): I, too, will be supporting this legislation. I see it as a positive step for sentencing options for our magistrates. This sentencing option will enable prisoners to be at home with their families in appropriate circumstances. I remind members that prior to the last election the Osborne Independent Group, as it was then, came up with this idea. It was part of the election platform for Mr Osborne's party at the time. It is interesting that the government took over the initiative that we came up with, and I applaud them for that. I will be supporting the bill.

Question (by **Ms Tucker**) negatived.

MS TUCKER (11.12): I wanted to have this debate adjourned because we have had this bill for two weeks and I do not think it has been properly discussed. I do not think we have had time to look at it. In the time I have had there has been a lot of pressure, as members are well aware. The people I have spoken to, particularly in the Aboriginal community, do not feel they have had a chance to really look at it. They are interested in home detention, as are the Greens, but would like to do the job properly.

I want to make some general comments. This is the first of a planned set of legislation to come before the Assembly to establish Canberra's new corrective services framework. Beyond the lofty title, this bill is about setting up home detention as an option for punishment for a crime. What we want to be sure of is that it will be a useful means of rehabilitation, which the Greens understand means whatever education, counselling, conferencing, drug treatment, training services, health treatments et cetera that the individual who committed the crime needs in order to address their issues such that they will be much less likely to commit a crime after their sentence. "Do no harm" is an important principle here, but our prison system is not currently effective in achieving rehabilitation.

Under this bill home detention will be a sentencing option for people already sentenced to a prison sentence, but only to people who pass the exclusion test, which precludes people found guilty of certain types of offences, and then a suitability test which assesses individual circumstances. The government also wants home detention to be available to people who would be remanded in custody and to people being paroled at the end of their imprisonment sentence.

I will have more to say about the question of remand later, but it needs to be clear first what kinds of offences are left following the exclusion test. I understand that this leaves people whose sentences are no more than 18 months, and what will most likely be left are driving offences, property offences, drug use but not dealing, fraud offences, traffic offences, minor assaults and resisting arrest.

Home detention was recommended by the Royal Commission into Deaths in Custody as a way to get indigenous people out of prisons. Last year the report from the women's prison working group and the women's alcohol and other drugs working party recommended further investigation of home detention as an option for women, particularly for women with child-rearing responsibilities. However, home detention has

also been the subject of quite a few very disturbing comments from people in the community sector who work with prisoners.

Fundamental to these concerns is the fact that essentially the home environment becomes the prison. Home is transformed by home detention from one's own place into a space that can be visited at any time of the day or night, and from which this one member of the household cannot leave unless they have been granted permission by the Corrective Services officer. The transformation of the home applies to the prisoner and to the householders—to their family, to their children, or mother, father or partner. On the other hand, the person is not away from their family, in prison.

In ideal circumstances it could work well. The household could receive whatever support and other services they need to cope with the imprisonment and to assist if there are other problems in the family. In other circumstances it could be terrible. It is easy to say that being at home is better than the person being entirely absent, but we do not know that. Criticisms and the studies depend in part on the details of the system.

The first 18 months of the New South Wales system was assessed, but the assessment at that relatively early stage could not look into recidivism and post-sentencing effects, and did not compare the effects on families of imprisonment in a prison versus prison in a home. I have asked whether the department knows of any studies that address these questions. I know the time is tight, but that is not our doing. Our role here is to ensure good laws. The department has been working to prepare for the introduction of this regime in the lead-up to the bill. I understand that they hope they could begin as soon as two weeks after passage of the bill, if indeed it does pass, and it appears that it will.

Home detention is not an alternative to imprisonment. Mr Moore and the department have been quite clear about that, and that is to be commended. Community service orders and weekend detention orders and treatment orders are alternatives to home detention. But this is a terrible rush. We have had this legislation for just over two weeks, as I said. Mr Moore has said that the urgency comes from the appalling conditions at Belconnen Remand Centre. Did I hear Mr Moore say three weeks?

Mr Moore: No.

MS TUCKER: Just as well. Mr Moore has said that the urgency comes from the appalling conditions at Belconnen Remand Centre. It is true; the conditions are appalling. However, we are very concerned that we do see really tight controls on this.

Mr Hargreaves and, I believe, Mr Osborne will argue against using home detention for remandees. They see the imposition on the home as unjust for someone who has not been found guilty. The screening test for eligibility for home detention would, one might expect, largely include people who might otherwise have been judged eligible for bail. Release on bail would be very different indeed from home detention.

The remand centre needs to be rebuilt and it needs more staff. The staff ratios need to be higher, not lower, after the extension is built, and home detention will not ease the burden. It shouldn't and it won't. So where is the rush? Home detentions fundamental questions require some detailed answers, and we do not have that detail. If we did not go

into the detail stage this week the department could carry on working and they could consult more thoroughly.

The royal commission's recommendations about custody for indigenous people emphasised the need to work with the community to make it as much as possible a community-based option. Recommendation 118 says that, where not presently available, home detention be provided as a sentencing option available to courts as well as a means of early release of prisoners. Great; but then let's look at the recommendations that precede 118, in the "Imprisonment as a last resort" section of the report. Recommendation 115 says that for the purpose of assessing the efficacy of sentencing options and for devising strategies for the rehabilitation of offenders, it is important that governments ensure that statistical and other information is recorded to enable an understanding of Aboriginal rates of recidivism and the effectiveness of various non-custodial sentencing orders and parole.

Recommendation 116 said that persons responsible for devising work programs for community service orders in Aboriginal communities should consult closely with the community to ensure that work is directed which is seen to have value to the community. Work performed under community service orders should not, however, be performed at the expense of paid employment which would otherwise be available to members of the Aboriginal community.

Given the emphasis on working with the Aboriginal and Torres Strait Islander community in a given place, one would have thought that the Aboriginal Justice Advisory Council, at a minimum, and other indigenous community groups would have been involved at early stages in developing this bill. This has not been the case. The Aboriginal Justice Advisory Council was given a presentation on the bill.

That is not quite the involved role you would expect when you read the government's 1999-2000 implementation report on the Bringing them home report. On page 15 they say that in recognition of the need for indigenous people to participate in the decision-making processes that impact on them in the criminal justice area, the ACT government has established the Aboriginal Justice Advisory Committee.

We know that indigenous imprisonment rates are disproportionate, 11 per cent, while the population is approximately 1 per cent. These figures do not reflect the different figures for young indigenous people, nor do they reflect the difference between men and women. This population figure is from the 2000 *State of the Territory Report*, and the 11 per cent figure is a summary of inmate characteristics. This gives us a clear picture. Indigenous people are over-represented in the ACT sentenced population. At the Estimates Committee hearing the then chair of the Aboriginal Justice Advisory Council spoke strongly about how important it would be to address this imbalance for the indigenous community to be involved in setting the framework approach for sentencing and prison.

Following the scrutiny of bills committee report and the round table meeting last Friday, the government has prepared and circulated a number of amendments. Mr Osborne has also prepared amendments. Some of the government amendments address concern I raised about the assessment process. This concern was that the assessment include consideration of the effects on the household under the circumstances, on the sentenced person, and consideration of cultural sensitivities.

One of the criticisms of home detention is that in states where home detention has been introduced it coincides with a reduction in the use of community corrections programs. Community corrections orders in the ACT have dropped over the past three years. The *State of the Territory Report* shows a drop from 35,344 hours worked in 1996-97 to 25,299 hours worked in 1999-2000. The suspicion is that the more intrusive home detention, and possibly less effective, will take over from community corrections.

Fuelling this fear is a concern that the resources allocated to home detention programs may not remain at levels necessary to ensure case management or through-care. If monitoring and compliance becomes more important than rehabilitation, and support to over-stretched case managers, which we see too many of in Canberra in very many areas of social support, with too many clients on their load—we are used to that story here—then it will simply be a cost-shifting exercise, with people being fed, washed up and clothed at home by their family rather than in prisons by the state.

Case management and through-care are not highlighted in the legislation. The round table explanation of this is that it would depend on resourcing in the department in the future. That to me is a strong case for ensuring that adequate case management and care is there so there is something to hold future governments to. Do I have an amendment to that effect? Of course not; we haven't had time.

In the first briefing I had from the officers of Corrective Services we asked about the fate of community services orders and about the reason for the Belconnen unit being dismantled. Apparently work for the dole programs have competed with the community placements. I have heard criticisms that there is not as much support provided for community placement providers as there used to be, or as there ought to be. It is important that this program does not suffer because of the costs associated with this one.

There are real issues for women as prisoners and as a family of a prisoner. There is the domestic violence issue in the family, there is stress from limited ability to do their work, and there is stress with the family. Will support services for the family and household be provided?

There are the issues of cost of equipment and the user pays component. The sentenced person will be responsible for maintaining a phone connection and for the call costs associated with it. You might be interested to know how many people in this town do not have that facility and how many only have incoming calls.

Post-sentencing reconstruction of life? Studies? We don't have access to any comparative evaluation studies of home detention with regard to recidivism, to the effects on the family, to post-sentence deaths, to post-sentence employment and so on.

We have regulations about dealing with medical records and counselling records. Are practitioners to be authorised by the prisoner to talk with their case manager? The department's explanation of this is that this is how it works for people on community corrections now. The idea is that the case manager has the imprisoned person's interests foremost and can work with them, but the medical records and counselling details of someone in prison are not disclosed to their custodial officers. While their custodial

officers are more concerned with containing them than with their care, I still have some questions.

Let's not swap one hell for another. Just in case anyone here says, "It's a prison, not a holiday camp," may I remind you that recidivism is very high. That means our prisons are not reducing crime because they are not addressing inequity, disadvantage, the frame of reference and other factors that underlie crime.

MR TEMPORARY DEPUTY SPEAKER (Mr Hird): Members, Mr Osborne has requested that some assistance be provided on the floor of the chamber. The chair has acknowledged that. I trust that members will agree with the chair.

MR OSBORNE (11.24): Mr Temporary Deputy Speaker, this bill has caused me a deal of concern. I appreciate that the provision of home detention was part of my platform at the last election. However, new research and a recent review of the New South Wales home detention scheme has dampened my initial enthusiasm to some extent.

In general I still support the overall concept of home detention and will vote to pass this bill with a number of amendments which have been circulated. Where it is appropriate for both the prisoner and their family, I can see benefits. In addition to keeping families together as they go through an incredibly difficult period in their lives, home detention also produces a significant cost-saving, costing only about 40 per cent of what it would to house a prisoner per day. However, there are several common and important criticisms of home detention, both as an overall concept and as contained in the bill.

One is a concept referred to as net widening. This is where people are placed into home detention who would not normally have been sentenced to imprisonment. Net widening can be avoided, however, by only allowing home detention to those who have already been convicted of criminal charges and sentenced. This was an important finding in the New South Wales study.

For this reason, and to prevent an unnecessary social stigma, I have an amendment to the bill that will remove the use of home detention for those on remand. It seems sensible to me that if a person can be trusted enough with home detention before they go to trial, then surely they can be given bail. Rather than remove the remand provision altogether, I intend to amend clause 7 to include a two-year delay in its commencement. This would give enough time to judge how the overall scheme is travelling and allow a further judgment to be made by the Assembly in 2003-2004.

A further criticism is the potential for increased conflict within the family once home detention has commenced. This concern was borne out by the New South Wales study that noted that about 20 per cent of home detention orders were revoked during the two-year study period. However, not all those revocations were due to family conflict. The study also noted that there were families who experienced an increase in healthy communication and stability.

A further benefit noted in New South Wales was the potential to increase family income. This is a most important point, given the financial burden families face when the breadwinner has been removed from the household. It is common for the families of prisoners to experience severe indebtedness, and mortgaged homes can easily be lost.

To ease my concerns about the way home detention can negatively impact on family life, I will seek to amend clauses 6 and 24 of the bill. The first amendment is to provide for a prison sentence to include the combination of imprisonment and home detention. This will allow suitable prisoners to be sent home much sooner, and hopefully reintegrate them back into families and society more easily.

The second amendment provides additional safeguards for the family of the prisoner where the home detention is not going well. The requirement for the family to approve or revoke their approval for a home detention order is obviously necessary. However, the way this provision was drafted was of concern to me. Although I am still not completely happy with it, I will be much more comfortable if this change to the clause is adopted.

Overall, Mr Temporary Deputy Speaker, imprisonment is a traumatic time for any family. Hopefully home detention will make it less so for some. A similar scheme appears to have had a good measure of success in New South Wales, and I see merit in trying it here, so I will be supporting the bill, Mr Temporary Deputy Speaker, with my amendments.

MR MOORE (Minister for Health, Housing and Community Services) (11.28), in reply: I thank members for their comments on the bill. It is a difficult piece of legislation. It does have the potential to provide alternatives to sentencing. I think almost all members at one stage or another, whether in an Estimates Committee report or a report from the Justice and Community Safety Committee, have urged the government to look at alternatives in terms of sentencing. I think all of us, as we go about the construction of a correctional facility, have to make sure that we are wary of the net widening and having more and more people incarcerated. If there are alternatives we ought to look at them as far as possible.

Mr Temporary Deputy Speaker, members have raised a number of problems, not so much with the legislation but the concept of home detention, and I share each one of those concerns. We have attempted to address them in the legislation, and we are attempting to address many of them in the regulations. We have given a broad outline of the drafting instructions for the regulations, and I have also committed to members, and I do so again in the house, that when we have those regulations drafted I will circulate them before they are gazetted.

Mr Temporary Deputy Speaker, it seems to me that each step we take down this path is important, but this is not just a step about home detention. As I think Mr Hargreaves mentioned, we are constructing the first stage of the rehabilitation of offenders legislation. This is not just about this particular thing. That is the focus here, along with the parole work, but what we are interested in doing is making sure that we construct a corrections system that is through-care, as members mentioned; one that is about case management and about ensuring rehabilitation, and that things don't just finish when somebody has finished their time of incarceration or deprivation of liberty.

When we talk of home detention we are talking about somebody who has been sentenced. We are talking about a deprivation of liberty. But we also must remember to ensure that the people around them who are affected—Ms Tucker waxed lyrical about this—are protected in the appropriate way. At Ms Tucker's suggestion, we have

introduced some amendments to deal with issues she raised at our round table discussion. This is something that I think does require continual monitoring. I have circulated the sorts of evaluations that we applied to this system. I can assure members that people within the department and others will now be working to ensure that this is delivered in the most effective possible way, with the least impact on families and taking into account the concerns of the families. I thank members for their support.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clause 1.

Motion (by **Ms Tucker**) put:

> That the debate be adjourned.

The Assembly voted—

Ayes 7		Noes 8	
Mr Berry	Mr Quinlan	Mrs Burke	Mr Osborne
Mr Corbell	Mr Stanhope	Mr Cornwell	Mr Rugendyke
Mr Hargreaves	Ms Tucker	Mr Hird	Mr Smyth
Mr Kaine		Mr Moore	Mr Stefaniak

Question so resolved in the negative.

Clause 1 agreed to.

Clause 2 agreed to.

Clause 3 agreed to.

Clause 4 agreed to.

Clause 5.

MR OSBORNE (11.36): I move amendment No 1 circulated in my name *[see schedule 8 at page 3565]*.

As I said in my speech earlier, Mr Temporary Deputy Speaker, this will allow home detention to be used in conjunction with an imprisonment sentence. A mix will be available. It can be part imprisonment and part home detention.

MR MOORE (Minister for Health, Housing and Community Services) (11.37): The government will accept this amendment. I think there are some administrative difficulties that we will need to deal with. I think it will need to be evaluated. If this does create a problem I would like members to be prepared to reconsider this early in the next Assembly. It is worth trying and I understand the intention. I think it is appropriate.

MR HARGREAVES (11.38): The opposition also will be supporting this amendment. Actually, this is one of the most meaningful parts about home detention. Home detention is not about putting people on remand in homes so the families can look after them. The most effective part of home detention is when it is part of a continuum of a sentencing regime. That is the bit that provides the inducement. I am pleased to see that Mr Osborne is doing it.

My worry is that it is a fairly difficult scheme. I am hoping that the difficulties can be overcome. I understand that whilst we are at the mercy of the New South Wales system we cannot always determine whether these people are going to be released to us as part of the sentencing anyway. However, that is a problem for the department and a problem for the judiciary. This Assembly is sending a message loud and clear that we want home detention as part of the suite of sentencing options. We will be supporting this. You will notice, Mr Osborne, that through the suite of amendments this phrase pops up quite regularly. We will be supporting them all.

Amendment agreed to.

Clause 5, as amended, agreed to.

Clause 6.

MR OSBORNE (11.40): I move amendment No 2 circulated in my name *[see schedule 8 at page 3565]*.

The same again, Mr Temporary Deputy Speaker.

Amendment agreed to.

MR MOORE (Minister for Health, Housing and Community Services) (11.40): I move amendment No 1 circulated in my name *[see schedule 9 at page 3568]*.

If you look at it with my amendment No 2, you will see that it just moves it from one clause to the other to make the act work better.

MR HARGREAVES (11.41): We will be supporting this amendment. On the question of young offenders, I noticed that in the drafting instructions for the regulations the provisions seem to be very similar to those for adults. I have a difficulty with that. I flag that as a challenge for the people who are looking at the regulations. We need to treat young people completely differently, with a completely different mindset, and I would like to see a completely different set of provisions in the regulations.

Amendment agreed to.

Clause 6, as amended, agreed to.

Clause 7.

MR MOORE (Minister for Health, Housing and Community Services) (11.42): I move amendment No 2 circulated in my name *[see schedule 9 at page 3568]*.

I indicated that this was part of the one that we did a minute ago.

Amendment agreed to.

MR OSBORNE (11.43): I move amendment No 3 circulated in my name *[see schedule 8 at page 3565]*.

This amendment relates to remand, to people on bail. As I said, one of the concepts referred to in relation to home detention is net widening. This is where people who would not normally be sentenced to imprisonment are placed in home detention. My amendment will not allow this act to come into operation for remand prisoners until two years after the commencement of the act in order to give the Assembly time to evaluate how the program is going. As I said, this is an important part of the New South Wales study. It will prevent any unnecessary social stigma. It seems to me quite sensible that if a person can be trusted enough with home detention before they go to trial, then surely they could be given bail.

MR MOORE (Minister for Health, Housing and Community Services) (11.44): The government will be opposing this amendment. I would strongly urge other members also to oppose this amendment. I think the best argument is to see the remand centre. I have to agree with the spirit of where Mr Osborne is coming from. If we had that as an option then I would say that would be reasonable if we had already built a correctional facility. But at the moment we can manage to deal in this way with three or four people, or perhaps a woman with a child, who still needs restriction. We still need to know where she is so that we can be sure that burglaries are not being committed. This is better than being remanded.

If we had the facilities in the remand centre; if it was not as crowded as it is, and as inappropriate a facility as it is, I think I would probably agree with Mr Osborne, but, considering the pragmatic situation we have, I urge members to oppose this amendment.

MR HARGREAVES (11.45): I want to make a couple of points on this. One of my worries is that it is a two-year thing instead of three years. I would prefer three years, but I will go with two. We will have a look at it as we go along the track. The reason for saying that is I think there is a coincidence between the emergence of a replacement remand centre and the old one. I would have preferred to have this clause disappear, if you like, a year after the opening of the thing rather than around about the same time. That is one of my concerns, but I am prepared to wear this.

Another of my concerns, and I expressed this very early in the piece, is that there is a temptation with home detention when it comes to remand to do some cost shifting; to shift the cost, when it has been decided that someone should be detained in custody, from the state to the family. The family has to cop all of the hospitality costs and all the rest of

it. I have a problem with remand, as I have articulated already tonight, particularly in regard to those people on remand who have not appeared before the magistrate and been convicted as yet. The opposition will be supporting Mr Osborne's amendment.

MR MOORE (Minister for Health, Housing and Community Services) (11.47): I am going to do something quite unusual. I am going to ask Mr Hargreaves to reconsider his position. I think, from the way he described it, that he may have read this back to front. Mr Osborne, instead of saying it only has operation for two years, which is what it sounded like you would be supporting, is saying it does not come into operation for two years. So the situation in the remand centre will remain as it is now. We will not be able to use this facility, this approach, for people who are on remand.

Consider the state of the remand centre at the moment. The fact is that we have to use court cells on occasions. I have given authorisation to use periodic detention cells should it be necessary. We are already in desperate straits. I would urge members to give us the prerogative, should the courts so wish, and should somebody meet all the criteria that we set out, of allowing people on remand to be on home detention. I ask you to reconsider that position.

MR HARGREAVES (11.48): I have not misinterpreted this. I have voiced my opposition to the use of home detention for remandees already. As far as I am concerned it is a choice between whether a person should be detained or whether a person should be on bail. I think Mr Osborne put it quite well. You either trust them to go out on bail or you do not.

The people who would be eligible for this are unlikely to pose a danger to society anyway. There will be a temptation, in my view, for the judiciary to apply home detention when they should really be looking at bail options, not the other way around. So, in response, Mr Temporary Deputy Speaker, I have not misunderstood this at all. You might find, when we have created a new remand centre, that I still have the same objection to using home detention as a remand option.

MR MOORE (Minister for Health, Housing and Community Services) (11.49): I see that my appeal to Labor is having no success at all. I appeal to Mr Rugendyke, Mr Kaine and Ms Tucker who, I think, are aware of the situation in the remand centre. I will give this example—

Mr Hargreaves: We know about the remand centre.

MR MOORE: I know you understand the situation at the remand centre, but I will give this example because I think it is important. The department provided me with the example of somebody they called, hypothetically, Stephanie, who has a three-year-old daughter. She has been charged and she is back again for a drug-related theft. She has a lengthy criminal history prior to the previous sentence. She has been arrested on her latest charges and she has been remanded in custody.

Now, what happens with Stephanie's three-year-old daughter? The last time she was in custody the daughter went to Stephanie's mother for some time and then to foster care. Stephanie has been through detox. She needs to spend time with her daughter. It appears

to be an appropriate way of dealing with this, but we also have to protect the community and be sure that she is not out doing further burglaries.

This is the sort of circumstance where a magistrate might say, "Look, in the end it's better for her. She is not a threat to society in terms of violence." But we do want to know that she is where she says she is at any given time, and to allow her to try to put her family together. We want to see whether we can help her. That is the sort of circumstance where somebody, even though they are on remand, is able to be better handled. Hopefully it would lead to a magistrate then sentencing her to a home detention period.

That sort of circumstance is probably unusual, but an extra two or three beds at the Belconnen Remand Centre would be an appropriate way for us to assist in dealing with people who are incarcerated in unacceptable conditions, with pressure on them and pressure on staff and so on. So once again I urge members. In fact I will ask Mr Osborne to change his mind.

Mr Hargreaves: Why not go the whole hog?

MR MOORE: Why not go the whole hog? Normally I would not push quite so hard, but I feel very strongly that this is a situation where we ought not cut off our options. I am asking members to give us the opportunity not to cut off our options.

Question put:

> That **Mr Osborne's** amendment be agreed to.

The Assembly voted—

Ayes, 8		Noes, 7	
Mr Berry	Mr Quinlan	Mrs Burke	Mr Moore
Mr Corbell	Mr Rugendyke	Mr Cornwell	Mr Smyth
Mr Hargreaves	Mr Stanhope	Mr Hird	Mr Stefaniak
Mr Osborne	Ms Tucker	Mr Kaine	

Question so resolved in the affirmative.

Amendment agreed to.

Clause 7, as amended, agreed to.

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

MR MOORE (Minister for Health, Housing and Community Services) (11.55): Mr Temporary Deputy Speaker, my understanding is that all of my amendments and all of Mr Osborne's amendments are acceptable to the Assembly.

Mr Osborne: I have a couple of extra amendments.

MR MOORE: That you have not circulated? All right. We will keep going then. Okay.

Mr Osborne: I can move my amendments Nos 4 through to 10.

MR MOORE: I will not oppose any more amendments because there is no point in opposing them. Mr Temporary Deputy Speaker, let me finish what I was saying. I will not be opposing any of those. I expect that nobody is opposing the amendments that I put up, and we still have to deal with Mr Hargreaves' amendment. The government, in the spirit of cooperation that we have on this bill, will accept Mr Hargreaves' amendment as well. Therefore, I think we can take the bill as a whole.

I seek leave to move my remaining amendments together.

Leave granted.

MR MOORE: I move my amendments Nos 3, 4 and 6 to 26 *[see schedule 9 at page 3568]*.

These amendments arose out of our round table discussions and as such I think they are appropriate. I appreciate the effort of members in trying to work these through together.

Amendments agreed to.

MR HARGREAVES (11.58): I move amendment No 1 circulated in my name *[see schedule 10 at page 3574]*.

Amendment agreed to.

MR OSBORNE (11.59): I seek leave to move my amendments Nos 4 to 12 together.

Leave granted.

MR OSBORNE: I move my amendments Nos 4 to 12 *[see schedule 8 at page 3565]*.

Amendments agreed to.

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

Bill, as amended, agreed to.

Wednesday, 29 August 2001

Adjournment

Motion (by **Mr Moore**) proposed:

> That the Assembly do now adjourn.

Chamber—seating arrangements

MR KAINE (12 midnight): I have a few comments that I would like to make in this adjournment debate. Mr Temporary Deputy Speaker, I have always admired the way that we in this place wholeheartedly take on new innovations in the way that we make this place work increasingly efficiently.

One of the most recent innovations I have noticed that are really taking on is having advisers or staffers sitting alongside us on the floor of the house. This is a big step forward because those staffers are able to make sure that we do not knock over our glass of water, that we keep all our papers in order, that we do not lose our place in the script, and that we perform to our absolute best. There is a bit of a problem, however, because at the moment only a minority of the members that do this. That makes the rest of us look like clever dicks who think we can handle it all by ourselves.

In order to dispel that illusion, I suggest that we provide two chairs at each desk and we can all have a staffer or an adviser of our choice sitting next to us to make sure that we do the job right, that we do not make any mistakes, do not make ourselves took stupid, and generally so that things will move along much more efficiently.

Innovation being the thing, I see this as only being a further step in evolution. After we all get comfortable with the idea of having a staffer or an adviser sitting next to us, the next thing is that we can let them speak for us. Let's face it; many of them write our speeches. They make sure that the syntax and the grammar is right, that the content is accurate, that there are no glaring mistakes and that we have not misspelled any two-syllable words or anything like that. We can occasionally experiment by letting our staffers and advisers speak for us. In some cases they would probably do better than we do and obviously the place would get along much better. In some cases we know that we wouldn't have to have our own staffer or adviser; we would have to have somebody else's staffer who actually wrote the speech to come down and deliver it for us. So we could make allowances for that.

It doesn't stop there because if this works we, the members, can go and sit up there and just observe. I am sure that the place would function magnificently because the staffers can do it just as well as we can, probably better.

Do you think that is the end of it? Oh no. Eventually we do not even have to sit up there; we can let the staffers do this. There is a next step, Mr Temporary Deputy Speaker. Obviously, with all this spare time that we members now have, we will need more money because we will have more leisure time. We will need more money so that we can do our jobs better while the staffers and the advisers are in here making this place work. So we will all need a pay rise.

This all sounds fanciful, doesn't it? It sounds a bit bizarre, doesn't it? Well, I submit, Mr Temporary Deputy Speaker, that we have already taken the first step with staffers sitting on this floor to make sure that members do not make mistakes and to keep them up to the mark. We have already taken that step. The rest of the steps are no more bizarre than that one. It's a real joke, isn't it? Or is it, Mr Temporary Deputy Speaker?

Chamber—seating arrangements

MR MOORE (Minister for Health, Housing and Community Services) (12.02 am), in reply: I am not quite sure what is happening to Mr Kaine's memory, but I reckon that in the First Assembly we used staffers in complex debates. My recollection of the first such debate where help was provided in this way was the debate on the planning legislation, or maybe there was a budget bill before that. It is unusual. I think we should keep it unusual, but for complex bills, if it can keep us on the straight and narrow, then I am in favour of it. I do not think I have any more complex bills coming up for the rest of my time in the Assembly, so, Mr Kaine, when you are back here you keep an eye on it.

Question resolved in the affirmative.

Assembly adjourned at 12.03 am (Wednesday)

Schedules of amendments

Schedule 1

Workers Compensation Amendment Bill 2001

Amendments circulated by Mr Berry

Amendment 48
Proposed schedule 3
Amendment 3.3
Proposed new subregulation 13 (2)—

Omit the subregulation, substitute the following subregulation:

(2) The lawyer or other agent of the worker may claim costs in relation to the arbitration, or claim a lien in relation to the costs, from the compensation only if, on application by the worker, lawyer or agent, the Magistrates Court awards the lawyer or agent stated costs in accordance with the rules.

Amendment 48
Proposed schedule 3
Amendment 3.3
Proposed new regulation 46—

Omit the regulation, substitute the following regulations:

46 Meaning of *OH&S Council* in pt 7

In this part:

1 OH&S Council—see the *Occupational Health and Safety Act 1989*, section 5 (1), definition of *council*.

46A Development of standards by OH&S Council

(1) The OH&S Council must develop written standards for the approval of rehabilitation providers.

(2) A standard under subregulation (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

46B Approval of rehabilitation providers

(1) The Minister may, in writing, approve someone as a rehabilitation provider.

(2) The Minister may approve the person on the Minister's own initiative or on application by the person.

(3) The Minister must, before approving someone, consider the following:

(a) whether the person complies with the standards mentioned in regulation 46;

(b) if the OH&S Council makes a recommendation about whether the person should be approved as a rehabilitation provider—the recommendation;

(c) the qualifications of the person;

(d) if the person has employees who will be providing retraining—the qualifications of the employees;

(e) the effectiveness, availability and cost of the retraining programs provided by the person.

(4) The Minister may consider any other relevant matter.

Schedule 2

Workers Compensation Amendment Bill 2001

Amendments circulated by Minister for Urban Services

1.
Clause 3
Subclause (1)
Page 2, line 11—

Omit the subclause, substitute the following subclause:
(1) This Act (other than sections 29 and 30) amends the *Workers' Compensation Act 1951* and the *Workers' Compensation Regulations*.
Note The *Workers' Compensation Act 1951* is amended in the body of this Act and in sch 1 and sch 2.
The 1111*Workers' Compensation Regulations* are amended in sch 3.

2.
Proposed new clause 3A
Page 2, line 17—

After clause 3, insert the following new clause:
3A Part 1, heading
substitute

Chapter 1 Preliminary

3.
Clause 4
Proposed heading to part 1A
Page 2, line 22—

Omit the heading, substitute the following heading:

Chapter 2 Interpretation generally

4.
Clause 4
Proposed section 1A, note 2
Page 3, line 8—

Omit "*Interpretation Act 1967*, s 11F and 11G", substitute "*Legislation Act 2001*, s 155 and s 156 (1)".

5.
Clause 4
Proposed section 2 (1), note
Page 3, line 11—

Omit "*Interpretation Act 1967*, s 12 (1)", substitute "*Legislation Act 2001*, s 127 (1)".

6.
Clause 4
Proposed subsection 2 (2)
Page 3, line 13—

Omit the subsection, substitute the following subsection:

(2) In this section:

2 ***note*** includes material enclosed in brackets in section headings.

Note For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following:

- ACT WCA: *Workers' Compensation Act 1951*, as in force immediately before the commencement of the *Workers Compensation Amendment Act 2001*, s 2.
- ACT WC Regs: *Workers' Compensation Regulations*, as in force immediately before the commencement of the *Workers Compensation Amendment Act 2001*, s 2.
- CW WRR: *Workplace Relations Regulations* (Cwlth).
- NSW WIMWCA: *Workplace Injury Management and Workers Compensation Act 1998* (NSW).
- NSW WCA: *Workers Compensation Act 1987* (NSW).

7.
Clause 4
Proposed new paragraph 3A (b)
Page 4, line 29—

Omit "section 7C (Deemed total incapacity)", substitute "section 7C (When is a worker taken to be totally incapacitated?)".

8.
Clause 4
Proposed heading to part 1B and heading to notes about part 1B
Page 6, line 1—

Omit the headings, substitute the following headings:

Chapter 3 Meaning of worker
Notes about chapter 3

9.
Clause 4
Proposed notes about part 1B
Proposed note 1
Page 6—

Omit "*part*", substitute "*chapter*".

10.
Clause 4
Proposed notes about part 1B
Proposed note 2
Page 7, lines 2 and 11—

Omit "part", substitute "chapter".

11.
Clause 4
Proposed notes about part 1B
Proposed note 3
Page 7, line 17—

Omit the note, substitute the following note:

Note 3 Subcontracting and labour hire (effect of s 5AA)

The Act applies in a special way to subcontracting arrangements, by which—

- a *worker* is engaged to work for a person who is the *employer* of the worker (under this chapter); and
- the employer has engaged the worker to fulfil a contract the employer has with someone else (in this note, a *principal*) to do work for the principal's trade or business.

Under s 5AA, the principal is liable to pay compensation to the worker if the worker is injured. The principal may, however, recover the compensation paid from the employer.

These situations may be complicated by the involvement of labour hirers, who may in some circumstances be taken to be the employer of workers engaged to do work for a principal (see s 5). Here are 3 illustrations of different subcontracting arrangements:

Arrangement 1 No labour hirer

A bricklayer's labourer (the ***worker***) is employed by a bricklayer (the ***employer***) to assist the bricklayer to fulfil a contract between the bricklayer and a builder (the ***principal***).

The bricklayer is the labourer's employer.

Arrangement 2 Labour hirer as employer

A cleaner (the ***worker***) is engaged by a labour hirer (the ***employer***) to fulfil a contract between the labour hirer and the owner of a retail store (the ***principal***) for the cleaning of the store. The labour hirer is taken (under s 5) to be the employer of the cleaner, because the cleaner has no contractual relationship with the owner of the store.

The labour hirer is the cleaner's employer.

Arrangement 3 Labour hirer as employment agent

A keyboard operator (the ***worker***) is employed by an information technology consultant (the ***employer***) to fulfil a contract between the consultant and a government department (the ***principal***). The consultant recruits the operator through a labour hirer acting as an employment agent.

The consultant is the operator's employer.

Under all of these arrangements, the worker may claim compensation from either the employer or the principal (see s 5AA (2) and (4)). If the principal pays compensation to the worker, the principal may claim repayment from the employer (see s 5AA (3)). But in the 3rd arrangement (*Labour hirer as employment agent*), the worker may not claim compensation from the labour hirer, and the principal may not seek repayment of compensation from the labour hirer.

12.
Clause 4
Proposed section 4A (1)
Page 8, line 24—

Omit "part", substitute "chapter".

13.
Clause 4
Proposed section 4B (1)
Page 9, line 8—

Omit "part", substitute "chapter".

14.
Clause 4
Proposed section 4B (2)
Page 9, line 13—

Omit "part", substitute "chapter".

15.
Proposed new clause 4A
Page 18, line 15—

After clause 4, insert the following new clauses:

4A Part 2, heading
substitute

Chapter 4 Entitlement to compensation

4B New part 4.1
insert

Part 4.1 Important concepts

5G Meaning of *cpi indexed* and *awe indexed*

(1) In this chapter:

4 *awe indexed*, for an amount, means the amount as adjusted in line with any adjustment in the AWE after the commencement of the provision in which the amount appears.

4 ***CPI*** means the All Groups Consumer Price Index (Canberra) issued by the ABS.
Note In June 2001, this was series 6401.0.
5 ***cpi indexed***, for an amount, means the amount as adjusted in line with any adjustment in the CPI since the commencement of the provision in which the amount appears.
Note ***AWE*** and ***ABS*** are defined in the dict.

(2) However, if an amount to be awe indexed or cpi indexed would, if adjusted in line with the adjustment (the ***negative adjustment***) to the AWE or CPI, become smaller, the amount is not reduced in line with the negative adjustment.
(3) An amount that, in accordance with subsection (2), is not reduced may be increased in line with an adjustment in the AWE or CPI that would increase the amount only to the extent that the increase, or part of the increase, is not one that would cancel out the effect of the negative adjustment.
(4) Subsection (3) does not apply to a negative adjustment once the effect of the negative adjustment has been offset against an increase in line with an adjustment in the AWE or CPI.

Example of adjustments
An amount in a section is $100 cpi indexed.
There is a 20% increase in the CPI after the section commences. The amount in the section becomes $120 (100 + 20%).
There is then a 10% drop in the CPI. The amount does not change from $120 (although if it had changed it would be $108).
There is a 20% increase in the CPI. The 20% increase is not to the $120, but to the $108. $108 + 20% = $129.60. So the $120 becomes $129.60. This is the amount ($120) increased by so much of the 20% increase that did not cancel out the effect of the adjustment down to $108.

5H Working out average pre-incapacity weekly earnings for non-contractor (SA WRC s 4)
(1) In working out average pre-incapacity weekly earnings for a worker who is not a contractor—
(a) if the worker was, immediately before the injury, employed by 2 or more employers—the worker's earnings from all employment must be taken into account; and
(b) the actual weekly earnings of the worker may be taken into account over—
(i) a period of 1 year before the injury; or
(ii) if the worker has not been employed for 1 year—the period of employment.

(2) However, if it is not possible to work out fair average pre-incapacity weekly earnings for the worker under subsection (1) because the worker has only been employed for a short time, because of the terms of the worker's employment or for some other reason, the worker's average pre-incapacity weekly earnings may be worked out by reference to the average weekly amount being earned by—
(a) others in the same employment who perform similar work at the same grade as the worker; or
(b) if there is no-one mentioned in paragraph (a) in the same employment—others in the same class of employment as the worker, who perform similar work at the same grade as the worker.

5I Working out average pre-incapacity weekly earnings for contractor

(SA WRC s 4)

In working out average pre-incapacity weekly earnings for a worker who is a contractor, the worker's average pre-incapacity weekly earnings are to be worked out—

(a) as if the worker were an employee; and

(b) if there is an award or industrial agreement applying to the class and grade of work in which the worker was engaged—by reference to the award or industrial agreement.

5J Working out average pre-incapacity weekly hours for non-contractor

(1) In working out average pre-incapacity weekly hours for a worker who is not a contractor—

(a) if the worker was, immediately before the injury, employed by 2 or more employers—the worker's work hours from all employment must be taken into account; and

(b) the actual weekly work hours of the worker over a period of up to 1 year before the injury may be taken into account.

(2) However, if it is not possible to work out fair average pre-incapacity weekly hours for the worker under subsection (1) because the worker has only been employed for a short time, because of the terms of the worker's employment or for some other reason, the worker's average pre-incapacity weekly hours may be worked out by reference to the average weekly hours being worked by—

(a) others in the same employment who perform similar work at the same grade as the worker; or

(b) if there is no-one mentioned in paragraph (a) in the same employment—others in the same class of employment as the worker, who perform similar work at the same grade as the worker.

5K Working out average pre-incapacity weekly hours for contractor

In working out average pre-incapacity weekly hours for a worker who is a contractor, the worker's average pre-incapacity weekly hours are to be worked out as if the worker were an employee.

5L Overtime—hours and wages

(1) This section applies to a component of the worker's earnings or hours attributable to overtime.

(2) The overtime is to be taken into account in working out average pre-incapacity weekly earnings or average pre-incapacity weekly hours only if—

(a) the worker worked overtime in accordance with a regular and established pattern; and

(b) the pattern was substantially uniform as to the number of hours of overtime worked; and

(c) the worker would have continued to work overtime in accordance with the established pattern if the worker had not been injured.

5M Gradual onset of incapacity

(1) This section applies if, because of the gradual onset of a worker's injury, it appears that the level of the worker's average pre-incapacity weekly earnings, or average pre-incapacity weekly hours, have been affected.

(2) The worker's average pre-incapacity weekly earnings, or average pre-incapacity weekly hours, must be set at an amount that fairly represents the weekly amount that the worker would have been earning or working if the level had not been affected.

16.
Clause 5
Page 18, line 16—

Omit the clause, substitute the following clause:

5 Section 7
substitute
Part 4.2 Compensation for personal injury
6C General entitlement to compensation for personal injury (ACT WCA s 7 (1))

(1) An employer is liable to pay compensation under this Act if a worker of the employer suffers personal injury arising out of, or in the course of, the worker's employment.

(2) However, if the injury is caused by a disease, the injury is taken to have arisen out of, or in the course of, the worker's employment only if the employment substantially contributes to the injury.

(3) Also, an injury suffered by a worker partly or completely because the worker had any of the following pre-existing conditions is taken to have arisen out of, or in the course of, the worker's employment only if the employment substantially contributes to the injury:

(a) diseased heart valve;
(b) coronary artery disease;
(c) aortic aneurism;
(d) cerebral aneurism.

(4) Further, this section is subject to the following provisions:

(a) section 7A (Compensation limited to Territory workers);
(b) section 7B (Injury outside Australia);
(c) part 4.8 (Exceptions to entitlements to compensation);
(d) in relation to the entitlement to weekly compensation—
(i) section 8A (What if the worker is dead?);
(ii) section 10ZI (Compliance by workers).

6D Amounts of compensation under Act cumulative (ACT WCA s 7 (5))

An amount of compensation payable under a provision of this Act in relation to an injury is, unless otherwise expressly stated, in addition to any amount of compensation paid or payable under any other provision of this Act.

6E Payments to people with legal disabilities

(1) If compensation under this Act is payable to someone with a legal disability, the Magistrates Court may make any order about the payment of the compensation that it considers appropriate to protect the person or the person's interests.

(2) In this section:

6 ***person with a mental disability*** means a person who is not legally competent to conduct the person's legal affairs because of a mental disability whether or not a guardian has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.

7 ***someone with a legal disability*** means someone who is—

(a) a child; or

(b) a person with a mental disability.

17.
New clause 7A
Page 21, line 25—

After clause 7, insert the following new clause:

7A New parts 4.3 to 4.8

insert

Part 4.3 Weekly compensation

8A What if the worker is dead?

(1) A worker is not entitled to weekly compensation if the worker is dead.

(2) However, this section does not affect an entitlement to weekly compensation that accrued before the worker's death.

8B When do weekly compensation payments begin?

If the worker is entitled to compensation for a compensable injury—

(a) the payment of weekly compensation must begin when the worker gives notice of the injury to the employer; and

(b) the worker is entitled to weekly compensation from the date of the injury.

8C Totally incapacitated workers

(1) This section applies if a worker is totally incapacitated because of a compensable injury.

(2) For 26 weeks after the incapacity date, the worker is entitled to receive weekly compensation equal to the worker's average pre-incapacity weekly earnings.

Note ***Incapacity date*** is defined in the dict.

(3) After the 26 weeks, the worker is entitled to receive weekly compensation equal to—

(a) if 100% of the worker's average pre-incapacity weekly earnings is less than the pre-incapacity floor for the worker—100% of the worker's average pre-incapacity weekly earnings; or

(b) if 100% of the worker's average pre-incapacity weekly earnings is more, but 65% of those earnings is less, than the pre-incapacity floor for the worker—the statutory floor; or

Note ***Statutory floor*** is defined in the dict.

(c) if 65% of the worker's average pre-incapacity weekly earnings is more than the pre-incapacity floor for the worker—whichever of following is (at the time of payment) more:

(i) 65% of the worker's average pre-incapacity weekly earnings;

(ii) the statutory floor.

(4) A worker stops being entitled to compensation under this section if the worker—

(a) stops being totally incapacitated; or

(b) returns to work; or

(c) reaches pension age; or
(d) dies.

(5) In this section:
8 ***pre-incapacity floor***, for a worker, means the statutory floor that applied immediately before the worker's incapacity date.

8D Partially incapacitated workers up to 26 weeks after incapacity date
(1) This section applies if the worker is partially incapacitated because of a compensable injury.

(2) For 26 weeks after the incapacity date, the worker is entitled to receive weekly compensation equal to the difference between—
(a) the worker's average pre-incapacity weekly earnings; and
(b) the average weekly amount that the worker is being paid for working or could earn in reasonably available suitable employment.

(3) In working out the average weekly amount the worker could earn, consideration may be given to the following:
(a) suitable employment that the worker unreasonably rejects;
(b) suitable employment that the worker obtains but unreasonably discontinues.

8E Partially incapacitated workers after 26 weeks after incapacity date
(1) This section applies if—
(a) the worker is partially incapacitated because of a compensable injury; and
(b) 26 weeks have passed since the incapacity date.

(2) The worker is entitled to receive weekly compensation equal to the difference between the weekly amount the worker is being paid for working and—
(a) if 100% of the worker's average pre-incapacity weekly earnings is less than the statutory floor—100% of the worker's average pre-incapacity weekly earnings; or
(b) if the relevant percentage of the worker's average pre-incapacity weekly earnings is less than the statutory floor—the statutory floor; or
(c) if the relevant percentage of the worker's average pre-incapacity weekly earnings is more than the statutory ceiling—the statutory ceiling; or
(d) in any other case—the relevant percentage of the worker's average pre-incapacity weekly earnings.

(3) For subsection (2), the ***relevant percentage*** is—

(a) if the worker is not working or works 25% of the worker's average pre-incapacity weekly hours or less—65%; or

(b) if the worker is working more than 25% of the worker's average pre-incapacity weekly hours but not more than 50%—75%; or

(c) if the worker is working more than 50% of the worker's average pre-incapacity weekly hours but not more than 75%—85%; or

(d) if the worker is working more than 75% of the worker's average pre-incapacity weekly hours but not more than 85%—95%; or

(e) if the worker is working more than 85% of the worker's average pre-incapacity weekly hours—100%.

(4) In this section:

9 ***statutory ceiling***, in relation to an amount, means 150% of AWE at the time the amount is to be paid.

8F Stopping of payments for partial incapacity

A worker stops being entitled to payments under section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (Partially incapacitated workers after 26 weeks after incapacity date) if the worker—

(a) stops being partially incapacitated; or

(b) for a worker who, at the time of the injury being compensated, was 1 year younger than pension age or older—has received payments under sections 8D and 8E, or sections 8C (Totally incapacitated workers), 8D and 8E, for 2 years in total; or

(c) reaches pension age; or

(d) dies.

8G Effect on payment period of loss of entitlement to weekly compensation

(1) This section applies if a worker would be entitled to weekly compensation under section 8C (Totally incapacitated workers), section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (Partially incapacitated workers after 26 weeks after incapacity date) but the payment of the compensation has been stopped under section 10F (No compensation while imprisoned) or section 10ZI (Compliance by workers).

(2) The period when the worker's entitlement to payment has stopped is counted as part of the period for payment under sections 8C, 8D and 8E.

8H Living outside Australia (ACT WCA sch 1 cl 14)

(1) A worker who is otherwise entitled to receive weekly compensation is not entitled to the compensation if the worker stops living in Australia.

(2) Subsection (1) does not apply to the worker if a medical referee certifies that—

(a) the incapacity resulting from the injury is likely to be permanent; or

(b) the worker's absence from Australia is likely to help the worker recuperate.

8I Effect of living outside Australia if compensation still payable (ACT WCA sch 1 cl 14)

(1) This section applies if the worker lives outside Australia but is, apart from this section, still entitled to weekly compensation.

Note A worker living outside Australia is still entitled to compensation if s 8H (2) applies to the worker.

(2) The worker is not entitled to weekly compensation, but is entitled to receive quarterly the amount of the weekly compensation payable during the previous quarter.

(3) However, the worker is entitled to receive quarterly payment of compensation only if the worker proves the worker's identity and that the worker continues to be incapacitated by the incapacity in relation to which the weekly compensation is payable.

(4) In this section:

10 ***quarter*** means a period of 3 months beginning on 1 July, 1 October, 1 December or 1 April.

8J Effect of payment of weekly compensation on other benefits etc

This part is not intended to affect an entitlement that, apart from this Act, the worker has to a benefit or payment except so far as a law in force in the Territory otherwise applies.

Examples of benefits not affected

1 accrual of long service leave
2 accrual of annual leave

8K No assignment etc of weekly compensation

(ACT WCA sch 4, cl 13)

Weekly compensation (including compensation payable under section 8I (Effect of living outside Australia if compensation still payable)) may not—

(a) be assigned, charged or attached; and
(b) pass to anyone else by operation of law; and
(c) have a claim set off against it.

Part 4.4 Compensation for permanent injuries

8L Meaning of *loss* (NSW WCA s 65)

In this chapter:

11 ***loss***, in relation to a thing—

12 means—

13 the loss of the thing; or

14 the permanent loss of the use, or efficient use, of the thing; and

15 includes the following:

16 permanent musculoskeletal impairment, or another permanent impairment;

17 a loss, damage, impairment, disfigurement or disease mentioned in schedule 1 (Compensation for permanent injuries).

8M Meaning of *single loss amount*

In this part:

18 ***single loss amount*** means $100 000 cpi indexed.

8N Meaning of *maximum loss amount*

In this part:

19 *maximum loss amount* means $150 000 cpi indexed.

8O Compensation for permanent injuries generally

(ACT WCA s 10D and s 10F, NSW WCA s 66)

(1) A worker who has suffered a loss mentioned in an item of schedule 1 as the result of a compensable injury is entitled to receive from the worker's employer, as compensation for the loss, the percentage of the single loss amount mentioned in that item.

(2) For this section, the loss is to be worked out when the last of the following happens:

1. the worker's employer became liable to pay compensation;
2. it is unlikely that there will be an improvement or further improvement in the use, or efficient use, of the injured part of the body.

(3) If a payment of compensation under this part has been made in relation to an injury, nothing prevents a further payment of compensation under this part from being made in relation to the same injury if there is an increase in the loss of the efficient use of the injured part of the body.

Example of loss of efficient use of injured part of body

A loss, or further loss, of sight in an injured eye.

8P Compensation for 2 or more losses

A worker who has suffered 2 or more losses mentioned in schedule 1 (Compensation for permanent injuries) because of an injury is not entitled to receive as compensation under this part more than the maximum loss amount for the losses.

8Q Compensation and left-handedness

If a worker's left arm or hand is the worker's dominant limb, in working out the loss for the worker—

(a) the loss of the worker's left arm, left hand or fingers of left hand is to be compensated as if it is the loss of the worker's right arm, right hand or fingers of right hand; and

(b) the loss of the worker's right arm, right hand or fingers of right hand is to be compensated as if it is the loss of the worker's left arm, left hand or fingers of left hand.

8R Compensation for combination of items

If a loss (other than the impairment of the back, neck or pelvis) may be compensated by a combination of items in schedule 1 (Compensation for permanent injuries) or by a proportionate loss of a single item, the loss is to be compensated by a proportionate loss of the single item.

Examples

1 Loss of 2 or more fingers is to be compensated as a proportionate loss of the hand.

2 Loss of a hand includes the loss of the thumb and other fingers of the hand and is to be compensated as a loss, or proportionate loss, of the hand.

3 Loss of an arm at or above the elbow includes the loss of the arm below the elbow and loss of the hand and is to be compensated as a loss, or a proportionate loss, of the arm at or above the elbow.

4 Loss of a leg at or above the knee includes the loss of the leg below the knee and loss of the foot and is to be compensated as a loss, or a proportionate loss, of the leg at or above the knee.
5 Loss of a leg below the knee includes the loss of the foot and is to be compensated as a loss, or a proportionate loss, of the leg below the knee.

8S Compensation for only arm, leg, hand or foot
Loss of an only arm, leg, hand or foot is treated under schedule 1 as the loss of both arms, legs, hands or feet.

8T Compensation for loss of sexual organs
The following percentages of the single loss amount are payable for the loss of sexual organs (subject to the maximum percentage of 47% and without limiting compensation for the loss of another sexual organ):
(a) the percentage payable for loss of the penis is 47%;
(b) the percentage payable for loss of 1 testicle is 10%;
(c) the percentage payable for loss of 2 testicles or an only testicle is 47%.

8U Loss of bowel function
To work out whether and to what extent a worker has suffered permanent loss of bowel function—
(a) the bowel is taken to include the anal sphincter; and
(b) permanent ileostomy and permanent colostomy are each taken to constitute permanent loss of bowel function for which the maximum percentage is payable.

8V Proportionate loss of use (NSW WCA s 68)
(1) If a loss suffered by a worker consists of the loss of a proportion, but not all, of a thing mentioned in schedule 1 (Compensation for permanent injuries), a percentage of the compensation payable for the total loss of the thing equal to the percentage lost by the worker is payable as compensation under section 8O (Compensation for permanent injuries generally).

(2) In working out the extent of the loss of the thing, the extent to which the loss, or the effect of the loss, may be reduced or limited by an external removable aid or appliance is not to be taken into account.

(3) The amount of compensation payable for a particular case must, unless decided by agreement, be worked out by arbitration under this Act.

8W Special provisions for HIV/AIDS (NSW WCA s 67A)
(1) Compensation is not payable under section 8O (Compensation for permanent injuries generally) for a loss that is related to HIV infection or AIDS if the HIV or AIDS was contracted during voluntary sexual activity or illicit drug use.

(2) Section 8V does not apply to a loss that is HIV infection or AIDS.

(3) In this section:
20 ***AIDS*** means Acquired Immune Deficiency Syndrome.
21 ***HIV infection*** means an infection by the Human Immunodeficiency Virus.

8X Deduction for previous injury or pre-existing condition
(NSW WC s 68A (1), (2), (6) and (8))

(1) In working out the compensation payable under this part for a loss (the ***initial loss***), an amount must be deducted from the compensation (the ***deductible proportion***) for any proportion of the loss attributable to—

(a) a previous injury (whether or not it is an injury for which compensation has been paid, or is payable, under this part); or

(b) a pre-existing condition or abnormality.

(2) In subsection (1), it does not matter whether the initial loss is a total or partial loss.

(3) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to work out, it is to be assumed that the deductible proportion for the loss (or the relevant part of the loss) is 10% of the loss, unless this assumption is contrary to the available evidence.

Example

If this subsection requires it to be assumed that the deductible proportion in relation to a particular loss is 10% and the loss is 30% of the loss of the use of the right arm, the deductible proportion for the loss is 3% (that is, 10% of 30%).

(4) However, section 8Z must be used to work out how much (if any) of a worker's hearing loss is caused by age.

8Y Further loss and deductible proportions
(NSW WC s 68A (3) and (4))

(1) This section applies in working out the compensation payable for a further loss (the ***further loss***) resulting from an initial loss.

(2) An amount proportionate to the deductible proportion of the initial loss must be deducted from the compensation payable for the further loss.

(3) A deduction under subsection (2) in relation to a further loss is in addition to, not in substitution for, any deductible proportion for the further loss.

8Z Loss of hearing because of age (NSW WC s 70)

(1) This section applies in working out the percentage of the decrease of hearing in relation to boilermakers deafness of a worker who is the prescribed age or older, but does not apply to total hearing loss in either of the worker's ears.

(2) For this part, it is to be conclusively presumed that the worker's loss of hearing to be attributed to loss of hearing because of age is 0.5 decibels for each complete year of the worker's age over the prescribed age.

(3) For this section, the ***prescribed age*** is—

3. for a male—55 years old; or
4. for a female—65 years old.

9 No compensation for less than 6% hearing loss
(NSW WCA s 69A (1), (3), (4), (5), (6))

(1) A worker is not entitled to compensation under section 8O (Compensation for permanent injuries generally) for a loss of hearing because of boilermakers deafness (the ***hearing loss***) if the worker's total hearing loss is less than 6%.

(2) However, the worker is entitled to compensation for the hearing loss if the total hearing loss reaches 6% or more.

Example

Assume all hearing losses mentioned in this example are because of boilermakers deafness.

A worker suffers a hearing loss of 3% (the first hearing loss that the worker has suffered). No compensation is payable under section 8O for the loss because it is less than 6%, although notice of injury may be given or a claim may be made for the hearing loss.

The worker suffers a further hearing loss of 6%, bringing the total loss to 9%. The total loss has now passed the 6% threshold and compensation is payable for the full 9%. Compensation for the initial 3% hearing loss will be payable by the earlier employer if the worker made a claim or gave notice of injury for the initial hearing loss.

The worker suffers a further hearing loss of 6%. The worker is entitled in the usual way to compensation for the 6% further loss because the 6% threshold has already been passed (the total loss is now 15%).

Note Pt 5.3 (Obligations on injury) and ch 6 (Claims) apply to a hearing loss even if it is not immediately compensable because of this section.

(3) In working out the percentage hearing loss because of boilermakers deafness, the loss of hearing is to be worked out as a proportionate loss of hearing of both ears, even if the loss is in 1 ear only.

(4) A lawyer or agent who acts for a worker on a claim for compensation for loss of hearing because of boilermakers deafness is not entitled to recover costs from the worker or the employer in relation to the claim if no compensation is payable on the claim because the worker's total hearing loss is less than 6%.

(5) In this section:

22 ***total hearing loss*** means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

9A Presumption to be drawn from refusal to submit to hearing examination (NSW WCA s 69A (7))

(1) This section applies to a worker with a claim for which no compensation is payable because of section 9.

(2) If the worker fails to allow himself or herself to be examined as required under the worker's personal injury plan, or obstructs the examination, it is presumed in the absence of evidence to the contrary that the worker has no hearing loss because of boilermakers deafness.

9B Employer's responsibility to pay for hearing loss tests
(NSW WCA s 69B)

(1) If an employer would, apart from section 9 (No compensation for less than 6% hearing loss), be liable to pay compensation under section 8O (Compensation for permanent injuries generally) for a worker's hearing, the employer is liable under this chapter to pay the cost of only the following hearing tests for the loss:

(a) a test carried out at least 3 years after any previous test that the employer has paid for;

(b) a test that finds that the worker has suffered a total hearing loss because of boilermakers deafness of 6% or more;

(c) a test carried out after the worker has left the worker's employment with the employer if the hearing loss is attributable to the employment;

(d) a test carried out by a doctor, or audiologist, using an audiogram to work out the level of hearing loss.

(2) The cost of a hearing test for the worker is the cost of obtaining a medical certificate, and any examination required for the certificate, about the extent of the worker's hearing loss.

(3) This section does not require payment by an employer for the cost of obtaining a hearing test that the employer would not otherwise be liable to pay for under this chapter.

(4) In this section:
23 *total hearing loss* means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

9C Reimbursement for costs of medical certificate and examination (NSW WCA s 73)

(1) Obtaining a medical certificate, and any examination required for the certificate, is taken to be medical or related treatment for this chapter if the worker gives the employer a copy of the certificate.

(2) In this section:
24 *medical certificate* means a report or certificate of a doctor that certifies—

(a) that a worker has suffered a loss mentioned in schedule 1 (Compensation for permanent injuries); or

(b) the extent of the loss to allow the amount of compensation payable for the loss to be worked out.

9D Limited entitlement if death happens within 3 months
(ACT WCA s 10F)

(1) This section applies if—

(a) a worker has received a compensable injury; and

(b) the worker dies within 3 months after receiving the compensable injury because of the compensable injury or another injury received at the same time.

(2) The worker is not entitled to receive compensation for the compensable injury under the following items of schedule 1 (Compensation for permanent injuries):

(a) item 2 (loss of sense of taste or smell);
(b) item 3 (loss of senses of taste and smell);
(c) item 41 (loss of sexual organs);
(d) item 42 (loss of both breasts);
(e) item 43 (loss of 1 breast);
(f) item 44 (permanent and total loss of capacity to engage in sexual intercourse);
(g) item 49 (severe facial disfigurement);
(h) item 50 (severe bodily disfigurement).

Part 4.5 Compensation for medical treatment, damage and other costs

9E Application of pt 4.5 (ACT WCA s 11 (1))

This part applies if—

(a) compensation under this Act is payable by an employer to, or in relation to, a worker in relation to an injury; or

(b) the operation of section 9 (No compensation for less than 6% hearing loss) means no compensation is payable by an employer to, or in relation to, a worker in relation to an injury; or

(c) compensation would be payable by an employer to, or in relation to, a worker in relation to an injury except that—

(i) the worker is not incapacitated for work; or

(ii) the worker is imprisoned (see section 10F); or

(iii) weekly compensation has been suspended under section 10ZI (Compliance by workers); or

(iv) the worker has contravened this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

9F Employer liability for medical treatment and damage

(ACT WCA s 11 (2), (3), (3A))

(1) The employer is liable to pay—

(a) for the cost of medical treatment reasonably obtained in relation to the injury—an amount of compensation appropriate for the provision of the medical treatment, having regard to the charges customarily made for similar medical treatment in the place where the treatment is obtained; and

(b) in relation to any damage to, or loss of, the worker's clothing sustained in association with the injury—compensation of a reasonable amount for the repair or replacement of the damaged or lost clothing.

(2) However, the total amount payable under subsection (1) for each of the following must not be more than the maximum amount:

(a) for the cost of medical treatment consisting of the repair or replacement of a worker's contact lenses, crutches, prosthesis, spectacles or other artificial aid;

(b) for damage to or loss of a worker's clothing.

(3) In subsection (2):

25 ***maximum amount***, in relation to a treatment, damage or loss, means—

(a) if an amount has been agreed between the worker and employer—that amount; or

(b) in any other case—$500 cpi indexed.

(4) In this section, the cost of medical treatment is taken to include—

(a) the amount of wages lost by the worker because of the worker's attendance at a place (the ***treatment place***) to undergo the treatment; and

(b) the cost of taking the worker (whether the worker or someone else does the taking) to and from the treatment place worked out under section 9J (Transport costs other than private car) or section 9K (Working out transport costs for private cars); and

(c) the cost of any accommodation (including the cost of meals) required by the worker because of the worker's attendance at the treatment place worked out under section 9L (Costs of accommodation and meals).

9G Claim for compensation for pt 4.5 (ACT WCA s 11 (4), (5))

(1) A worker may make a claim for compensation under this part for the cost of medical treatment or in relation to damage to, or loss of, the worker's clothing only if the worker has given the employer written notice stating—

(a) the amount of compensation sought; and

(b) reasonable details of the expenses for which compensation is sought.

(2) However, a failure to give notice, or a defect or inaccuracy in the notice, does not affect a claim for compensation under this part if it is found in the proceeding on the claim that—

(a) if a notice or amended notice were then given and the hearing postponed, the employer's defence is not, or would not be, prejudiced by the failure, defect or inaccuracy; or

(b) the failure, defect or inaccuracy was caused by mistake or other reasonable cause.

9H Second opinions (ACT WCA s 11 (6))

(1) This section applies if the worker receives medical treatment and claims the cost of it from the employer under this part.

(2) The employer may, in consultation with the doctor or other person providing the treatment, and before making a payment under this part, require the worker to be examined by a doctor, or other person, chosen by the employer.

9I Payments for treatment received from hospital (ACT WCA s 11 (7))

(1) This section applies if the employer is liable under this part to pay an amount in relation to medical treatment received by the worker from a hospital.

(2) The employer must pay the amount, less any amount previously paid by the worker in relation to the treatment, on demand—

(a) for a private hospital—to the proprietor of the hospital; or

(b) for any other hospital—to the person authorised in writing by the governing entity in charge of the hospital to receive payments payable to the hospital.

9J Transport costs other than private car
(ACT WC Regs r 14)

(1) This section sets out how the costs of taking an injured worker to and from a place (other than by private motor vehicle) to undergo medical treatment must be worked out.

(2) If the worker cannot be taken in a motor vehicle (other than an ambulance) because of the worker's injury, the transport cost is the actual cost of the transport by ambulance.

(3) The transport cost is the actual cost of the public transport if the worker is taken by public transport because, although the worker can be taken in a private motor vehicle—

(a) the worker is prohibited by law from taking himself or herself in a private motor vehicle and no-one else is available to take the worker in a private motor vehicle; or

(b) no private motor vehicle is available.

(4) The transport cost is the reasonable cost of transport if a private motor vehicle or public transport is not reasonably available, or reasonably appropriate, to transport the worker in the circumstances.

(5) In this section:

26 ***public bus***—see the *Road Transport (Public Passenger Services) Act 2001*, dictionary.

27 ***public transport*** means a public bus, a taxi or a restricted taxi.

28 ***restricted taxi***—see the *Road Transport (General) Act 1999*, section 100.

29 ***taxi***—see the *Road Transport (General) Act 1999*, section 100.

9K Working out transport costs for private cars

(1) The costs of taking an injured worker by private motor vehicle (the *car*) to and from a place to undergo medical treatment must be worked out in accordance with this section.

(2) The transport cost is the cost worked out by multiplying the number of kilometres travelled to and from the place by the per kilometre cost for the car.

(3) The per kilometre cost for the car is the amount mentioned in the *Income Tax Assessment Regulations 1997* (Cwlth), schedule 1, part 2 in relation to the size of the car for the financial year in which the cost was incurred.

9L Costs of accommodation and meals (ACT WC Regs r 15)

(1) The cost of accommodation for the worker is the relevant amount set out in a public ruling by the Commonwealth Commissioner of Taxation in relation to reasonable allowance amounts for the year in which the costs were incurred.

Note For the financial year 2000-2001, the ruling in relation to reasonable allowance amounts is TR2000/13. It is available on the website of the Australian Taxation Office (www.ato.gov.au).

(2) The relevant amount, for accommodation, is the amount that would be allowed for an employee on the lowest salary for which allowances are given for the place where the employee was accommodated.

(3) The worker is not entitled to payment for a meal unless the meal is eaten while the worker—

(a) is travelling to or from medical treatment (the *treatment*) for which compensation is payable under this part; or

(b) is at a place to receive the treatment; or

(c) is staying at accommodation for which compensation is payable under this part.

(4) In this section:

30 *accommodation*, for a worker, includes meals for the worker, other than a meal to which the worker is not entitled to payment because of subsection (3).

31 *public ruling*—see the *Taxation Administration Act 1953* (Cwlth), section 14ZAAA (Interpretation).

Part 4.6 Compensation for death

10 Death benefits

(1) This section applies to the death of a worker for which compensation is payable under this Act.

(2) The dependants of the worker are entitled to the following:

(a) a single lump sum payment of $150 000 cpi indexed to be divided between the dependants;

(b) for each dependant who is a child—weekly compensation of $50 cpi indexed;

(c) the funeral expenses of the worker to a maximum of $4 000 cpi indexed.

(3) In working out for this Act whether or not a child is, or was, dependent on the earnings of the worker, any family tax benefit within the meaning of the *A New Tax System (Family Assistance) Act 1999* (Cwlth), section 3 (definitions) in relation to the child must be disregarded.

(4) Compensation under subsection (2) (b) is payable only while the person receiving it is a child.

10A Payment into court of lump sum death benefits

(ACT WCA sch 1 cl 6)

(1) A payment mentioned in section 10 (2) (a) (the *lump sum*) must be paid into the Magistrates Court, unless the court otherwise orders.

(2) The Magistrates Court must, until the lump sum is paid to the person entitled to it—

(a) invest, apply or otherwise deal with the lump sum payment in the way the court considers appropriate for the benefit of the person entitled to it under this Act; or

(b) deal with it under the *Public Trustee Act 1985*, section 25 (Payment of money etc to public trustee on behalf of a person under disability).

(3) The receipt of the registrar of the Magistrates Court is a sufficient discharge for the amount paid in.

Part 4.7 Registration of agreements for compensation

10B Registration of agreements for compensation

(NSW WCA s 66A (3), (4), (4A), (10))

(1) If the worker agrees to receive an amount of compensation under section 8O (Compensation for permanent injuries generally) for a loss or under section 12J (How worker may commute rights) for the commutation of a right, a party to the agreement may apply to the Magistrates Court for registration of the agreement.

(2) The Magistrates Court may refuse to register the agreement if the court considers that the agreement is inaccurate or that the agreed amount of compensation is inadequate.

(3) The Magistrates Court must refuse to register the agreement unless satisfied that the worker received independent legal advice about the agreement before entering into it.

(4) An agreement may deal with the payment of costs.

10C Effect of registration of agreements

(NSW WCA s 66A (1), (2), (7))

(1) A worker with a registered agreement in relation to a loss or the commutation of a right is not entitled to receive any additional compensation for the loss or commutation of the right under an award of the Magistrates Court.

(2) However, the Magistrates Court may award additional compensation if satisfied that—

(a) the agreement was obtained by fraud or undue influence; or

(b) the agreed amount of compensation was manifestly inadequate.

(3) This section does not limit an award of additional compensation for a further loss suffered after the loss to which the agreement relates.

10D Cancellation or amendment of registered agreements

(1) On application by a party to a registered agreement, the Magistrates Court may amend the registered agreement or cancel the registration of the agreement.

(2) The Magistrates Court may act under subsection (1) only if—

(a) a party becomes aware of evidence that was not available to the party when the agreement was made; and

(b) the court considers that, if the party had been aware of the evidence, the agreement would not have been made, or would not have been made as registered.

Part 4.8 Exceptions to entitlements to compensation

10E When is compensation under Act generally not payable? (ACT WCA s 7 (3) and (4))

(1) This section applies if, apart from this section, compensation in relation to an injury to a worker is payable under this Act.

(2) Compensation is not payable if the injury to, or death of, the worker is caused by an intentionally self-inflicted injury.

(3) Compensation is not payable if it is proved that the injury to the worker is attributable to the worker's serious and wilful misconduct, unless the injury results in death or serious and permanent disablement.

(4) In subsection (3), the personal injury received by the worker is attributable to the serious and wilful misconduct of the worker if—

(a) at the time of the injury, the worker was under the influence of alcohol or another drug, unless the alcohol or other drug did not contribute to the injury or was not consumed or taken voluntarily; or

(b) the injury was otherwise attributable to the serious and wilful misconduct of the worker.

(5) In this section:

32 *drug*—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

10F No compensation while imprisoned

A worker who is otherwise entitled to compensation under this Act is not entitled to compensation for a period when the worker is imprisoned because the worker has been convicted of an offence against a law of the Territory, a State, the Commonwealth or another Territory.

18.
Proposed new clause 11A
Page 22, line 19—

After clause 11, insert the following new clause:

11A New chapter 5
Chapter 5 Injury management process
Part 5.1 Object and definitions for chapter 5
10H Object of ch 5 (NSW WIMWCA s 41)

The object of this chapter is to establish a system the aim of which is to achieve the best results for the timely, safe and durable return to work of workers following workplace injuries.

10I Definitions for ch 5 (NSW WIMWCA s 42 (1))

In this chapter:

33 *injured worker* means a worker who has received a workplace injury.

34 *injury management* means the process that consists of activities and procedures that are carried out or established to achieve a timely, safe and durable return to work for injured workers.

35 *injury management program* means a coordinated and managed program that integrates all aspects of injury management (including treatment, rehabilitation, retraining, claims management and employment management practices) to achieve the best results for a timely, safe and durable return to work of injured workers.

36 *injury notice*—see section 10O (2) (Early notification of workplace injury).

37 *insurer* means an approved insurer or self-insurer.

38 *nominated treating doctor*, for an injured worker, means the doctor or medical practice nominated under section 10X (Nomination of doctor for personal injury plan).

39 ***personal injury plan***, for an injured worker, means a plan for coordinating and managing the aspects of injury management, that relate to the treatment, rehabilitation and retraining of the worker, to achieve a timely, safe and durable return to work for the worker.
40 ***workplace injury*** means an injury in relation to which compensation is or may be payable under this Act.

10J Meaning of *employer* and *insurer* if more than 1
(NSW WIMWCA s 42 (2))
(1) This section applies if 2 or more employers are or may be liable to pay compensation to an injured worker but the employers do not all still employ the worker.
(2) In this chapter:
41 ***employer***, of the injured worker, is the employer that last employed the worker.
42 ***insurer*** means the employer's insurer.

Part 5.2 General obligations
10K Insurer to establish etc injury management program
(1) An insurer must establish and maintain an injury management program.

(2) An insurer must review the effectiveness of its injury management program at least once every 2 years and revise the program in accordance with the results of the review.

(3) An insurer must give a copy of its injury management program, and any revised injury management program, to the Minister.

10L Insurer to give effect to injury management program
(1) An insurer must give effect to its injury management program, in particular by complying with the obligations imposed on the insurer under the program.

(2) An insurer must take appropriate steps to ensure that each employer who is insured by the insurer is aware of the employer's obligations under this chapter and is aware of the requirements of the insurer's injury management program.
Note An employer may have obligations under the following provisions of this part:
- under s 10N to comply with the obligations imposed on the employer under the injury management program
- under s 10O (2) to give notice of injury to the insurer
- under s 10V to take part and cooperate in establishing a personal injury plan for a worker, and to comply with the plan
- under s 10ZA and s 10ZB to provide suitable work for an injured worker
- under s 10ZE to establish a return-to-work program.

(3) Subsection (2) does not apply to a self-insurer.

10M Insurer's obligation of prompt payment
(1) If an insurer is required under this Act to pay an amount for a service, the insurer must pay the amount to the person who provided the service (the ***service provider***) within 30 days after the service is provided.
Maximum penalty: 10 penalty units.

(2) Subsection (1) does not apply if the insurer does not pay for the service because—

(a) the insurer believes on reasonable grounds that the service has not been provided, or has not been properly provided, and the insurer has told the service provider, in writing, why the insurer has not paid for the service; or

(b) the insurer has another reasonable ground for not paying for the service.

10N Employer's obligations for injury management programs

An employer (other than a non-business employer) must comply with the reasonable obligations imposed on the employer by the employer's insurer under the insurer's injury management program.

Maximum penalty: 10 penalty units.

10NA Register of injuries (NSW WIMWCA s 63)

(1) This section applies to a mine, quarry, factory, workshop, office or shop (the ***workplace***).

(2) A register of injuries (the ***register***) is to be kept at the workplace in a place that is readily accessible to workers at the workplace.

(3) The manager of the mine or quarry, or the occupier of the factory, workshop, office or shop, must ensure the register is kept in accordance with subsection (2).

Maximum penalty: 50 penalty units.

(4) A person must not, without lawful authority or excuse, change, damage, deface, remove or otherwise interfere with the register.

Maximum penalty: 20 penalty units.

(5) A worker employed at the workplace, or a person acting on the worker's behalf, may enter in the register details of an injury received by the worker.

(6) If details of the injury are entered in the register as soon as possible after the injury happens, the entry is taken to be notice of the injury given to the employer by the injured worker for this Act.

Part 5.3 Obligations on injury

10O Early notification of workplace injury

(NSW WIMWCA s 44)

(1) The injured worker must tell the employer that the worker has received a workplace injury as soon as possible after being injured.

Note An injured worker may give notice of an injury by making an entry in a register of injuries (see s 10NA).

(2) The employer must give the insurer notice of the injury (an ***injury notice***) under section 10P within 48 hours after becoming aware that the worker has received a workplace injury.

(3) Subsection (2) does not apply if the employer is a self-insurer.

10P Injury notice (ACT WCA, s 25 (4), NSW WIMWCA s 62)

(1) An injury notice must state—

(a) the name and address of the injured worker; and

(b) the cause of the injury (in ordinary language); and

(c) the date and time the injury happened; and

(d) the name and address of the employer; and

(e) the name and address of the nominated treating doctor or, if there is no treating doctor, a doctor who has treated the worker for the injury.

(2) The employer may give the notice orally, in writing or in electronic form.

(3) However, if the employer gives the notice orally, the employer must give the notice in writing or in electronic form within 3 days after giving the notice orally.

(4) If the worker has more than 1 employer, the notice must be given to the employer responsible for the workplace where the injury happened.

(5) The notice of injury is taken to have been given to an employer—

(a) if it is given to a person designated for the purpose by the employer; or

(b) if it is given to a person under whose supervision the worker is employed.

10Q What if employer does not give notice of injury within time?

(1) This section applies if an employer (other than a self-insurer) is given an injury notice for an injured worker, but does not give the insurer the injury notice within the time (the ***notification time***) mentioned in section 10O (2) (Early notification of workplace injury).

(2) The employer is liable to pay the worker weekly compensation from the end of the notification time until the employer gives the insurer the injury notice.

(3) The employer may not be indemnified by the insurer for a payment mentioned in subsection (2).

10R Obligation of insurer on being notified of injury

(NSW WIMWCA s 43 (4))

Within 3 business days after receiving the injury notice, the insurer must take action under the insurer's injury management program and must (in accordance with the program) make contact with the injured worker, the employer (except if the insurer is a self-insurer) and (if appropriate and practicable) the worker's nominated treating doctor.

Maximum penalty: 10 penalty units.

Part 5.4 Obligations in relation to personal injury plans

10S Personal injury plan for worker with significant injury

(NSW WIMWCA s 45)

(1) If it appears to an insurer who is, or may be, liable to pay compensation to an injured worker on behalf of the worker's employer that the workplace injury is a significant injury, the insurer must establish a personal injury plan for the worker.

(2) The personal injury plan must be established—

(a) in agreement with the employer (unless the employer is a self-insurer or a non-business employer) and the injured worker, to the maximum extent that their cooperation and participation allow; and

(b) with the assistance of an approved rehabilitation provider.

(3) The insurer must give effect to the personal injury plan established for the injured worker and, for that purpose, must comply with the obligations imposed on the insurer under the plan.

(4) In this section:

43 ***significant injury*** means a workplace injury that is likely to result in the worker being incapacitated for work for a continuous period of longer than 7 days, whether or not any of those days are business days and whether or not the incapacity is total or partial or a combination of both.

10T Provision of information about personal injury plan

(1) The insurer must give both the employer and the injured worker information about the personal injury plan.

(2) The information must include a statement to the effect that the worker's entitlement to weekly compensation may stop if the worker unreasonably fails to comply with the requirements of this chapter after being asked to do so by the insurer.

(3) The insurer must keep the employer informed of significant steps taken, or proposed to be taken, under the personal injury plan for the worker, unless the employer is a self-insurer.

10U Vocational rehabilitation

The insurer must ensure, as far as possible, that vocational rehabilitation provided or arranged for the injured worker under the personal injury plan is of a kind that may reasonably be thought likely to lead to a real prospect of employment or a real increase in earnings for the injured worker.

10V Employer's personal injury plan obligations

(NSW WIMWCA s 46)

(1) The employer must take part and cooperate in the establishment of a personal injury plan for the injured worker.

Maximum penalty: 10 penalty units.

(2) The employer must comply with the reasonable obligations imposed on the employer under the personal injury plan.

Maximum penalty: 10 penalty units.

(3) This section does not apply if the employer is a self-insurer.

10W Worker's personal injury plan obligations

(NSW WIMWCA s 47)

(1) The injured worker must take part and cooperate in the establishment of a personal injury plan for the worker.

Note If the injured worker does not take part and cooperate in the establishment of the worker's personal injury plan, the worker's weekly compensation may be stopped while time for payment of weekly compensation continues to run against the worker (see s 10ZI).

(2) The injured worker must comply with obligations imposed on the worker under the worker's personal injury plan, including any obligation to receive medical or surgical treatment or take part in rehabilitation or retraining.

10X Nomination of doctor for personal injury plan

(1) The worker must nominate a doctor, or medical practice, as the worker's treating doctor for the worker's personal injury plan.

(2) The worker may only nominate a doctor, or medical practice, that is prepared to take part in the development of, and in the arrangements under, the worker's personal injury plan.

(3) The nomination of a medical practice as treating doctor for the worker's personal injury plan is the nomination of the members of the practice who treat the worker from time to time.

(4) The worker must authorise the worker's nominated treating doctor to provide relevant information to the insurer or the employer for the worker's personal injury plan.

(5) The worker's personal injury plan must provide a way for the worker to change the worker's nominated treating doctor.

10Y Subsequent medical certificates under personal injury plan

A medical certificate required under a personal injury plan in relation to a claim for ongoing compensation under this Act must be from a doctor.

Part 5.5 Other obligations

10Z Injured worker's obligation to return to work

(NSW WIMWCA s 48)

The injured worker must make all reasonable efforts to return to work with the worker's pre-incapacity employer (that is, the employer liable to pay compensation to the worker) as soon as possible, considering the nature of the injury.

10ZA Employer must provide suitable work for full-time, part-time and casual workers (NSW WIMWCA s 49)

(1) This section applies to a full-time, part-time or casual worker who has been totally or partially incapacitated for work because of an injury if the worker can return to work, whether on a full-time or part-time basis and whether or not to the worker's previous employment.

(2) The employer liable to pay compensation to the worker under this Act in relation to the injury must provide suitable employment for the worker if asked by the worker within 6 months after the day the worker became entitled to weekly compensation under this Act.

Maximum penalty: 10 penalty units.

(3) The employment that the employer must provide is employment that is both suitable employment and, so far as reasonably practicable, the same as, or equivalent to, the employment in which the worker was employed at the time of the injury.

(4) This section does not apply if—

(a) the worker voluntarily left the employment of the employer after the injury happened (whether before or after the beginning of the incapacity for work); or

(b) the employer ended the worker's employment after the injury happened, for a reason other than because the worker was not fit for employment because of the injury; or

(c) the employer is a non-business employer; or

(d) the employer cannot provide suitable employment.

10ZB Employer must provide suitable work for contract workers

(1) This section applies to a contract worker who has been totally or partially incapacitated for work because of an injury if the worker can return to work, whether on a full-time or part-time basis and whether or not to the worker's previous employment.

(2) The employer liable to pay compensation to the worker under this Act in relation to the injury must provide suitable employment for the worker if asked by the worker—

(a) if the contract, and any reasonably expected extension or renewal of the contract, ends or would end before the end of 6 months after the day the worker became entitled to weekly compensation under this Act—before the end of the following:

(i) the extension or renewal;

(ii) if there is no reasonably expected extension or renewal—the contract; or

(b) in any other case—within 6 months after the day the worker became entitled to weekly compensation under this Act.

Maximum penalty: 10 penalty units.

(3) The employment that the employer must provide is employment that is suitable employment and, so far as practicable, the same as, or equivalent to, the employment in which the worker was employed at the time of the injury.

(4) This section does not apply if—

(a) the worker voluntarily left the employment of the employer after the injury happened (whether before or after the beginning of the incapacity for work); or

(b) the employer ended the worker's employment after the injury happened for a reason other than because the worker was not fit for employment because of the injury; or

(c) the employer is a non-business employer; or

(d) the employer cannot provide suitable employment.

10ZC Payment of cost of treatment of injured worker

(NSW WIMWCA s 50)

(1) The worker's personal injury plan may provide for the insurer to pay the following costs:

(a) the cost of any treatment for the workplace injury provided to the worker by the nominated treating doctor if the nominated treating doctor is prepared to take part in the arrangements under the plan;

(b) the cost of other treatment described in the plan that is provided to the worker for the workplace injury.

Examples of other treatment

Treatment may be identified by reference to factors like the kind of treatment, the identity of the health care professional who provides the treatment, and the circumstances in which the treatment is provided.

(2) For a payment under subsection (1), it does not matter that the worker has not made a claim for compensation, that the insurer has not accepted liability for the injury or if the insurer disputes liability for the injury.

(3) If the insurer makes the payments in relation to the injury and another insurer (the ***other insurer***) or another employer (the ***other employer***) accepts liability to pay compensation to the worker in relation to the injury, the insurer is entitled to recover the costs (to the extent that compensation is payable under this Act in relation to the costs) as a debt from the other insurer or other employer.

(4) An amount recoverable under subsection (3) is taken to be payable by the other insurer or other employer as compensation to the injured worker.

10ZD Second injury arrangements (NSW WIMWCA s 51)

(1) Arrangements may be entered into under this section to encourage the employment of injured workers by providing financial incentives to their employers in relation to insurance liabilities arising from further injuries to the workers.

(2) An insurer who is liable to pay compensation to an injured worker may enter into an arrangement with a new employer (the ***new employer***) of the injured worker providing for either or both of the following:

(a) for the insurer to indemnify the new employer in relation to the employer's liability to pay compensation to the injured worker under this Act;

(b) for the insurer to pay a wage subsidy to the new employer in relation to the worker's employment.

(3) An arrangement under this section—

(a) applies for 6 months or, if a period is stated in the arrangement, that period; and

(b) if it provides for an indemnity—applies to all injuries or only to the injuries stated in the indemnity arrangement; and

(c) is subject to the conditions the insurer decides and the new employer agrees to.

(4) A claim for compensation for an injury to the worker to which an indemnity under this section applies is excluded from the claims experience of the new employer in working out the premium payable by the new employer for an insurance policy.

(5) This section applies only in relation to approved insurers.

10ZE Workplace rehabilitation (NSW WIMWCA s 52)

(1) An employer (other than a non-business employer) must establish a return-to-work program in relation to policies and procedures for the rehabilitation (including, if necessary, vocational rehabilitation) of injured workers of the employer.
Maximum penalty: 10 penalty units.

(2) An employer's return-to-work program must not be inconsistent with the injury management program of the employer's insurer and is of no effect to the extent of any inconsistency.

(3) A return-to-work program must—

(a) be established in accordance with guidelines (if any) issued by the Minister under section 10ZF; and

(b) be developed by the employer in consultation with the workers to whom it relates, or may relate, any industrial union of workers representing the workers and an approved rehabilitation provider; and

(c) be in writing displayed or notified at places of work of the workers to whom it relates or may relate.

(4) A group of 2 or more employers may establish a single return-to-work program under this section for each member of the group if the employers are authorised in writing to do so by the Minister.

10ZF Return-to-work guidelines

(1) The Minister may, in writing, issue guidelines for the establishment of return-to-work programs.

(2) Guidelines are a disallowable instrument.
Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

(3) In deciding guidelines for this section, the Minister may consult with the entities the Minister considers appropriate.

Part 5.6 Compliance with chapter 5

10ZG Obligation of Minister

The Minister must monitor compliance by insurers with the requirements of this chapter.

10ZH Compliance by insurers (NSW WIMWCA s 55 (1))

It is a condition of an insurer's approval that the insurer must comply with the requirements of this chapter.

10ZI Compliance by workers (NSW WIMWCA s 57)

(1) A worker is not entitled to weekly compensation for a period when the worker unreasonably—

(a) contravenes a requirement under this chapter (including under the worker's personal injury plan) after being asked in writing by the insurer to comply with the requirement; or

(b) fails to take part in or make a reasonable effort to take part in vocational rehabilitation or a return-to-work program; or

(c) fails to attend an assessment of the worker's employment prospects; or

(d) fails to undertake suitable alternative duties (if any) provided by the employer; or

(e) fails to take up an offer of suitable work for which the worker is qualified and that the worker can perform.

(2) A worker's entitlement to weekly compensation does not stop under this section until 1 week after the day, or latest day, the insurer gives written notice to the worker and to the Minister that the compensation will stop.

(3) The notice must be accompanied by a statement of the reasons for the entitlement stopping and the action that the insurer considers the worker must take to be entitled to the continuation, or resumption, of weekly compensation.

(4) The resumption of weekly compensation does not entitle the worker to weekly compensation for the period when the worker had no entitlement to weekly compensation.

10ZIA Unreasonableness in stopping payment

(1) This section applies if an insurer gives the worker and Minister notice under section 10ZI and stops the worker's weekly compensation.

(2) If the Minister considers that stopping the weekly compensation may have been unreasonable, the Minister may do either or both of the following:

(a) ask the insurer, in writing, for further information about the stoppage;

(b) direct the insurer, in writing, not to stop paying the weekly compensation, or to continue to pay the weekly compensation, for a stated time that is not longer than 1 month.

(3) If the Minister considers that stopping payment of the weekly compensation is unreasonable, the Minister may—

(a) tell the insurer so in writing; and

(b) direct the insurer, in writing, not to stop paying the weekly compensation, or to continue to pay the weekly compensation until the Minister otherwise directs or the claim is settled or decided.

(4) The insurer must not, without reasonable excuse, contravene a direction under this section.

Maximum penalty: 10 penalty units.

10ZJ Liability not affected (NSW WIMWCA s 58)

None of the following things done by an insurer or employer is an admission of liability by the employer or insurer under this Act or independently of this Act:

(a) anything done under or for an injury management program or personal injury plan;

(b) anything done in relation to the assessment of an injured worker for rehabilitation, retraining or employment or the provision or arrangement of services or other measures for the rehabilitation or suitable employment of injured workers (whether done under a return-to-work program or otherwise).

19.
Clause 12
Page 22, line 20—

Omit the clause, substitute the following clause:
12 Sections 11 to 13
substitute
Chapter 6 Claims
Part 6.1 Making claims
11 Making claim for compensation
(NSW WIMWCA s 65 (1), (2) and (13))
(1) A worker may claim compensation under this Act.

(2) A claim for weekly compensation must be accompanied by a medical certificate from a doctor.

(3) Failure to make a claim under this Act does not prevent the recovery of compensation if it is found that the failure was caused by ignorance, mistake or other reasonable cause.

11A Claim for property loss or damage
(1) This section applies to the loss of, or damage to, property because of a compensable injury.

(2) The details required to be given in the claim in relation to the loss or damage are details that adequately identify the property and how it was lost or damaged.

11B Medical certificates and claims for compensation
(NSW WIMWCA s 65 (3), (4) and (5))
(1) To the extent that information or material has been given in the course of the making of a claim for compensation for an injury, it is not necessary to give the information or material when making any further claim for compensation in relation to the same injury.
A medical certificate required to accompany a claim for weekly compensation must include a statement of the doctor's opinion about—
(a) the likelihood of the worker's employment being a substantial contributing factor to the injury; or
(b) whether the worker's condition is consistent with the worker's employment being a substantial contributing factor to the injury.

11C What if no medical certificate with doctor's opinion?
(1) This section applies if a claim is deficient because section 11B (2) has not been complied with.

(2) If the insurer (or self-insurer) tells the worker in writing about the deficiency (including details of what is required to comply with section 11B (2)) as soon as possible (but in any case within 72 hours) after receiving the claim, the claim is not considered to have been made until section 11B (2) is complied with.

(3) However, if the insurer (or self-insurer) does not tell the worker in writing about the deficiency (including details of what is required to comply with section 11B (2)) within 72 hours after receiving the claim, the claim is taken to comply with section 11B (2).

(4) Subsection (2) does not apply if the insurer (or self-insurer) waives the requirement for the claim to comply with section 11B (2).

11D Time for taking proceedings generally

(ACT WCA s 25 (1) and (3))

A proceeding for the recovery of compensation for an injury may continue only if—

(a) notice of the injury (an *injury notice*) was given as soon as practicable after the injury happened, and before the worker voluntarily left the employment in which the worker was injured; and

(b) the claim for compensation was made—

within 3 years after the injury happened; or

if the worker dies—within 3 years after the claimant became aware of the death.

Note Section 11H (No notice or defective or inaccurate notice) contains an exception to this regulation.

11E Time for making claim under pt 4.4

(1) A claim for compensation payable under part 4.4 (Compensation for permanent injuries) in relation to an injury may not be made earlier than 2 years after the injury.

(2) However, the claim may be made earlier than 2 years after the injury if—

(a) the Magistrates Court allows the claim to be made; or

(b) the injury has stabilised.

(3) The Magistrates Court may allow the claim to be made earlier than 2 years after the injury only if satisfied that an early application is justified by the severity of the injury or the prospect of the worker's imminent death.

(4) The worker's injury is taken to have stabilised if—

(a) the worker has returned to work for the worker's pre-incapacity weekly hours (the ***previous work hours***) or longer; and

(b) the worker has been working at least the previous work hours for at least 3 months.

(5) However, the worker's injury may have stabilised even if the worker has not returned to work.

11F When is a claim made?

(1) A claim is made on the day the claim is given to the employer or insurer.

(2) If the claim is given to the employer and insurer on different days, the claim is made on the day the claim is given to the first of them.

11G The notice for an injury (ACT WCA s 25 (4))

(1) An injury notice must contain—

(a) the name and address of the injured worker; and

(b) the cause of the injury (in ordinary language); and

(c) the date and time the injury happened.

(2) The notice must be served on the employer or, if the worker has more than 1 employer, on the employer responsible for the workplace where the injury happened.

11H No notice or defective or inaccurate notice
(ACT WCA s 25 (2))

(1) This section applies to a claim in relation to which—

(a) an injury notice has not been given; or

(b) the injury notice given was defective or inaccurate.

(2) A proceeding may be maintained in relation to the claim if the Magistrates Court or arbitrator finds, in the proceeding for the claim, that—

(a) the employer's defence is not, or would not be, prejudiced by the lack of notice, or defect or inaccuracy in the notice, if a notice or amended notice were given and the hearing postponed; or

(b) the lack of notice, or defect or inaccuracy in the notice, was caused by mistake or another reasonable cause.

11I Admissibility of statements by injured workers

(1) A written statement in relation to a worker's injury given by the worker to the employer is admissible in evidence on behalf of the employer in a proceeding under this Act only if the employer gives the worker a copy of the statement at least 14 days before the proceeding is heard.

(2) In this section:

44 ***employer*** includes the employer's insurer.

45 ***insurer*** means—

46 an approved insurer; or

47 the nominal insurer.

11J Action by employer in relation to claims (NSW WIMWCA s 69)

(1) If an employer receives a claim for compensation or another document in relation to a claim, the employer must, within 7 days after receiving the claim or document, forward it to the insurer that the employer believes is liable to indemnify the employer for the claim (the ***liable insurer***).

Maximum penalty: 50 penalty units.

(2) If the employer receives a written request from the liable insurer for further stated information in relation to the claim or document, the employer must, within 7 days after receiving the request, either—

(a) give the insurer the requested information; or

(b) if the information is not in the employer's possession and is not reasonably obtainable by the employer—tell the insurer that in writing.

Maximum penalty: 50 penalty units.

(3) If an employer has received an amount of compensation under this Act from an insurer, the employer must immediately pay the amount to the person entitled to the compensation.
Maximum penalty: 50 penalty units.

(4) This section does not apply to an employer who is a self-insurer.

(5) A person does not commit an offence by contravening this section if there was a reasonable excuse for the contravention.

Part 6.2 Time for accepting or rejecting claims

12 Meaning of *given* to the insurer

For this part, a claim is ***given*** to the insurer if the claim is given to the insurer or the insurer is given notice of the claim by the employer or worker.

12A Claim accepted if not rejected within 28 days

If the insurer does not reject a worker's claim for compensation under this Act within 28 days after the claim is given to the insurer—

(a) the insurer is taken to have accepted the claim; and

(b) any payment made by the insurer in relation to the claim is not recoverable.

12B Rejecting claims generally

(1) An insurer rejects a claim for compensation under this Act by written notice given to the worker and employer.

(2) The claim is taken to be rejected when the notice is received by the worker and employer.

(3) If the worker and employer do not receive the notice on the same day, the notice is taken to have been given on the day the notice is received by the last of them.

(4) The notice must include the reason the insurer is rejecting the claim.

(5) If the insurer rejects the claim 28 days or later after the claim is given to the insurer, the notice must include affidavit evidence about why the insurer is rejecting the claim.

(6) For this section, a notice is taken not to contain the reason the insurer is rejecting the claim if it simply says the claim is being rejected for medical reasons without including the medical reasons.

12C Rejecting claim within 28 days

(1) If the insurer rejects the worker's claim within 28 days after the claim is given to the insurer, the insurer may—

(a) stop weekly compensation to the worker 2 weeks after the insurer rejects the claim; and

(b) stop payment of compensation mentioned under part 4.5 (Compensation for medical treatment, damage and other costs) for costs incurred 2 weeks or later after the insurer rejects the claim.

Note For how a claim is rejected, see s 12B.

(2) However, the insurer is not entitled to reject the worker's claim within 28 days after the claim is given to the insurer only on the ground that the insurer has not had time to adequately assess the claim.

12D Rejecting claims after 28 days but within 1 year

If the insurer rejects the worker's claim 28 days or later, but not later than 1 year, after the claim is given to the insurer, the insurer may—

stop weekly compensation to the worker 8 weeks after the insurer rejects the claim; and

stop payment of compensation mentioned under part 4.5 (Compensation for medical treatment, damage and other costs) for costs incurred 8 weeks or later after the claim is rejected.

Note For how a claim is rejected, see s 12B.

12E Rejecting claims from 1 year

(1) An insurer may reject a worker's claim for compensation 1 year or later after the claim is given to the insurer only with the leave of the Magistrates Court.

(2) If the Magistrates Court gives leave to the insurer to reject the worker's claim for compensation—

(a) the insurer need not give the worker notice of the rejection if the worker, or the worker's lawyer, is present when the court gives leave for the insurer to reject the claim; and

(b) the insurer may stop paying weekly compensation—

(i) on the day stated by the court in the order giving leave to the insurer to reject the claim; or

(ii) 8 weeks after the worker gets notice of the rejection if no day is stated in the order.

(3) For this section, the worker gets notice of the rejection—

(a) if the worker is present when the court gives leave to the insurer to reject the claim—on the day the court gives leave; or

(b) when the worker receives notice of the rejection from the insurer.

Note Court approved termination is dealt with under the regulations.

Part 6.3 Liability on claims

12F Without prejudice payments

An insurer may, when making a payment in relation to a claim, state that the payment is not an admission of liability for the injury in relation to which it is made.

12G Liability on claim not accepted or rejected

(1) If a worker makes a claim in relation to an injury, the insurer is liable to pay weekly compensation and compensation for costs in relation to the injury until the insurer rejects or settles the claim.

(2) A payment under this section may not be recovered by the insurer.

(3) However, the insurer is not liable to pay, and may recover from the employer, an amount that the employer is liable to pay under section 10Q (What if employer does not give notice of injury within time?).

12H Order for refund of overpayments of compensation

(NSW WIMWCA s 68)

(1) This section applies to a payment to a person (an ***overpayment***), purportedly made because of an obligation arising under this Act, to which the person is not entitled under this Act.

(2) However, this section only applies if the court before which a proceeding for an offence under section 26T (False claims etc) is taken against the person is satisfied on the balance of probabilities that the person has received an overpayment as a result or partly as a result of the act or omission that is alleged to constitute the offence.

(3) The court may, on the application of the employer or insurer (whether or not the person is convicted of the offence), order the person to refund the amount of the overpayment to the person who made the payment.

(4) Unless the compensation is payable under an award of a court, the refund may be deducted from future payments of compensation in accordance with the terms of the court's order.

(5) Subsection (3) applies even if the compensation is weekly compensation that is payable under a direction of a conciliator.

(6) This section does not limit any other right of recovery that a person may have against someone else in relation to an overpayment to the other person.

Part 6.4 Settlement of claims

12I Contracting out

(1) A provision of an agreement or other document is void if it purports to exclude, or limit in any way—

(a) a right given to a worker under this Act; or

(b) a liability imposed on an employer under this Act.

(2) However, this section does not apply to an agreement by a worker to commute an existing right to compensation for a compensable injury under this part.

12J How worker may commute rights

(1) A worker may commute, in writing, an existing right to compensation for a compensable injury on payment of an amount by the insurer (the *settlement*).

(2) The settlement may include a payout of 1 or more of the following:

(a) the worker's entitlement to weekly compensation under part 4.3;

(b) the worker's entitlement to compensation for permanent injuries under part 4.4;

(c) the worker's entitlement to compensation for medical treatment, damage and other costs under part 4.5;

(d) an entitlement of the worker to compensation apart from this Act;

(e) any other amount.

12K No assignment etc of payout of weekly compensation (ACT WCA sch 4, cl 13)
A payout of weekly compensation may not—
(a) be assigned, charged or attached; and
(b) pass to anyone else by operation of law; and
(c) have a claim set off against it.

20.
Clause 14
Page 25, line 4—

Omit the clause, substitute the following clause:
14 Part 2A
substitute
Chapter 7 Vocational rehabilitation
15A Meaning of *approved rehabilitation provider* etc
(1) In this chapter:
48 *approved rehabilitation provider* means a person approved by the Minister to provide vocational rehabilitation for this Act.

(2) The regulations may make provision about the approval of rehabilitation providers by the Minister, including—
(a) the factors to be taken into account in deciding whether to approve rehabilitation providers; and
(b) the conditions that may be imposed on approvals; and
(c) how approvals may be renewed, suspended and revoked.

15B Meaning of *vocational rehabilitation*
(ACT WCA s 15A, 15B)
(1) In this chapter:
49 *vocational rehabilitation*, for the injured worker, means—
(a) the assessment of the needs of the worker for paragraph (b); and
(b) the provision of appropriate, adequate and timely services for the worker aimed at maintaining the worker in suitable employment or returning the worker to suitable employment.

(2) For the definition of ***vocational rehabilitation***, services are taken to be appropriate, adequate and timely if they are in accordance with a relevant protocol.

15C Meaning of *protocol* in ch 7 etc (ACT WCA s 15A)
(1) In this chapter:
50 *protocol* means a protocol about vocational rehabilitation approved under the regulations.

(2) The regulations may allow the Minister to approve a protocol about vocational rehabilitation.

15D Vocational rehabilitation (ACT WCA s 15C)

(1) If the worker has a compensable injury, the employer must provide the worker with vocational rehabilitation in accordance with this Act.

Maximum penalty: 50 penalty units.

(2) The provision of vocational rehabilitation to the worker is not taken to be an admission of liability for the worker's claim for compensation.

(3) This section does not apply to a non-business employer.

(4) The regulations may exempt employers from subsection (1), either completely or in prescribed circumstances.

15E False representation of approval

A person must not pretend to be an approved rehabilitation provider.

Maximum penalty: 30 penalty units.

21.
Clause 23
Page 40, line 1—

Omit the clause, substitute the following clause:

23 New chapter 13

insert

Chapter 13 Notice and appeals

26RA Notice of reviewable decisions to be given to affected people

(1) In this chapter:

51 ***reviewable decision*** means a decision made by the Minister that is prescribed under the regulations.

(2) If the Minister makes a reviewable decision, the Minister must give written notice of the decision to each person affected by the decision.

(3) The notice must be in accordance with the requirements of the code of practice in force under of the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

26RB Review by administrative appeals tribunal of reviewable decisions

A person may apply in writing to the administrative appeals tribunal for review of a reviewable decision within 28 days after receiving notice of the decision.

22.
Clause 25
Proposed new paragraphs 30 (2) (a) to (c)
Page 44, line 27—

Omit the paragraphs.

23.
Clause 25
Proposed new paragraph 30 (2) (l)
Page 45, line 21—

Omit the proposed new paragraph, substitute the following paragraph:

(l) arbitration of matters and questions arising under this Act, including provision for the exclusion or modification of the *Commercial Arbitration Act 1986* in its application to such an arbitration;

24.
Clause 25
Proposed new subsections 30 (3), (4) and (5)
Page 46, line 2—

Omit the subsections.

25.
Clause 26
Page 46, line 21—

Omit the clause, substitute the following clauses:

26 Part 8
omit
26A New chapter 15
insert
Chapter 15 Transitional
32 Definitions for ch 15
In this chapter:
52 ***the amendment Act*** means the *Workers Compensation Amendment Act 2001*.
53 ***the current Act*** means the *Workers Compensation Act 1951*, as in force after the commencement of the amendment Act.
54 ***the previous Act*** means the *Workers' Compensation Act 1951*, as in force immediately before the commencement of the amendment Act.

33 What injuries does this Act apply to?

(1) The current Act applies only to injuries that happen on or after the commencement of the amendment Act.

(2) However, if the worker first became aware that the worker received an injury after the commencement of the amendment Act, the injury is, for this chapter, taken to have happened when the worker became aware of the injury.

(3) Also, if an injury (the ***original injury***) that happened before the commencement of the amendment Act is aggravated after the commencement, the current Act applies to the aggravation as if the original injury were an injury within the meaning of the current Act.

34 What happens to injuries before the commencement of the amendment Act?

The previous Act continues to apply to injuries that happened before the commencement of the amendment Act.

35 Determined categories of workers

(1) This section applies if, immediately before the commencement of the amendment Act, a determination by the Minister under the previous Act, section 6B (Determined categories of workers) was in force.

(2) The determination is taken to be a determination under the current Act, section 4A (3) (Who is a *worker*?).

36 Approved insurers

(1) An insurer (the ***previously approved insurer***) that was an approved insurer under the previous Act immediately before the commencement of the amendment Act is taken to be an approved insurer under the current Act.

(2) However, the approval of the previously approved insurer under the current Act ends 6 months after the commencement of the amendment Act, because of the operation of this section.

(3) Subsection (2) applies to the approval irrespective of the terms of the approval under the previous Act.

37 Exempt employers

(1) A person who was an exempt employer immediately before the commencement of the amendment Act is taken to have been exempted under the current Act, section 17C (Self-insurers).

(2) However, the exemption of the person under section 17C ends 6 months after the commencement of the amendment Act.

(3) Subsection (2) applies to the exemption irrespective of the terms of the exemption under the previous Act.

38 Modification of ch 15's operation

The regulations may modify the operation of this chapter to make provision with respect to any matter that is not already, or is not (in the Executive's opinion) adequately, dealt with in this chapter.

39 Expiry of ch 15

This chapter expires 1 year after it commences.

Note Transitional provisions are usually of transitional effect. They are kept with the original provisions for a limited time to ensure people are aware of them. However, the expiry of transitional provisions does not end their effect (see *Legislation Act 2001*, s 88).

26.
Clause 27
Proposed new schedule 1
Page 49, line 3—

Before the proposed dictionary, insert the following proposed new schedule:

Schedule 1 Compensation for permanent injuries

(see s 8L and s 8O)

column 1 item	column 2 nature of injury	column 3 % of maximum amount payable
	Speech loss	
1	loss of power of speech	60
	Sensory loss	
2	loss of sense of taste or smell	17
3	loss of senses of taste and smell	34
	Hearing loss	
4	loss of hearing of both ears	65
5	loss of hearing of 1 ear	20
	Loss of vision	
6	loss of sight of both eyes	100
7	loss of sight of an only eye	100
8	loss of sight of 1 eye, together with serious diminution of the sight of the other eye	75
9	loss of sight of 1 eye	40
10	loss of binocular vision (if not otherwise compensable under this schedule)	40
11	loss of eyeball (in addition to compensation for loss of sight of the eye)	22
	Arm injuries	
12	loss of right arm at or above elbow	80
13	loss of right arm below elbow	75
14	loss of left arm at or above elbow	75
15	loss of left arm below elbow	70
	Hand injuries	
16	loss of right hand	70
17	loss of left hand	65
18	loss of thumb of right hand	30
19	loss of thumb of left hand	26
20	loss of a joint of thumb	16
21	loss of forefinger of right hand	21
22	loss of forefinger of left hand	18
23	loss of 2 joints of forefinger of right hand	16
24	loss of 2 joints of forefinger of left hand	12
25	loss of first joint of forefinger of right hand	10
26	loss of first joint of forefinger of left hand	9

27	loss of middle finger of either hand	12
28	loss of 2 joints of middle finger of either hand	10
29	loss of first joint of middle finger of either hand	6
30	loss of little or ring finger of either hand	11
31	loss of 2 joints of little or ring finger of either hand	9
32	loss of first joint of little or ring finger of either hand	6
	Leg injuries	
33	loss of either leg at or above knee	75
34	loss of either leg below knee	70
	Foot injuries	
35	loss of a foot	65
36	loss of great toe of either foot	22
37	loss of a joint of great toe of either foot	10
38	loss of any other toe	6
39	loss of any joint of any other toe	2
	Bowel injury	
40	permanent loss of bowel function	65
	Loss of sexual organs etc	
41	loss of sexual organs	47
42	loss of both breasts	47
43	loss of 1 breast	30
44	permanent and total loss of capacity to engage in sexual intercourse	75
	Brain damage	
45	permanent brain damage if not, or not completely an injury otherwise compensable under this schedule	100
	Permanent impairment of back, neck, pelvis	
46	permanent impairment of back	60
47	permanent impairment of neck	40
48	permanent impairment of pelvis	15
	Disfigurement	
49	severe facial disfigurement if not, or not completely, an injury otherwise compensable under this schedule	80
50	severe bodily disfigurement if not, or not completely, an injury otherwise compensable under this schedule	50
	Disease	
51	HIV infection (Human Immunodeficiency Virus infection)	100
52	AIDS (Acquired Immune Deficiency Syndrome)	100

27.
Proposed dictionary
Proposed new definitions
Page 49, line 4—

Insert the following definitions in the proposed dictionary in the appropriate alphabetical position decided on a letter-by-letter basis:
55 ***ABS*** means the Australian Bureau of Statistics established under the *Australian Bureau of Statistics Act 1975* (Cwlth).

56 ***average pre-incapacity weekly earnings*** means earnings worked out under—
57 for a worker who is not a contractor—section 5H (Working out average pre-incapacity weekly earnings for non-contractor); or
58 for a worker who is a contractor—section 5I (Working out average pre-incapacity weekly earnings for contractor).
59 average pre-incapacity weekly hours means hours worked out under—
60 for a worker who is not a contractor—section 5J (Working out average pre-incapacity weekly hours for non-contractor); or
61 for a worker who is a contractor—section 5K (Working out average pre-incapacity weekly hours for contractor).
62 ***AWE*** means the *Average weekly earnings*, States and Territories, seasonally adjusted for the ACT (all males total earnings) issued by the ABS.
63 ***awe indexed***—see section 5G.
64 ***boilermakers deafness*** includes deafness of a similar origin.
65 ***child***, in relation to a worker, means an unmarried child of the worker who is—
66 younger than 16; or
67 a full-time student.
68 ***compensable injury*** means an injury in relation to which compensation is payable under this Act.
69 ***compensation for costs***, for a worker, means compensation to which the worker is entitled under part 4.5 (Compensation for medical treatment, damage and other costs).
70 ***cpi indexed***—see section 5G.
71 ***deductible proportion***, for part 4.4 (Compensation for permanent injuries)—see section 8X (1) (Deduction for previous injury or pre-existing condition).
72 ***employer***, for chapter 5 (Injury management process)—see section 10J.
73 ***full-time student*** means an individual who—
74 is at least 16 years old but younger than 25; and
75 is receiving full-time education at a secondary or tertiary educational institution.
76 ***given*** to the insurer, for part 6.2 (Time for accepting or rejecting claims)—see section 12.
77 ***incapacity date***, for a worker, means—
78 the date of the beginning of the period of the worker's incapacity for work; or
79 if the worker has been incapacitated for work because of the same injury for a number of separate periods—the date of beginning of the last period of incapacity; or
80 if the worker is dead and the death was not immediately preceded by a period of incapacity for work in relation to which the worker received compensation under this Act—the date of the worker's death.
81 ***initial loss***, for part 4.4 (Compensation for permanent injuries)—see section 8X (1) (Deduction for previous injury or pre-existing condition).
82 ***injured worker***, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).
83 ***injury*** management, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).
84 ***injury management program***, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).
85 ***injury notice***—
(a) for chapter 5 (Injury management process)—see section 10O (2) (Early notification of workplace injury);
(b) for chapter 6 (Claims)—see section 11D (Time for giving injury notice).

86 ***insurer***, for chapter 5 (Injury management process), means—
87 an approved insurer or a self-insurer; or
88 if there is more than 1 employer of the worker—see section 10J.
89 ***loss***, for chapter 4 (Entitlements to compensation)—see section 8L.
90 ***maximum loss amount***, for part 4.4 (Compensation for permanent injuries)—see section 8N.
91 ***nominated treating doctor***, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).
92 ***pension age***, for a worker—see the *Social Security Act 1991* (Cwlth), section 23 (5A), (5B), (5C) and (5D).
93 ***personal injury plan***, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).
94 ***registered agreement*** means an agreement registered under section 10B (Registration of agreements for compensation).
95 ***return-to-work program*** means a program mentioned in section 10ZE (Workplace rehabilitation).
96 ***rules*** means the rules made under this Act.
97 ***single loss amount***, for part 4.4 (Compensation for permanent injuries)—see section 8M.
98 ***statutory floor*** means the federal minimum wage decided from time to time by the Australian Industrial Relations Commission under the *Workplace Relations Act 1996* (Cwlth).
99 weekly compensation, for a worker, means compensation to which the worker is entitled under section 8C (Totally incapacitated workers), section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (Partially incapacitated workers after 26 weeks after incapacity date).
100 ***workplace injury***, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

28.
Clause 27
Proposed dictionary
Proposed definition of *approved retraining provider*
Page 49, line 7—

Omit the proposed new definition, substitute the following definition:
101 ***approved rehabilitation provider***, for chapter 7 (Vocational rehabilitation)—see section 15A (Meaning of *approved rehabilitation provider* etc).

29.
Clause 27
Proposed dictionary
Proposed definition of *medical referee*
Page 50, line 3—

Omit “section 15”, substitute “section 26RD”.

30.
Clause 27
Proposed dictionary
Proposed definition of *protocol*, paragraph (a)
Page 51, line 3—

Omit the paragraph, substitute the following paragraph:
(a) for chapter 7 (Vocational rehabilitation)—see section 15C (Meaning of *protocol* for ch 7 etc); or

31.
Clause 27
Proposed dictionary
Proposed definition of *registered auditor*
Page 51, line 9—

Omit "Corporations Law", substitute "Corporations Act".

32.
Clause 27
Proposed dictionary
Proposed definition of *reviewable decision*
Page 51, line 10—

Omit "part 6C", substitute "chapter 13".

33.
Clause 27
Proposed dictionary
Proposed definition of *substantial*
Page 51, line 14—

After the proposed definition of ***self-insurer***, insert the following new definition:
102 *substantial* means real, actual or material.

34.
Clause 27
Proposed dictionary
Proposed definition of *vocational retraining*
Page 51, line 19—

Omit the proposed definition, substitute the following definition:
103 ***vocational rehabilitation***, for chapter 7 (Vocational rehabilitation)—see section 15B (Meaning of *vocational rehabilitation*).

35.
Clause 27
Proposed dictionary
Proposed definition of *worker*
Page 51, line 21—

Omit "part 1B", substitute "chapter 3".

36.
Clause 29
Amendment of *Limitation Act 1985*
Proposed paragraph 16A (1) (a)
Page 52, line 8—

Omit the proposed paragraph, substitute the following new paragraph:
(a) the cause of action relates to a personal injury that is a compensable injury under the *Workers Compensation Act 1951*; and

37.
Schedule 1
Proposed new amendment 1.11A
Page 54, line 18—

After amendment 1.11, insert the following new amendment:
[1.11A] Section 9
relocate as section 5N

38.
Schedule 1
Proposed new amendment 1.12A
Page 54, line 20—

After amendment 1.12, insert the following new amendment:
[1.12A] Sections 9A and 9B
relocate as sections 5O and 5P

39.
Schedule 1
Amendment 1.13
Page 54, line 21—

Omit amendment 1.13, substitute the following new amendments:
[1.13] Section 14
relocate after section 5 (as inserted by this Act), as section 5AA

[1.13A] Section 15
relocate as section 26RD

[1.13B] Part 3, heading
renumber as chapter 8

40.
Schedule 1
Proposed new amendments 1.26A and 1.26B
Page 59, line 5—

After amendment 1.26, insert the following new amendments:
[1.26A] **Part 4**
renumber as chapter 9
[1.26B] **Section 21A**
omit
Part
substitute
chapter

41.
Schedule 1
Amendment 1.28
Page 59, line 8—

Omit the amendment, substitute the following new amendments:
[1.28] **Section 21B**
omit
in respect of
substitute
in relation to

[1.28A] **Section 21B**
omit
Part
substitute
chapter

[1.28B] **Sections 22, 23 and 23A**
omit
in respect of
substitute
in relation to

42.
Schedule 1
Proposed new amendments 1.29A, 1.29B and 1.29C
Page 59, line 16—

After amendment 1.29, insert the following new amendments:
[1.29A] **Part 5**
renumber as chapter 10

[1.29B] **Section 23C, heading**
omit
pt 5
substitute
ch 10

[1.29C] **Section 23C**
omit
Part
substitute
chapter

43.
Schedule 1
Proposed new amendment 1.30A
Page 60, line 20—

After amendment 1.30, insert the following new amendment:
[1.30A] **Part 6**
renumber as chapter 11

44.
Schedule 1
Proposed new amendments 1.33A and 1.33B
Page 61, line 2—

After amendment 1.33, insert the following new amendment:
[1.33A] **Part 6B**
renumber as chapter 12

[1.33B] **Section 26G**
omit
Part
substitute
chapter

45.
Schedule 1
Proposed new amendments 1.34A and 1.34B
Page 61, line 6—

After amendment 1.34, insert the following new amendments:

[1.34A] **Sections 26H, 26J, 26L, 26P, 26Q and 26R**
omit
Part
substitute
chapter

[1.34B] Part 7
renumber as chapter 14

46.
Schedule 2
Amendment 2.4
Proposed new section 7C, heading
Page 63, line 19—

Omit the heading, substitute the following heading:
7C When is a worker taken to be totally incapacitated?

47.
Schedule 2
Amendment 2.24
Proposed new section 21AB
Page 69, lines 21 and 24—

Omit "part", substitute "chapter".

48.
Proposed new schedule 3
Page 71, line 15—

After schedule 2, insert the following new schedule:
Schedule 3 Amendments of Workers' Compensation Regulations
(see s 3)
[3.1] New part heading
insert
Part 1 Preliminary
[3.2] Regulation 1
substitute
1 Name of regulations
These regulations are the *Workers Compensation Regulations 2002*.

[3.3] Regulations 2 to 16
substitute
2 Dictionary
The dictionary at the end of these regulations is part of these regulations.
Note 1 The dictionary at the end of these regulations defines certain words and expressions used in these regulations, and includes references (***signpost definitions***) to other words and expressions defined elsewhere in these regulations or in the Act.
For example, the signpost definition '***self-insurer***—see the Act, dictionary.' means that the expression 'self-insurer' is defined in dictionary to the Act.
Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulations unless the definition, or another provision of the regulations, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

3 Notes

(1) A note included in these regulations is explanatory and is not part of these regulations.

Note See *Legislation Act 2001*, section 127 (1), (4) and (5) for the legal status of notes.

(2) In this regulation:

104 *note* includes material enclosed in brackets in regulation headings.

Note For comparison, a number of these regulations contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of Acts and other regulations. Abbreviations in the notes include the following:

- ACT WCA: *Workers' Compensation Act 1951*, as in force immediately before the commencement of the *Workers Compensation Amendment Act 2001*, s 2
- ACT WC Regs: *Workers' Compensation Regulations*, as in force immediately before the commencement of the *Workers Compensation Amendment Act 2001*, s 2
- NSW WIMWCA: *Workplace Injury Management and Workers Compensation Act 1998* (NSW)
- NSW WCA: *Workers Compensation Act 1987* (NSW).

(3) Subregulation (2), this subregulation, and the material enclosed in brackets in regulation headings, expire 2 years after this regulation commences.

Part 2 Arbitration

4 What does pt 2 apply to?

This part applies to a matter that, under the Act, is to be decided by arbitration.

5 Commercial Arbitration Act does not apply to arbitrations (ACT WCA sch 4, cl 3)

The *Commercial Arbitration Act 1986* does not apply to an arbitration under the Act.

6 Representative committee already in existence

(ACT WCA sch 4, cl 1)

(1) This regulation applies to a matter to be decided by arbitration if there is a committee (the ***committee***) that represents the employer and workers that has the power to decide a matter arising under the Act between the employer and workers.

(2) The matter must be decided by arbitration by the committee unless a party to the matter objects to that arbitration by written notice given to the other party before the committee meets to consider the matter.

(3) However, the committee may refer a matter it is required to arbitrate for arbitration by the Magistrates Court under this part if the committee considers it appropriate to do so.

7 When must Magistrates Court arbitrate a matter?

(ACT WCA sch 4, cl 2)

The Magistrates Court must decide a matter arising for arbitration under the Act if—

(a) there is no committee that represents the employer and workers that has the power to decide a matter arising under the Act between the employer and workers; or

(b) there is a committee but—

(i) a party to the matter objects to the matter being arbitrated by the committee; or

(ii) the committee refers the matter to the court for arbitration; or

(iii) the committee does not decide the matter within 1 month after the claim on the matter is made.

8 Committee may refer questions of law

(ACT WCA sch 4, cl 3)

The committee may refer a question of law for the decision of the Magistrates Court.

9 Powers of Magistrates Court on arbitration

(ACT WCA sch 4, cl 4)

For a proceeding on an arbitration under this Act, the Magistrates Court has the same power to require the attendance of witnesses and the production of documents as it would have if the proceeding were an action in the court.

10 Medical referees (ACT WCA sch 4, cl 5, cl 14)

(1) The Magistrates Court may require a medical referee to sit with the court to help it assess the matter in dispute.

(2) The Magistrates Court or committee may ask a medical referee to report on any matter arising from the arbitration.

11 Procedure on arbitration (ACT WCA sch 4, cl 6A)

(1) This regulation applies to an arbitration under the Act unless the Act or rules expressly state otherwise.

(2) The Magistrates Court may decide its own procedure.

(3) The Magistrates Court or committee is not required to act in a formal way and is not bound by rules of evidence.

(4) The Magistrates Court or committee may inform itself about anything in the way it considers appropriate.

(5) The Magistrates Court or committee must act according to equity, good conscience and the substantial merits of the case being arbitrated, without regard to technicalities and legal forms.

12 Costs (ACT WCA sch 4, cl 7)

(1) The Magistrates Court or committee must not award the costs of, or incidental to, an arbitration or a related proceeding against someone claiming compensation honestly in the arbitration or proceedings.

(2) The costs of, and incidental to, an arbitration or a related proceeding—

(a) must not exceed the limit prescribed under the rules; and

(b) must be taxed as prescribed under the rules.

(3) The Magistrates Court may review the taxation mentioned in subregulation (2) (b).

Note Disbursements are payable in full (see reg 47 (3)).

13 Claim against arbitration award (ACT WCA sched 4, cl 13)

(1) This regulation applies if a worker is paid an amount of compensation on arbitration.

(2) A lawyer or other agent of the worker may claim costs in relation to the arbitration, or claim a lien in relation to the costs, from the compensation only if, on application by the worker, lawyer or agent, the Magistrates Court or committee awards the lawyer or agent stated costs.

(3) The amount of costs to be awarded to the lawyer or other agent must be—

(a) worked out in accordance with the scale of costs prescribed under the rules (if any); and

(b) taxed.

Part 3 Courts and claims

14 Meaning of *party* for pt 3

In this part:

105 *party*, in relation to a claim, means a party to the proceeding on the claim.

15 Action on receiving claim

(1) The Magistrates Court must, for each claim it receives, hold a case management meeting with the parties to the proceeding on the claim.

(2) The purpose of the case management meeting is—

(a) to assess the likelihood of the parties settling the claim before the proceeding is heard; and

(b) to direct the hearing of the claim because of the assessment.

16 Settling of claim likely

If, at a case management meeting for a claim, the Magistrates Court considers it likely that the parties may settle the claim, the court—

(a) must promote the settlement of the claim (either at the meeting or by referral to other dispute resolution mechanisms); and

(b) may adjourn the proceeding to a stated date or for a stated period to allow the parties to negotiate a settlement of the claim.

17 Resolution of dispute unlikely

(1) If, at a case management meeting for an application, the Magistrates Court considers it unlikely that the parties may settle the claim, the court must give directions about how the proceeding will be conducted.

(2) When deciding what direction to give for the proceeding, the Magistrates Court must endeavour to facilitate—

(a) hearing the claim as promptly as practicable; and

(b) keeping costs for the parties as low as practicable.

18 Court approved termination (ACT WCA s 26E and 26F)

(1) An insurer may apply to the Magistrates Court for leave to end payments of weekly compensation to a worker.

Note An employer must apply to the Magistrates Court if the employer wants to end payments of compensation 1 year or later after the claim is made (see the Act, s 12E).

(2) An insurer must give the worker notice of the insurer's intention to apply to the Magistrates Court for leave to terminate weekly compensation to the worker.

(3) The insurer must give a copy of the notice under subregulation (2) to the nominal insurer as soon as practicable.

Maximum penalty: 5 penalty units.

(4) If the Magistrates Court is satisfied that the worker is not entitled to receive weekly compensation, the court must give leave to the insurer to terminate the payment of the compensation to the worker after a stated day that is at least 8 weeks after the insurer gave the worker notice under subregulation (2).

Part 4 Compulsory insurance policies

Division 4.1 Contents of compulsory insurance policies

19 Meaning of *relevant worker* in div 4.1

In this division:

106 *relevant worker*, in relation to a compulsory insurance policy, means a worker who is covered by the policy.

20 Insurer liable under policy

The compulsory insurance policy must provide that the insurer is liable to pay compensation for each relevant worker who suffers a compensable injury and, if the worker dies as a result of a compensable injury, to any dependent or other person, if the worker, dependent or other person is entitled to compensation under the Act.

21 Insurer bound under policy by judgments etc

The compulsory insurance policy must provide that the insurer is bound by, and subject to, a judgment, order, decision or award given or made against the employer in relation to the compensable injury, or death from the compensable injury, of a relevant worker.

22 Insurer to indemnify employer

(1) The compulsory insurance policy must provide that the insurer will indemnify the employer against any amount in relation to which the employer is liable under the Act.

(2) However, the compulsory insurance policy must provide that the insurer will not indemnify the employer for any amount for which the Act expressly states that the employer is not to be indemnified.

Note The employer is liable to pay any amount incurred between the time by which the employer must tell the insurer that an injury has happened and the time the employer tells the insurer that the injury has happened and may not be indemnified by the insurer for the amount (see the Act, s 10Q).

23 Insurer to notify renewal

The compulsory insurance policy must provide that the insurer must notify the employer at least 30 days before the insurance policy is to end.

24 Services to be provided

The compulsory insurance policy must include a description of the services to be provided under the policy and when they will be provided.

25 Cancellation

The compulsory insurance policy must include a provision to the effect that the policy may only be cancelled in accordance with a protocol approved by the Minister.

26 Insurance policy may contain other provisions

The compulsory insurance policy may contain any other provision, that is not inconsistent with the Act, that the parties agree to.

Division 4.2 Conditions on compulsory insurance policies

27 Compliance with pt 4 is policy condition

(NSW WIMWCA s 56 (6))

It is a condition of a compulsory insurance policy that the employer must comply with the requirements of this part, but only if the insurer has taken appropriate steps to ensure that the employer is made aware of the obligations.

Part 5 Approved insurers

Division 5.1 Approval by Minister

28 Application for approval

(1) An application for approval as an insurer must contain the following:

(a) a written statement by the insurer that the insurer has reasonable grounds for believing that the insurer will be able to meet present and future claims under the Act for which it is, or will be, liable;

(b) for an applicant other than a self-insurer—evidence that the insurer is a corporation listed on the Australian Stock Exchange;

(c) if the insurer has, or is applying for, a corresponding approval in another jurisdiction—evidence of the approval or application;

(d) evidence that the insurer has unlimited reinsurance for a single event to cover the insurer's future liability under the Act;

(e) a copy of the annual report and balance sheet or, if either is not available, of equivalent information for the insurer for each of the previous 3 years;

(f) a written agreement by the insurer to allow the Minister to discuss the affairs and performance of the insurer with other Australian jurisdictions for the purpose of the Act;

(g) a written agreement by the insurer to allow, and pay the costs of, an audit by the Minister to establish that the insurer has adequate resources to meet the insurer's expected liabilities under the Act.

(2) The Minister may, in writing, require further information from the insurer that provides evidence that the insurer is financially and prudentially sound.

(3) In this regulation:

107 ***corresponding approval*** means an approval or licence under a law of a State that has the same effect or substantially the same effect as an approval under this part.

29 When must Minister not approve insurer?

(1) The Minister must not approve an insurer unless satisfied that the insurer will be able to meet the insurer's likely liability under the Act.

(2) Also, the Minister must not approve an insurer unless satisfied that the insurer will comply with the conditions of the approval.

30 How long does approval last?

The Minister may approve an insurer under this division for up to 3 years.

31 What must approval state?

The approval must state the name of the approved insurer and how long the insurer is approved for.

Division 5.2 Conditions on approvals

32 Providing information about ability to pay compensation

It is a condition of an insurer's approval that the insurer provides information that is reasonably required in writing by the Minister to allow the Minister to assess the continuing ability of the insurer to pay compensation under the Act.

33 Information about workers compensation

It is a condition of an insurer's approval that the insurer provides information that is reasonably required in writing by the Minister about the claims that have been made against the insurer under the Act.

34 Information on working out of premiums

(1) It is a condition of an insurer's approval of that—

(a) on written request by the Minister, the approved insurer must give the Minister any relevant information asked for by the Minister about how the insurer works out premiums for compulsory insurance; and

(b) the insurer must provide information under paragraph (a) within the period stated in the request that is not less than 21 days after the Minister requested the information.

(2) The information the Minister may ask for is information that the Minister is satisfied, on reasonable grounds, will help the Minister to decide whether the premiums are being worked out in accordance with the principles for working out premiums under regulation 35.

35 Principles for working out premiums

(1) In working out premiums, an insurer must do the following:

(a) provide for sufficient (but not excessive) income from premiums to fully fund liability arising from policies of insurance to which the premiums relate;

(b) be structured so as to minimise, as far as is reasonably practicable, the cross subsidisation of premium rating groups.

(2) For this regulation, premiums are sufficient to fully fund the liability to which the premiums relate if the premiums are sufficient to do all of the following:

(a) fully fund claims liabilities arising from the insurance policies to which the premiums relate;

(b) pay all acquisition, policy administration and claims settlement expenses of the insurer;

(c) provide a profit margin after the payment of claims, costs and expenses that represents an adequate return on capital invested and compensation for the risk taken;

(d) provide for anything else that a prudent insurer should, in the circumstances, provide for;

(e) provide for contributions or other charges payable by the insurer under the Act.

(3) An insurer is taken to have complied with subregulation (1) (a) if the insurer provides for sufficient (but not excessive) income from premiums in accordance with actuarial advice about the liability arising from policies of insurance to which the premiums relate.

36 Prompt payment

(1) It is a condition of an insurer's approval that the insurer pays the amount for a service for which the insurer is required to pay under the Act to a service provider who has provided a service in relation to a compensable injury within 30 days after the service has been provided.

(2) However, the insurer does not breach the condition mentioned in subregulation (1) if the insurer does not pay for the service if—

(a) the insurer believes on reasonable grounds that the service has not been provided, or has not been properly provided, and the insurer has told the service provider why the insurer has not paid for the service; or

(b) the insurer has another reasonable ground for not paying for the service.

37 Information to be provided quickly

It is a condition of an insurer's approval that any information required to be provided to the Minister, is provided as quickly as is reasonably practicable.

Division 5.3 Action on approvals

38 Notice of proposed action on approval

If the Minister proposes to take action (the ***proposed action***) under regulation 39 in relation to an insurer's approval, the Minister must give the insurer a notice that—

(a) states the proposed action and the ground for the proposed action; and

Note The possible grounds for the proposed action are set out in regulation 39 (1).

(b) invites the insurer to make written representations, within a stated period of at least 14 days after the insurer is given the notice, why the proposed action should not be taken.

39 Action in relation to approval

(NSW WIMWCA s 55 (2)-(8))

(1) This regulation applies in relation to an insurer's approval if the insurer—

(a) contravenes the Act, section 10ZH (Compliance by insurers); or

(b) contravenes any other provision of the Act; or

(c) acts unreasonably in stopping a worker's weekly compensation.

(2) The Minister may take 1 or more of the following actions in relation to an insurer's approval:

(a) revoke the insurer's approval;

(b) suspend the insurer's approval;

(c) impose a monetary penalty of up to $1 000 on the insurer;

(d) amend the terms of the insurer's approval (for example by the inclusion of a condition providing for increased supervision of the insurer by the Minister).

(3) However, if, after considering any written representations made by the insurer within the stated period under regulation 38, the Minister is satisfied on reasonable grounds that a ground mentioned in subregulation (1) exists to take action under this regulation, the Minister may take the following action:

(a) if the proposed action included revoking the insurer's approval—either revoke the approval or suspend the approval;

(b) if the proposed action included suspending the approval for a stated period or stated additional period—suspend the approval for not longer than the period;

(c) if the proposed action included imposing a penalty of a stated amount—impose a penalty of not more than that amount;

(d) if the proposed action included amending the terms of the insurer's approval in a stated way—amend the terms of the insurer's approval as stated;

(e) if the proposed action included issuing a letter of censure to the insurer—issuing a letter of censure to the insurer.

(4) The Minister must tell the insurer in writing of the decision.

Note The Minister must tell the person in a way that complies with the code of practice for notification of reviewable decisions and review rights (see the Act, s 26RA).

40 What if Minister decides to revoke or suspend approval?

(1) If the Minister decides to revoke or suspend an insurer's approval, the Minister must tell the insurer in writing when the revocation or suspension takes effect.

(2) A revocation or suspension must not take effect earlier than 7 days after the insurer is told about the decision.

(3) Subject to the Act, section 16B (Effect of revocation or suspension of approval), if the Minister suspends an insurer's approval, the insurer is, during the suspension—

(a) taken not to be an approved insurer; and

(b) disqualified from applying for approval as an insurer.

(4) The Minister may, at any time, end or reduce a period of suspension of an insurer's approval.

41 When does revocation make previous insurance policies not compulsory insurance policies? (ACT WCA s 17B (2))

(1) If an insurer's approval is revoked, a policy issued before the revocation (a ***pre-revocation policy***) is taken not to be a compulsory insurance policy only if a reason for the revocation is the winding up of the insurer.

(2) A pre-revocation policy stops being a compulsory insurance policy 7 days after the revocation takes affect.

42 Under reporting wages

(1) This regulation applies if—

(a) to obtain insurance from an approved insurer, an employer has told the insurer that the employer is paying a stated amount of wages; and

(b) the amount of wages the employer is paying is at least 10% more than the stated amount the employer told the insurer.

(2) The insurer is entitled to an amount equal to double the difference between the premium that the employer paid and the premium that the employer would have paid if the employer had told the insurer the true amount of wages the employer was paying.

(3) An amount under subregulation (2) is a debt owing to the insurer by the employer.

Part 6 Self-insurers

43 What an application for exemption must contain

(1) An application for exemption from the Act, section 16C (1) (which requires employers to maintain a compulsory insurance policy with an approved insurer) must contain the following:

(a) a written statement by the applicant that the applicant has reasonable grounds for believing that the applicant will be able to meet present and future claims under the Act for which it is, or will be, liable;

(b) if the applicant has, or is applying for, a corresponding approval in another jurisdiction—evidence of the approval or application;

(c) evidence that the applicant has reinsurance of at least $5 000 000 cpi indexed for a single event to cover the applicant's future liability under the Act;

(d) a copy of the annual report and balance sheet or, if either is not available, of equivalent information for the applicant for each of the previous 3 years;

(e) an actuarial report;

Note See subregulation (3) for what must be included in an actuarial report.

(f) a guarantee from an authorised deposit-taking institution in favour of the nominal insurer for the guaranteed amount in relation to the applicant;

Note The guaranteed amount is defined in subregulation (4).

(g) a written agreement by the applicant to allow the Minister to discuss the affairs and performance of the applicant with other Australian jurisdictions for the purposes of the Act;

(h) a written agreement by the applicant to allow, and pay the costs of, an audit conducted on behalf of the Minister to establish that the applicant has adequate resources to meet the applicant's expected liabilities under the Act;

(i) a copy of the applicant's OH&S policy and evidence that it has been brought to the attention of the applicant's workers;

(j) a written agreement by the applicant to—

(i) allow an inspector to inspect the workplaces in the ACT in relation to which the applicant is applying to be a self-insurer; and

(ii) make any reasonable changes asked for in writing by the inspector;

(k) the name, address in the ACT and phone number of a person nominated by the applicant to be a contact officer to provide information about claims under the Act to the Minister;

(l) evidence that the applicant has in place an occupational health and safety management system that complies with Australian Standard 4801.

Note Australian Standard 4801 is *Occupational Health and Safety Management Systems—specification with guidance for use*.

(2) The Minister may, in writing, require further information from the insurer that provides evidence that the insurer is financially and prudentially sound.

(3) For subregulation (1) (e), the actuarial report must contain the following:

(a) an estimate of the applicant's current outstanding liability in relation to compensable injuries (the ***current liability***);

(b) an estimate of the total of the applicant's expected liability for each year in relation to which the applicant is applying to be a self-insurer (the ***expected liability***);

(c) an estimate of the total of the expected payments in satisfaction of the applicant's liability for compensable injuries that will be made for each year in relation to which the applicant is applying to be a self-insurer (the *expected payout*).

(4) For subregulation (1) (f), the ***guaranteed amount*** is the greater of the following amounts:

(a) $2 500 000;

(b) an amount equal to the sum of the current liability and the factored expected liability, less the expected payout.

(5) In this regulation:

108 ***corresponding approval*** means an approval under a law of a State or another Territory that has the same effect or substantially the same effect as an approval under this part.

109 ***factored expected liability*** means an amount equal to 1.5 times the expected liability.

110 ***OH&S policy***, of an applicant, means a policy developed and maintained by the applicant under the *Occupational Health and Safety Act 1989*, section 27 (2) (e).

44 Minister may exempt

(1) On application under regulation 43, the Minister may, in writing, exempt the employer from the requirement to comply with the Act, section 16C (1) (which requires employers to maintain a compulsory insurance policy with an approved insurer).

(2) The Minister may exempt an employer only if satisfied that the employer will be able to meet the employer's future liability under the Act.

(3) Also, the Minister may approve an employer only if satisfied that the insurer will comply with the conditions on the exemption.

45 Providing information about workers compensation, vocational rehabilitation and occupational health and safety

It is a condition of an employer's exemption that the employer provides information to the Minister that is reasonably required in writing by the Minister about workers compensation, vocational rehabilitation and occupational health and safety to help the Minister decide if the employer continues to be suitable to be a self-insurer.

Part 7 Rehabilitation providers

46 Minister may approve

(1) The Minister may, in writing, approve someone as a rehabilitation provider.

(2) The Minister may approve the person on the Minister's own initiative or on application by the person.

(3) The Minister must, before approving someone, consider the following:

(a) the qualifications of the person;

(b) if the person has employees who will be providing rehabilitation—the qualifications of the employees;

(c) the effectiveness, availability and cost of the rehabilitation programs provided by the person.

(4) The Minister may consider any other relevant matter.

Part 8 Miscellaneous

47 Scale of costs

(1) Unless the court orders otherwise, the successful party to an application in relation to a claim is entitled to be indemnified for party and party costs (and reasonable disbursements) by the unsuccessful party.

(2) Costs under this regulation (other than disbursements) are payable at 2/3 of the prescribed scale of costs set out in the *Supreme Court Rules*, schedule 4 unless the Magistrates Court orders otherwise.

(3) Disbursements are payable in full.

48 Diseases related to employment (ACT WC Regs r 13)

For the Act, section 5O (Employment-related diseases), a disease of a kind mentioned in schedule 1, column 2 of an item is related to employment of a kind mentioned in column 3 of the item.

49 Prescribed offences and fines (ACT WC Regs r 16)

(1) For the Act, chapter 12 (On-the-spot fines), a prescribed offence is an offence against a provision of the Act mentioned in schedule 2, column 2.

(2) For the definition of ***on-the-spot fine*** in the Act, section 26G (Interpretation), the prescribed fine in relation to an offence prescribed by subregulation (1) is the fine mentioned in column 3 of the item in schedule 2 that relates to the offence.

50 Reviewable decisions

For the definition of ***reviewable decision*** in the Act, section 26RA (1) (Notice of decisions to be given to affected people), the decisions of the Minister mentioned in schedule 3 are reviewable decisions.

[3.4] Schedules 1 to 3

substitute

Schedule 1 Diseases related to employment
(see reg 48)

column 1	column 2 disease	column 3 employment
1	Ankylostomiasis	Employment in or about a mine
2	Anthrax	Employment in connection with— (a) animals infected with anthrax; or (b) animal carcasses or parts of such carcasses; or (c) wool, hair, bristles, hides or skins; or (d) loading, unloading or transport of animals, animal carcasses or parts of such carcasses, wool hair, bristles, hides or skins
3	Asbestosis	Employment involving exposure to, or contact with, asbestos
4	Chrome ulceration of skin or mucous membrane; any of the sequelae of such an ulceration	Employment involving exposure to or contact with— (a) chromic acid; or (b) bichromate of— (i) ammonium; or (ii) potassium; or (iii) sodium, or a preparation containing any of those substances
5	Mesothelioma	Employment involving exposure to, or contact with, asbestos
6	Pathological condition caused by— (a) radium or another radioactive substance; or (b) x-rays	Employment involvin g exposure to or contact with radium, other radioactive substances or x-rays
7	Pneumoconiosis	Employment involving inhalation of matter capable of causing pneumoconiosis
8	Poisoning by antimony or a compound of antimony; any of the sequelae of such a poisoning	Employment involving exposure to or contact with antimony, a compound of antimony or a preparation containing antimony or such a compound

9	Poisoning by arsenic or a compound of arsenic; any of the sequelae of such a poisoning	Employment involving exposure to or contact with arsenic, a compound of arsenic or a preparation containing arsenic or such a compound
10	Poisoning by benzene, a homologue of benzene or a nitro-derivative or amido-derivative of benzene; any of the sequelae of such a poisoning	Employment involving exposure to or contact with benzene, a homologue of benzene or a nitro-derivative or amido-derivative of benzene
11	Poisoning by beryllium or a compound of beryllium; any of the sequelae of such a poisoning	Employment involving exposure to or contact with beryllium, a compound of beryllium or a preparation containing beryllium or such a compound
12	Poisoning by cadmium or a compound of cadmium; any of the sequelae of such a poisoning	Employment involving exposure to or contact with cadmium, a compound of cadmium or a preparation containing cadmium or such a compound
13	Poisoning by carbon bisulphide	Employment involving exposure to or contact with carbon bisulphide
14	Poisoning by carbon monoxide	Employment involving exposure to carbon monoxide
15	Poisoning by copper or a compound of copper; any of the sequelae of such a poisoning	Employment involving exposure to or contact with copper, a compound of copper or a preparation containing copper or such a compound
16	Poisoning by a halogen derivative of a hydrocarbon of the aliphatic series	Employment involving exposure to or contact with a halogen derivative or a hydrocarbon of the aliphatic series
17	Poisoning by hydrogen cyanide or a compound of hydrogen cyanide	Employment involving exposure to or contact with hydrogen cyanide, a compound of hydrogen cyanide or a preparation containing hydrogen cyanide or such a compound
18	Poisoning by hydrogen sulphide	Employment involving exposure to hydrogen sulphide
19	Poisoning by lead or a compound of lead; any of the sequelae of such a poisoning	Employment involving exposure to or contact with lead, a compound of lead or a preparation containing lead or such a compound
20	Poisoning by manganese or a compound of manganese; any of the sequelae of such a poisoning	Employment involving exposure to or contact with manganese, a compound of manganese or a preparation containing manganese or such a compound
21	Poisoning by mercury or a a compound of mercury; any of the sequelae of such a poisoning	Employment involving exposure to or contact with mercury, a compound of mercury or a preparation containing mercury or such a compound

22	Poisoning by an oxide of nitrogen; any of the sequelae of such a poisoning	Employment involving contact with nitric acid or the inhalation of nitric acid
23	Poisoning by phosphorus or a compound of phosphorus; any of the sequelae of such a poisoning	Employment involving exposure to or contact with phosphorus, a compound of phosphorus or a preparation containing phosphorus or such a compound
24	Poisoning by vanadium or a compound of vanadium; any of the sequelae of such a poisoning	Employment involving exposure to or contact with vanadium, a compound of vanadium or a preparation containing vanadium or such a compound
25	Poisoning by zinc or a compound of zinc; any of the sequelae of such a poisoning	Employment involving exposure to or contact with zinc, a compound of zinc or a preparationcontaining zinc or such a compound
26	Primary epitheliomatous cancer of the skin	Employment involving exposure to or contact with tar, pitch, bitumen, mineral oil, paraffin or a compound, product, or residue of any of those substances
27	Q Fever	Employment involving exposure to or contact with Coxiella burnetii
28	Tenosynovitis	Employment which requires repetitive movements of a hand and forearm

Schedule 2 **On-the-spot fines**
(see reg 49)

column 1 **item**	**column 2** **offence**	**column 3** **fine**
1	section 10N	$100
2	section 10NA (30	$100
3	section 10V	$100
4	section 10ZA	$100
5	section 10ZB	$100
6	section 10ZE	$100
7	section 15D (1)	$100
8	section 15E	$100
9	section 21 (2)	$100

Schedule 3 **Reviewable decisions**
(see reg 50)

Division 1 **The Act**

column 1 **item**	**column 2** **section**	**column 3** **decision**
1	5E (3)	refuse to exempt employer from s 5E (2)
2	16A (1)	refuse to approve an insurer

Division 2 **These regulations**

column 1 item	column 2 regulation	column 3 decision
1	29	refuse to approve insurer
2	30	approve insurer for a period of less than 3 years
3	39	revoke or suspend the approval of insurer, impose pecuniary penalty on insurer or amend terms of insurer's approval
4	44	refuse to exempt an employer

Dictionary
(see reg 3)
111 ***approved insurer***—see the Act, dictionary.

112 ***committee***, for part 2 (Arbitration)—see regulation 6 (Representative committee already in existence).

113 ***compensable injury*** means—

114 an injury in relation to which compensation is payable under the Act; and

115 in relation to an insurer or employer—a compensable injury for which the insurer or employer is liable.
116 ***medical referee***—see the Act, dictionary.

117 ***party***, for part 3 (Courts and claims)—see regulation 14.

118 ***relevant worker***, for division 4.1 (Contents of compulsory insurance policies)—see regulation 19.

119 ***rules*** means the rules made under the Act.

120 ***self-insurer***—see the Act, dictionary.

121 ***weekly compensation***—see the Act, dictionary.

Schedule 3 (yellow sheet)

Workers Compensation Amendment Bill 2001

Amendments circulated by Mr Berry

1
Clause 2
Page 2, line 4—
Omit the clause, substitute the following clause:

2 Commencement

(1) This Act (other than new section 8OA, as inserted by section 7A, and schedule 2) commences on 1 July 2002.

Note The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

(2) The following provisions commence on the day this Act is notified in the Gazette:

(a) new section 8OA (Back, neck and pelvis impairments—Legislative Assembly endorsement for inclusion in sch 1), as inserted by section 7A;

(b) schedule 2 (Minor amendments).

2
Clause 4
Proposed new section 4DA
Page 13, line 37—
After proposed section 4D, insert the following proposed new section:

4DA The 80% rule

(1) This section applies to the engagement of an individual by a person (***the principal***) if—

(a) the individual has been engaged by the principal under a contract for services to work for the principal; and

(b) 80% or more of the individual's income while working under the contract is earned under the contract; and

(c) the individual personally does part or all of the work.

(2) For this Act, the individual is taken to be a ***worker*** employed by the principal.

Note *Person* includes corporation (see *Legislation Act 2001*, dict, pt 1).

3
Clause 4
Proposed section 5
Page 14, line 1—
Omit the proposed section, substitute the following section:

5 Labour hire arrangements

(1) This section applies if—

(a) an individual has been engaged by a person (the ***labour hirer***) under a contract for services to work for someone other than the labour hirer; and

(b) there is no contract to perform the work between the individual and the person (the ***principal***) for whom the work is to be performed; and

(c) the individual personally does part or all of the work; and

(d) if the labour hirer is a corporation—the individual is not an executive officer of the corporation.

(2) The individual is taken to be a ***worker*** employed by the principal.

(3) However, the regulations may exempt the individual and principal from this section.

(4) If the regulations exempt an individual and principal from this section, the individual is taken to be a ***worker*** employed by the labour hirer.

4
Clause 4
Proposed subsection 5B (2)
Page 15, line 13—
Omit the proposed subsection, substitute the following subsection:

(2) To remove any doubt, the fact that the treatment or manufacture of articles or materials, or the performance of services, takes place on premises not under the control or management of the principal does not affect the determination of—

(a) whether the outworker is a ***worker*** for this Act; or

(b) if the outworker is a ***worker*** for this Act—who is, or who is taken to be, the outworker's employer for this Act.

4
Clause 24
Proposed section 27A
Page 44, line 1—
Omit the proposed section, substitute the following section:

27A Role of OH&S Council

(1) To remove any doubt, it is a function of the OH&S Council to advise the Minister on matters relating to workers compensation.

Note This function is given to the OH&S Council under the *Occupational Health and Safety Act 1989*, s 10 (1) (a) (ii).

(2) In this section:

122 *OH&S Council*—see the *Occupational Health and Safety Act 1989*, section 5 (1), definition of *council*.

Schedule 4 (gold sheet)

Workers Compensation Amendment Bill 2001

Amendments circulated by Mr Berry

1
Amendment 17
Proposed new clause 7A
Proposed new subsection 8C (4)—
Omit the subsection, substitute the following new subsection:

(4) A worker stops being entitled to compensation under this section at the earliest of the following times:
(a) when the worker stops being totally incapacitated;
(b) when the worker returns to work;
(c) for a worker who, at the time of the injury being compensated, was more than 2 years younger than pension age—when the worker reaches pension age;
(d) for a worker who, at the time of the injury being compensated, was 2 years younger than pension age, or older—2 years after the worker first became entitled to compensation under this section;
(e) when the worker dies.

2
Amendment 17
Proposed new clause 7A
Proposed new section 8F—
Omit the section, substitute the following new section:

8F Stopping of payments for partial incapacity
A worker stops being entitled to payments under section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (Partially incapacitated workers after 26 weeks after incapacity date) at the earliest of the following times:
(a) when the worker stops being partially incapacitated;
(b) for a worker who, at the time of the injury being compensated, was more than 2 years younger than pension age—when the worker reaches pension age;
(c) for a worker who, at the time of the injury being compensated, was 2 years younger than pension age, or older—2 years after the worker first became entitled to compensation under section 8C (Totally incapacitated workers), 8D or 8E, whichever is earliest;
(d) when the worker dies.

3
Amendment 17
Proposed new clause 7A
Proposed new section 8OA—
Omit the section, substitute the following new section:

8OA Actuarial review and back, neck and pelvis impairments

(1) This section applies to the following items in schedule 1 (the ***disallowable items***):

(a) item 46—permanent impairment of back;

(b) item 47—permanent impairment of neck;

(c) item 48—permanent impairment of pelvis.

(2) As soon as practicable after the *Workers Compensation Amendment Act 2001* is notified, the Minister must commission a report from an actuary who has expertise in workers compensation insurance about the actuarial effect of the amendments made by that Act to this Act and, in particular, the actuarial effect of the inclusion of the disallowable items in schedule 1.

Note This section also commences on the day the *Workers Compensation Amendment Act 2001* is notified. Schedule 1 commences later, on 1 July 2002. See that Act, s 2.

(4) A copy of the report must be presented to the Legislative Assembly on or before the first sitting day after 1 February 2002.

(5) Notice of motion to disallow any of the disallowable items (a ***notified item***) may be given to the Legislative Assembly within 6 sitting days after the report is presented to the Assembly.

(6) If the Legislative Assembly passes a resolution to disallow a notified item, schedule 1 is taken to be amended by omitting the item.

(7) For this section, the Legislative Assembly is taken to have passed a resolution to disallow a notified item if, at the end of 6 sitting days after notice is given—

(a) the notice has not been withdrawn and the motion has not been called on; or

(b) the motion has been called on and moved, but has not been withdrawn or otherwise disposed of.

(8) If the Legislative Assembly passes a resolution to disallow a notified item, the Minister must prepare a written notice stating that, because of a resolution passed by the Legislative Assembly, schedule 1 is taken to be amended by omitting the item.

(9) The notice is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

(10) The Minister must ensure that the notice is notified within 7 days after the Legislative Assembly passes the resolution.

(11) This section expires on 1 July 2002.

4
Amendment 18
Proposed new clause 11A
Proposed new subsection 10X (1)—
Omit the subsection, substitute the following subsection:

(1) The worker may nominate a doctor, or medical practice, as the worker's treating doctor for the worker's personal injury plan.

5
Amendment 18
Proposed new clause 11A
Proposed new section 10ZI—
Omit the section, substitute the following section:

10ZI Compliance by workers (NSW WIMWCA s 57)
(1) A worker is not entitled to weekly compensation for a period when the worker unreasonably—
(a) fails to comply with a requirement under this chapter (including under the worker's personal injury plan) after being asked in writing by the insurer to comply with the requirement; or
(b) fails to take part in or make a reasonable effort to take part in vocational rehabilitation or a return-to-work program; or
(c) fails to attend an assessment of the worker's employment prospects; or
(d) fails to undertake suitable alternative duties (if any) provided by the employer; or
(e) fails to take up an offer of suitable work for which the worker is qualified and that the worker can perform.

(2) The insurer may give the worker written notice that the insurer will stop payment of weekly compensation.

(3) A worker's entitlement to weekly compensation stops under subsection (1)—
(a) if the notice under subsection (2) is given less than 1 year after the day the claim is given to the insurer—8 weeks after the notice is given to the worker; or
(b) if the notice under subsection (2) is given 1 year or later after the claim is given to the insurer—when the Magistrates Court orders the entitlement to stop under this section.

(4) The resumption of weekly compensation does not entitle the worker to weekly compensation for the period when the worker had no entitlement to weekly compensation.

6
Amendment 19
Proposed new clause 11A
Proposed new paragraph 11D (b)—
Omit the paragraph, substitute the following paragraph:

(b) the claim for compensation was made—
(i) within 3 years after the injury happened; or
(ii) if the worker was not aware of the injury when it happened—within 3 years after the worker became aware of the injury; or
(iii) if the worker dies—within 3 years after the claimant became aware of the death.

7
Amendment 19
Proposed new clause 11A
Proposed new section 11E—
Omit the section.

Schedule 5 (purple sheet)

Workers Compensation Amendment Bill 2001

Amendments circulated by Ms Tucker

1
Amendment 18
Proposed new clause 11A
Proposed new section 10W
Proposed subsection (2)—
Before "obligations" insert "reasonable".

2
Amendment 18
Proposed new clause 11A
Proposed new section 10ZI—
Omit the section, substitute the following section:

10ZI Compliance by workers (NSW WIMWCA s 57)

(1) A worker is not entitled to weekly compensation for a period when the worker unreasonably—

(a) contravenes a requirement under this chapter (including under the worker's personal injury plan) after being asked in writing by the insurer to comply with the requirement; or

(b) fails to take part in or make a reasonable effort to take part in vocational rehabilitation or a return-to-work program; or

(c) fails to attend an assessment of the worker's employment prospects; or

(d) fails to undertake suitable alternative duties (if any) provided by the employer; or

(e) fails to take up an offer of suitable work for which the worker is qualified and that the worker can perform.

(2) A worker's entitlement to weekly compensation does not stop under this section until 2 weeks after the day, or latest day, the insurer gives written notice to the worker and to the Minister that the compensation will stop.

(3) The notice must be accompanied by a statement of the reasons for the entitlement stopping and the action that the insurer considers the worker must take to be entitled to the continuation, or resumption, of weekly compensation.

(4) The resumption of weekly compensation does not entitle the worker to weekly compensation for the period when the worker had no entitlement to weekly compensation.

3
Amendment 19
Proposed new clause 12
Proposed new section 11H
Proposed paragraph (2) (b)—
Before "mistake" insert "ignorance,".

4
Amendment 25
Proposed new clause 26A
Proposed new section 39—
Omit the section, substitute the following section:

39 Expiry of ch 15
This chapter expires 2 years after it commences.
Note Transitional provisions are usually of transitional effect. They are kept with the original provisions for a limited time to ensure people are aware of them. However, the expiry of transitional provisions does not end their effect (see *Legislation Act 2001*, s 88).

Schedule 6 (pink sheet)

Workers Compensation Amendment Bill 2001

Amendments circulated by Ms Tucker

1
Clause 24
Proposed section 27A
Page 44, line 1—
Omit the proposed section, substitute the following section:

27A Minister must take advice

(1) The Minister must ask for, and take into consideration, the advice of the OH&S Council in relation to the development of regulations for this Act.

(2) To prevent doubt—

(a) it is a function of the OH&S Council to advise the Minister on matters relating to workers compensation; and

Note This function is given to the OH&S Council under the *Occupational Health and Safety Act 1989*, s 10 (1) (a) (ii).

(b) the OH&S Council may set up an advisory committee, made up of people with suitable expertise, to help it in the exercise of this function.

Note The power to set up an advisory committee if necessary to assist in the exercise of a function is given to the OH&S Council under the *Occupational Health and Safety Act 1989*, s 25 (1).

Examples of suitable expertise
Legal or medical expertise.

(3) In this section:

123 *OH&S Council*—see the *Occupational Health and Safety Act 1989*, section 5 (1), definition of *council*.

Schedule 7 (green sheet)

Workers Compensation Amendment Bill 2001

Amendments circulated by Minister for Urban Services

17
New clause 7A
Page 21, line 25—
After clause 7, insert the following new clause:

7A New parts 4.3 to 4.8
insert

Part 4.3 Weekly compensation
8A What if the worker is dead?
(1) A worker is not entitled to weekly compensation if the worker is dead.

(2) However, this section does not affect an entitlement to weekly compensation that accrued before the worker's death.

8B When do weekly compensation payments begin?
If the worker is entitled to compensation for a compensable injury—
(a) the payment of weekly compensation must begin when the worker gives notice of the injury to the employer; and
(b) the worker is entitled to weekly compensation from the date of the injury.

8C Totally incapacitated workers
(1) This section applies if a worker is totally incapacitated because of a compensable injury.
(2) For 26 weeks after the incapacity date, the worker is entitled to receive weekly compensation equal to the worker's average pre-incapacity weekly earnings.
Note ***Incapacity date*** is defined in the dict.

(3) After the 26 weeks, the worker is entitled to receive weekly compensation equal to—
(a) if 100% of the worker's average pre-incapacity weekly earnings is less than the pre-incapacity floor for the worker—100% of the worker's average pre-incapacity weekly earnings; or
(b) if 100% of the worker's average pre-incapacity weekly earnings is more, but 65% of those earnings is less, than the pre-incapacity floor for the worker—the statutory floor; or
Note ***Statutory floor*** is defined in the dict.
(c) if 65% of the worker's average pre-incapacity weekly earnings is more than the pre-incapacity floor for the worker—whichever of following is (at the time of payment) more:
(i) 65% of the worker's average pre-incapacity weekly earnings;
(ii) the statutory floor.

(4) A worker stops being entitled to compensation under this section if the worker—
(a) stops being totally incapacitated; or
(b) returns to work; or
(c) reaches pension age; or
(d) dies.

(5) In this section:

124 ***pre-incapacity floor***, for a worker, means the statutory floor that applied immediately before the worker's incapacity date.

8D Partially incapacitated workers up to 26 weeks after incapacity date

(1) This section applies if the worker is partially incapacitated because of a compensable injury.

(2) For 26 weeks after the incapacity date, the worker is entitled to receive weekly compensation equal to the difference between—
(a) the worker's average pre-incapacity weekly earnings; and
(b) the average weekly amount that the worker is being paid for working or could earn in reasonably available suitable employment.

(3) In working out the average weekly amount the worker could earn, consideration may be given to the following:
(a) suitable employment that the worker unreasonably rejects;
(b) suitable employment that the worker obtains but unreasonably discontinues.

8E Partially incapacitated workers after 26 weeks after incapacity date

(1) This section applies if—
(a) the worker is partially incapacitated because of a compensable injury; and
(b) 26 weeks have passed since the incapacity date.

(2) The worker is entitled to receive weekly compensation equal to the difference between the weekly amount the worker is being paid for working and—
(a) if 100% of the worker's average pre-incapacity weekly earnings is less than the statutory floor—100% of the worker's average pre-incapacity weekly earnings; or
(b) if the relevant percentage of the worker's average pre-incapacity weekly earnings is less than the statutory floor—the statutory floor; or
(c) if the relevant percentage of the worker's average pre-incapacity weekly earnings is more than the statutory ceiling—the statutory ceiling; or
(d) in any other case—the relevant percentage of the worker's average pre-incapacity weekly earnings.

(3) For subsection (2), the ***relevant percentage*** is—
(a) if the worker is not working or works 25% of the worker's average pre-incapacity weekly hours or less—65%; or
(b) if the worker is working more than 25% of the worker's average pre-incapacity weekly hours but not more than 50%—75%; or
(c) if the worker is working more than 50% of the worker's average pre-incapacity weekly hours but not more than 75%—85%; or

(d) if the worker is working more than 75% of the worker's average pre-incapacity weekly hours but not more than 85%—95%; or

(e) if the worker is working more than 85% of the worker's average pre-incapacity weekly hours—100%.

(4) In this section:

statutory ceiling, in relation to an amount, means 150% of AWE at the time the amount is to be paid.

8F Stopping of payments for partial incapacity

A worker stops being entitled to payments under section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (Partially incapacitated workers after 26 weeks after incapacity date) if the worker—

(a) stops being partially incapacitated; or

(b) for a worker who, at the time of the injury being compensated, was 1 year younger than pension age or older—has received payments under sections 8D and 8E, or sections 8C (Totally incapacitated workers), 8D and 8E, for 2 years in total; or

(c) reaches pension age; or

(d) dies.

8G Effect on payment period of loss of entitlement to weekly compensation

(1) This section applies if a worker would be entitled to weekly compensation under section 8C (Totally incapacitated workers), section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (Partially incapacitated workers after 26 weeks after incapacity date) but the payment of the compensation has been stopped under section 10F (No compensation while imprisoned) or section 10ZI (Compliance by workers).

(2) The period when the worker's entitlement to payment has stopped is counted as part of the period for payment under sections 8C, 8D and 8E.

8H Living outside Australia (ACT WCA sch 1 cl 14)

(1) A worker who is otherwise entitled to receive weekly compensation is not entitled to the compensation if the worker stops living in Australia.

(2) Subsection (1) does not apply to the worker if a medical referee certifies that—

(a) the incapacity resulting from the injury is likely to be permanent; or

(b) the worker's absence from Australia is likely to help the worker recuperate.

8I Effect of living outside Australia if compensation still payable (ACT WCA sch 1 cl 14)

(1) This section applies if the worker lives outside Australia but is, apart from this section, still entitled to weekly compensation.

Note A worker living outside Australia is still entitled to compensation if s 8H (2) applies to the worker.

(2) The worker is not entitled to weekly compensation, but is entitled to receive quarterly the amount of the weekly compensation payable during the previous quarter.

(3) However, the worker is entitled to receive quarterly payment of compensation only if the worker proves the worker's identity and that the worker continues to be incapacitated by the incapacity in relation to which the weekly compensation is payable.

(4) In this section:
quarter means a period of 3 months beginning on 1 July, 1 October, 1 December or 1 April.

8J Effect of payment of weekly compensation on other benefits etc
This part is not intended to affect an entitlement that, apart from this Act, the worker has to a benefit or payment except so far as a law in force in the Territory otherwise applies.

Examples of benefits not affected
1 accrual of long service leave
2 accrual of annual leave

8K No assignment etc of weekly compensation
(ACT WCA sch 4, cl 13)
Weekly compensation (including compensation payable under section 8I (Effect of living outside Australia if compensation still payable)) may not—
(a) be assigned, charged or attached; and
(b) pass to anyone else by operation of law; and
(c) have a claim set off against it.

Part 4.4 Compensation for permanent injuries
8L Meaning of *loss* (NSW WCA s 65)
In this chapter:
loss, in relation to a thing—
125 means—
126 the loss of the thing; or
127 the permanent loss of the use, or efficient use, of the thing; and
128 includes the following:
129 permanent musculoskeletal impairment, or another permanent impairment;
130 a loss, damage, impairment, disfigurement or disease mentioned in schedule 1 (Compensation for permanent injuries).

8M Meaning of *single loss amount*
In this part:
single loss amount means $100 000 cpi indexed.

8N Meaning of *maximum loss amount*
In this part:
maximum loss amount means $150 000 cpi indexed.

8O Compensation for permanent injuries generally

(ACT WCA s 10D and s 10F, NSW WCA s 66)

(1) A worker who has suffered a loss mentioned in an item of schedule 1 as the result of a compensable injury is entitled to receive from the worker's employer, as compensation for the loss, the percentage of the single loss amount mentioned in that item.

(2) For this section, the loss is to be worked out when the last of the following happens:

9. the worker's employer became liable to pay compensation;

10. it is unlikely that there will be an improvement or further improvement in the use, or efficient use, of the injured part of the body.

(3) If a payment of compensation under this part has been made in relation to an injury, nothing prevents a further payment of compensation under this part from being made in relation to the same injury if there is an increase in the loss of the efficient use of the injured part of the body.

Example of loss of efficient use of injured part of body

A loss, or further loss, of sight in an injured eye.

8OA Actuarial review and back, neck and pelvis impairments

(1) This section applies to the following items in schedule 1 (the ***disallowable items***):

(a) item 46—permanent impairment of back;

(b) item 47—permanent impairment of neck;

(c) item 48—permanent impairment of pelvis.

(2) As soon as practicable after 1 July 2003, the Minister must commission a report from an actuary who has expertise in workers compensation insurance about the actuarial effect of the amendments made by the *Workers Compensation Amendment Act 2001* to this Act over the period 1 July 2002 to 30 June 2003 and, in particular, the actuarial effect of the inclusion of the disallowable items in schedule 1 over that period.

(4) A copy of the report must be presented to the Legislative Assembly on the first sitting day after 1 February 2004.

(5) Notice of motion to disallow any of the disallowable items (a ***notified item***) may be given to the Legislative Assembly within 6 sitting days after the report is presented to the Assembly.

(6) If the Legislative Assembly passes a resolution to disallow a notified item, schedule 1 is taken to be amended by omitting the item.

(7) For this section, the Legislative Assembly is taken to have passed a resolution to disallow a notified item if, at the end of 6 sitting days after notice is given—

(a) the notice has not been withdrawn and the motion has not been called on; or

(b) the motion has been called on and moved, but has not been withdrawn or otherwise disposed of.

(8) If the Legislative Assembly passes a resolution to disallow a notified item, the Minister must prepare a written notice stating that, because of a resolution passed by the Legislative Assembly, schedule 1 is taken to be amended by omitting the item.

(9) The notice is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

(10) The Minister must ensure that the notice is notified within 7 days after the Legislative Assembly passes the resolution.

(11) This section expires on 1 July 2004.

8P Compensation for 2 or more losses

A worker who has suffered 2 or more losses mentioned in schedule 1 (Compensation for permanent injuries) because of an injury is not entitled to receive as compensation under this part more than the maximum loss amount for the losses.

8Q Compensation and left-handedness

If a worker's left arm or hand is the worker's dominant limb, in working out the loss for the worker—

(a) the loss of the worker's left arm, left hand or fingers of left hand is to be compensated as if it is the loss of the worker's right arm, right hand or fingers of right hand; and

(b) the loss of the worker's right arm, right hand or fingers of right hand is to be compensated as if it is the loss of the worker's left arm, left hand or fingers of left hand.

8R Compensation for combination of items

If a loss (other than the impairment of the back, neck or pelvis) may be compensated by a combination of items in schedule 1 (Compensation for permanent injuries) or by a proportionate loss of a single item, the loss is to be compensated by a proportionate loss of the single item.

Examples

1 Loss of 2 or more fingers is to be compensated as a proportionate loss of the hand.

2 Loss of a hand includes the loss of the thumb and other fingers of the hand and is to be compensated as a loss, or proportionate loss, of the hand.

3 Loss of an arm at or above the elbow includes the loss of the arm below the elbow and loss of the hand and is to be compensated as a loss, or a proportionate loss, of the arm at or above the elbow.

4 Loss of a leg at or above the knee includes the loss of the leg below the knee and loss of the foot and is to be compensated as a loss, or a proportionate loss, of the leg at or above the knee.

5 Loss of a leg below the knee includes the loss of the foot and is to be compensated as a loss, or a proportionate loss, of the leg below the knee.

8S Compensation for only arm, leg, hand or foot

Loss of an only arm, leg, hand or foot is treated under schedule 1 as the loss of both arms, legs, hands or feet.

8T Compensation for loss of sexual organs

The following percentages of the single loss amount are payable for the loss of sexual organs (subject to the maximum percentage of 47% and without limiting compensation for the loss of another sexual organ):

(a) the percentage payable for loss of the penis is 47%;

(b) the percentage payable for loss of 1 testicle is 10%;

(c) the percentage payable for loss of 2 testicles or an only testicle is 47%.

8U Loss of bowel function

To work out whether and to what extent a worker has suffered permanent loss of bowel function—

(a) the bowel is taken to include the anal sphincter; and

(b) permanent ileostomy and permanent colostomy are each taken to constitute permanent loss of bowel function for which the maximum percentage is payable.

8V Proportionate loss of use (NSW WCA s 68)

(1) If a loss suffered by a worker consists of the loss of a proportion, but not all, of a thing mentioned in schedule 1 (Compensation for permanent injuries), a percentage of the compensation payable for the total loss of the thing equal to the percentage lost by the worker is payable as compensation under section 8O (Compensation for permanent injuries generally).

(2) In working out the extent of the loss of the thing, the extent to which the loss, or the effect of the loss, may be reduced or limited by an external removable aid or appliance is not to be taken into account.

(3) The amount of compensation payable for a particular case must, unless decided by agreement, be worked out by arbitration under this Act.

8W Special provisions for HIV/AIDS (NSW WCA s 67A)

(1) Compensation is not payable under section 8O (Compensation for permanent injuries generally) for a loss that is related to HIV infection or AIDS if the HIV or AIDS was contracted during voluntary sexual activity or illicit drug use.

(2) Section 8V does not apply to a loss that is HIV infection or AIDS.

(3) In this section:

AIDS means Acquired Immune Deficiency Syndrome.

HIV infection means an infection by the Human Immunodeficiency Virus.

8X Deduction for previous injury or pre-existing condition

(NSW WC s 68A (1), (2), (6) and (8))

(1) In working out the compensation payable under this part for a loss (the ***initial loss***), an amount must be deducted from the compensation (the ***deductible proportion***) for any proportion of the loss attributable to—

(a) a previous injury (whether or not it is an injury for which compensation has been paid, or is payable, under this part); or

(b) a pre-existing condition or abnormality.

(2) In subsection (1), it does not matter whether the initial loss is a total or partial loss.

(3) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to work out, it is to be assumed that the deductible proportion for the loss (or the relevant part of the loss) is 10% of the loss, unless this assumption is contrary to the available evidence.

Example
If this subsection requires it to be assumed that the deductible proportion in relation to a particular loss is 10% and the loss is 30% of the loss of the use of the right arm, the deductible proportion for the loss is 3% (that is, 10% of 30%).

(4) However, section 8Z must be used to work out how much (if any) of a worker's hearing loss is caused by age.

8Y Further loss and deductible proportions
(NSW WC s 68A (3) and (4))
(1) This section applies in working out the compensation payable for a further loss (the ***further loss***) resulting from an initial loss.

(2) An amount proportionate to the deductible proportion of the initial loss must be deducted from the compensation payable for the further loss.

(3) A deduction under subsection (2) in relation to a further loss is in addition to, not in substitution for, any deductible proportion for the further loss.

8Z Loss of hearing because of age (NSW WC s 70)
(1) This section applies in working out the percentage of the decrease of hearing in relation to boilermakers deafness of a worker who is the prescribed age or older, but does not apply to total hearing loss in either of the worker's ears.

(2) For this part, it is to be conclusively presumed that the worker's loss of hearing to be attributed to loss of hearing because of age is 0.5 decibels for each complete year of the worker's age over the prescribed age.

(3) For this section, the ***prescribed age*** is—
11. for a male—55 years old; or
12. for a female—65 years old.

9 No compensation for less than 6% hearing loss
(NSW WCA s 69A (1), (3), (4), (5), (6))
(1) A worker is not entitled to compensation under section 8O (Compensation for permanent injuries generally) for a loss of hearing because of boilermakers deafness (the ***hearing loss***) if the worker's total hearing loss is less than 6%.

(2) However, the worker is entitled to compensation for the hearing loss if the total hearing loss reaches 6% or more.

Example
Assume all hearing losses mentioned in this example are because of boilermakers deafness.

A worker suffers a hearing loss of 3% (the first hearing loss that the worker has suffered). No compensation is payable under section 8O for the loss because it is less than 6%, although notice of injury may be given or a claim may be made for the hearing loss.
The worker suffers a further hearing loss of 6%, bringing the total loss to 9%. The total loss has now passed the 6% threshold and compensation is payable for the full 9%. Compensation for the initial 3% hearing loss will be payable by the earlier employer if the worker made a claim or gave notice of injury for the initial hearing loss.
The worker suffers a further hearing loss of 6%. The worker is entitled in the usual way to compensation for the 6% further loss because the 6% threshold has already been passed (the total loss is now 15%).
Note Pt 5.3 (Obligations on injury) and ch 6 (Claims) apply to a hearing loss even if it is not immediately compensable because of this section.

(3) In working out the percentage hearing loss because of boilermakers deafness, the loss of hearing is to be worked out as a proportionate loss of hearing of both ears, even if the loss is in 1 ear only.

(4) A lawyer or agent who acts for a worker on a claim for compensation for loss of hearing because of boilermakers deafness is not entitled to recover costs from the worker or the employer in relation to the claim if no compensation is payable on the claim because the worker's total hearing loss is less than 6%.

(5) In this section:
total hearing loss means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

9A Presumption to be drawn from refusal to submit to hearing examination (NSW WCA s 69A (7))
(1) This section applies to a worker with a claim for which no compensation is payable because of section 9.

(2) If the worker fails to allow himself or herself to be examined as required under the worker's personal injury plan, or obstructs the examination, it is presumed in the absence of evidence to the contrary that the worker has no hearing loss because of boilermakers deafness.

9B Employer's responsibility to pay for hearing loss tests
(NSW WCA s 69B)
(1) If an employer would, apart from section 9 (No compensation for less than 6% hearing loss), be liable to pay compensation under section 8O (Compensation for permanent injuries generally) for a worker's hearing, the employer is liable under this chapter to pay the cost of only the following hearing tests for the loss:
(a) a test carried out at least 3 years after any previous test that the employer has paid for;
(b) a test that finds that the worker has suffered a total hearing loss because of boilermakers deafness of 6% or more;
(c) a test carried out after the worker has left the worker's employment with the employer if the hearing loss is attributable to the employment;

(d) a test carried out by a doctor, or audiologist, using an audiogram to work out the level of hearing loss.

(2) The cost of a hearing test for the worker is the cost of obtaining a medical certificate, and any examination required for the certificate, about the extent of the worker's hearing loss.

(3) This section does not require payment by an employer for the cost of obtaining a hearing test that the employer would not otherwise be liable to pay for under this chapter.

(4) In this section:
total hearing loss means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

9C Reimbursement for costs of medical certificate and examination (NSW WCA s 73)
(1) Obtaining a medical certificate, and any examination required for the certificate, is taken to be medical or related treatment for this chapter if the worker gives the employer a copy of the certificate.

(2) In this section:
medical certificate means a report or certificate of a doctor that certifies—
(a) that a worker has suffered a loss mentioned in schedule 1 (Compensation for permanent injuries); or
(b) the extent of the loss to allow the amount of compensation payable for the loss to be worked out.

9D Limited entitlement if death happens within 3 months
(ACT WCA s 10F)
(1) This section applies if—
(a) a worker has received a compensable injury; and
(b) the worker dies within 3 months after receiving the compensable injury because of the compensable injury or another injury received at the same time.

(2) The worker is not entitled to receive compensation for the compensable injury under the following items of schedule 1 (Compensation for permanent injuries):
(a) item 2 (loss of sense of taste or smell);
(b) item 3 (loss of senses of taste and smell);
(c) item 41 (loss of sexual organs);
(d) item 42 (loss of both breasts);
(e) item 43 (loss of 1 breast);
(f) item 44 (permanent and total loss of capacity to engage in sexual intercourse);
(g) item 49 (severe facial disfigurement);
(h) item 50 (severe bodily disfigurement).

Part 4.5 Compensation for medical treatment, damage and other costs

9E Application of pt 4.5 (ACT WCA s 11 (1))

This part applies if—

(a) compensation under this Act is payable by an employer to, or in relation to, a worker in relation to an injury; or

(b) the operation of section 9 (No compensation for less than 6% hearing loss) means no compensation is payable by an employer to, or in relation to, a worker in relation to an injury; or

(c) compensation would be payable by an employer to, or in relation to, a worker in relation to an injury except that—

(i) the worker is not incapacitated for work; or

(ii) the worker is imprisoned (see section 10F); or

(iii) weekly compensation has been suspended under section 10ZI (Compliance by workers); or

(iv) the worker has contravened this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

9F Employer liability for medical treatment and damage

(ACT WCA s 11 (2), (3), (3A))

(1) The employer is liable to pay—

(a) for the cost of medical treatment reasonably obtained in relation to the injury—an amount of compensation appropriate for the provision of the medical treatment, having regard to the charges customarily made for similar medical treatment in the place where the treatment is obtained; and

(b) in relation to any damage to, or loss of, the worker's clothing sustained in association with the injury—compensation of a reasonable amount for the repair or replacement of the damaged or lost clothing.

(2) However, the total amount payable under subsection (1) for each of the following must not be more than the maximum amount:

(a) for the cost of medical treatment consisting of the repair or replacement of a worker's contact lenses, crutches, prosthesis, spectacles or other artificial aid;

(b) for damage to or loss of a worker's clothing.

(3) In subsection (2):

maximum amount, in relation to a treatment, damage or loss, means—

(a) if an amount has been agreed between the worker and employer—that amount; or

(b) in any other case—$500 cpi indexed.

(4) In this section, the cost of medical treatment is taken to include—

(a) the amount of wages lost by the worker because of the worker's attendance at a place (the ***treatment place***) to undergo the treatment; and

(b) the cost of taking the worker (whether the worker or someone else does the taking) to and from the treatment place worked out under section 9J (Transport costs other than private car) or section 9K (Working out transport costs for private cars); and

(c) the cost of any accommodation (including the cost of meals) required by the worker because of the worker's attendance at the treatment place worked out under section 9L (Costs of accommodation and meals).

9G Claim for compensation for pt 4.5 (ACT WCA s 11 (4), (5))

(1) A worker may make a claim for compensation under this part for the cost of medical treatment or in relation to damage to, or loss of, the worker's clothing only if the worker has given the employer written notice stating—

(a) the amount of compensation sought; and

(b) reasonable details of the expenses for which compensation is sought.

(2) However, a failure to give notice, or a defect or inaccuracy in the notice, does not affect a claim for compensation under this part if it is found in the proceeding on the claim that—

(a) if a notice or amended notice were then given and the hearing postponed, the employer's defence is not, or would not be, prejudiced by the failure, defect or inaccuracy; or

(b) the failure, defect or inaccuracy was caused by mistake or other reasonable cause.

9H Second opinions (ACT WCA s 11 (6))

(1) This section applies if the worker receives medical treatment and claims the cost of it from the employer under this part.

(2) The employer may, in consultation with the doctor or other person providing the treatment, and before making a payment under this part, require the worker to be examined by a doctor, or other person, chosen by the employer.

9I Payments for treatment received from hospital (ACT WCA s 11 (7))

(1) This section applies if the employer is liable under this part to pay an amount in relation to medical treatment received by the worker from a hospital.

(2) The employer must pay the amount, less any amount previously paid by the worker in relation to the treatment, on demand—

(a) for a private hospital—to the proprietor of the hospital; or

(b) for any other hospital—to the person authorised in writing by the governing entity in charge of the hospital to receive payments payable to the hospital.

9J Transport costs other than private car

(ACT WC Regs r 14)

(1) This section sets out how the costs of taking an injured worker to and from a place (other than by private motor vehicle) to undergo medical treatment must be worked out.

(2) If the worker cannot be taken in a motor vehicle (other than an ambulance) because of the worker's injury, the transport cost is the actual cost of the transport by ambulance.

(3) The transport cost is the actual cost of the public transport if the worker is taken by public transport because, although the worker can be taken in a private motor vehicle—

(a) the worker is prohibited by law from taking himself or herself in a private motor vehicle and no-one else is available to take the worker in a private motor vehicle; or

(b) no private motor vehicle is available.

(4) The transport cost is the reasonable cost of transport if a private motor vehicle or public transport is not reasonably available, or reasonably appropriate, to transport the worker in the circumstances.

(5) In this section:
public bus—see the *Road Transport (Public Passenger Services) Act 2001*, dictionary.
public transport means a public bus, a taxi or a restricted taxi.
restricted *taxi*—see the *Road Transport (General) Act 1999*, section 100.
taxi—see the *Road Transport (General) Act 1999*, section 100.

9K Working out transport costs for private cars

(1) The costs of taking an injured worker by private motor vehicle (the ***car***) to and from a place to undergo medical treatment must be worked out in accordance with this section.

(2) The transport cost is the cost worked out by multiplying the number of kilometres travelled to and from the place by the per kilometre cost for the car.

(3) The per kilometre cost for the car is the amount mentioned in the *Income Tax Assessment Regulations 1997* (Cwlth), schedule 1, part 2 in relation to the size of the car for the financial year in which the cost was incurred.

9L Costs of accommodation and meals (ACT WC Regs r 15)

(1) The cost of accommodation for the worker is the relevant amount set out in a public ruling by the Commonwealth Commissioner of Taxation in relation to reasonable allowance amounts for the year in which the costs were incurred.
Note For the financial year 2000-2001, the ruling in relation to reasonable allowance amounts is TR2000/13. It is available on the website of the Australian Taxation Office (www.ato.gov.au).

(2) The relevant amount, for accommodation, is the amount that would be allowed for an employee on the lowest salary for which allowances are given for the place where the employee was accommodated.

(3) The worker is not entitled to payment for a meal unless the meal is eaten while the worker—
(a) is travelling to or from medical treatment (the ***treatment***) for which compensation is payable under this part; or
(b) is at a place to receive the treatment; or
(c) is staying at accommodation for which compensation is payable under this part.

(4) In this section:
accommodation, for a worker, includes meals for the worker, other than a meal to which the worker is not entitled to payment because of subsection (3).
public ruling—see the *Taxation Administration Act 1953* (Cwlth), section 14ZAAA (Interpretation).

Part 4.6 Compensation for death

10 Death benefits

(1) This section applies to the death of a worker for which compensation is payable under this Act.

(2) The dependants of the worker are entitled to the following:

(a) a single lump sum payment of $150 000 cpi indexed to be divided between the dependants;

(b) for each dependant who is a child—weekly compensation of $50 cpi indexed;

(c) the funeral expenses of the worker to a maximum of $4 000 cpi indexed.

(3) In working out for this Act whether or not a child is, or was, dependent on the earnings of the worker, any family tax benefit within the meaning of the *A New Tax System (Family Assistance) Act 1999* (Cwlth), section 3 (definitions) in relation to the child must be disregarded.

(4) Compensation under subsection (2) (b) is payable only while the person receiving it is a child.

10A Payment into court of lump sum death benefits

(ACT WCA sch 1 cl 6)

(1) A payment mentioned in section 10 (2) (a) (the ***lump sum***) must be paid into the Magistrates Court, unless the court otherwise orders.

(2) The Magistrates Court must, until the lump sum is paid to the person entitled to it—

(a) invest, apply or otherwise deal with the lump sum payment in the way the court considers appropriate for the benefit of the person entitled to it under this Act; or

(b) deal with it under the *Public Trustee Act 1985*, section 25 (Payment of money etc to public trustee on behalf of a person under disability).

(3) The receipt of the registrar of the Magistrates Court is a sufficient discharge for the amount paid in.

Part 4.7 Registration of agreements for compensation

10B Registration of agreements for compensation

(NSW WCA s 66A (3), (4), (4A), (10))

(1) If the worker agrees to receive an amount of compensation under section 8O (Compensation for permanent injuries generally) for a loss or under section 12J (How worker may commute rights) for the commutation of a right, a party to the agreement may apply to the Magistrates Court for registration of the agreement.

(2) The Magistrates Court may refuse to register the agreement if the court considers that the agreement is inaccurate or that the agreed amount of compensation is inadequate.

(3) The Magistrates Court must refuse to register the agreement unless satisfied that the worker received independent legal advice about the agreement before entering into it.

(4) An agreement may deal with the payment of costs.

10C Effect of registration of agreements
(NSW WCA s 66A (1), (2), (7))

(1) A worker with a registered agreement in relation to a loss or the commutation of a right is not entitled to receive any additional compensation for the loss or commutation of the right under an award of the Magistrates Court.

(2) However, the Magistrates Court may award additional compensation if satisfied that—

(a) the agreement was obtained by fraud or undue influence; or

(b) the agreed amount of compensation was manifestly inadequate.

(3) This section does not limit an award of additional compensation for a further loss suffered after the loss to which the agreement relates.

10D Cancellation or amendment of registered agreements

(1) On application by a party to a registered agreement, the Magistrates Court may amend the registered agreement or cancel the registration of the agreement.

(2) The Magistrates Court may act under subsection (1) only if—

(a) a party becomes aware of evidence that was not available to the party when the agreement was made; and

(b) the court considers that, if the party had been aware of the evidence, the agreement would not have been made, or would not have been made as registered.

Part 4.8 Exceptions to entitlements to compensation

10E When is compensation under Act generally not payable? (ACT WCA s 7 (3) and (4))

(1) This section applies if, apart from this section, compensation in relation to an injury to a worker is payable under this Act.

(2) Compensation is not payable if the injury to, or death of, the worker is caused by an intentionally self-inflicted injury.

(3) Compensation is not payable if it is proved that the injury to the worker is attributable to the worker's serious and wilful misconduct, unless the injury results in death or serious and permanent disablement.

(4) In subsection (3), the personal injury received by the worker is attributable to the serious and wilful misconduct of the worker if—

(a) at the time of the injury, the worker was under the influence of alcohol or another drug, unless the alcohol or other drug did not contribute to the injury or was not consumed or taken voluntarily; or

(b) the injury was otherwise attributable to the serious and wilful misconduct of the worker.

(5) In this section:

drug—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

10F No compensation while imprisoned

A worker who is otherwise entitled to compensation under this Act is not entitled to compensation for a period when the worker is imprisoned because the worker has been convicted of an offence against a law of the Territory, a State, the Commonwealth or another Territory.

Schedule 8

Rehabilitation Of Offenders (Interim) Bill 2001

Amendments circulated by Mr Osborne

1
Clause 5
Subclause (2)
Page 3, line 11—
After "sentence", insert ", or relevant part of the sentence,"

2
Clause 6
Subclause (1)
Page 4, line 8—

After "sentence", insert ", or part of the sentence,".

3
Clause 7
Proposed new subclauses (6) and (7)
Page 5, line 28—

Add at the end, the following new subclauses:

(6) This section comes into operation 2 years after the commencement of section 6.

(7) Subsection (6) and this subsection expire immediately after this section comes into operation.

4
Clause 11
Paragraph (1) (a)
Page 9, line 24—

After "sentence", insert, or ", part of the sentence,".

5
Clause 11
Paragraph (1) (b)
Page 9, line 26

After "sentence", insert or ", part of the sentence".

6
Clause 11
Subclause (3)
Page 10, line 10—

After "sentence", insert ", or part of the sentence,".

7
Clause 12
Subclause (1)
Page 11, line 5—

Omit the subclause, substitute the following subclause:

(1) If a court sentences a person to a term of imprisonment as mentioned in section 6 (Imprisonment by way of home detention) or remands a person in custody as mentioned in section 7 (Remand by way of home detention), the court may, at the time of sentencing or a later time, ask the chief executive for an assessment report about the person.

8
Clause 16
Subclause (1)
Page 14, line 6

After "sentence", insert ", or a part of a sentence,".

9
Clause 19
Page 15, line 11—

After "sentence", insert ", or a part of a sentence,".

10
Clause 24
Paragraph (1) (b)
Page 17, line 18

After "sentence", insert ", or part of the sentence,".

11
Clause 24
Proposed new paragraph (1) (ba)
Page 17, line 19

After paragraph (b), insert the following new paragraph:

(ba) the court is satisfied that it is no longer appropriate that the relevant sentence, or part of the sentence, of imprisonment or remand be served by way of home detention because the continuation of the home detention order may cause harm (including mental harm to anyone; or

12
Clause 24
Subclause (2)
Page 17, line 25—

Omit the subclause, substitute the following subclauses:

(2) Subsection (1) (c) applies despite any continuing consent under section 11 (1) (c) of any person to the making of the order.

(3) This section does not limit the relevant court's powers in relation to the person.

Schedule 9

Rehabilitation Of Offenders (Interim) Bill 2001

Amendments circulated by Minister for Health, Housing and Community Services

1.
Clause 6
Proposed new subclause (7)
Page 5, line 2—
At the end of subclause (6), add the following new subclause:

(7) In this section:

sentenced, for a young offender, means dealt with under the *Children and Young People Act 1999*, section 96 (Disposition of young offenders).

2.
Clause 7
Subclause (5)
Page 5, line 25—
Omit the subclause.

3.
Clause 13
Paragraph (2) (a)
Page 11, line 20—
Omit the paragraph, substitute the following paragraphs:

(a) the potential for the order to help in the rehabilitation of the person;

(aa) any criminal record of the person, and the likelihood that the person will reoffend;

(ab) any cultural issues in relation to the person or to the household in which the person would live;

4.
Clause 13
Paragraph (2) (g)
Page 12, line 9—
After "harm", insert "the person or".

5.
Clause 21
Subclause (1)
Page 16, line 8—
Omit ", or will breach,".

6.
Clause 34
Page 24, line 4—
Omit the clause, substitute the following clause:

34 Victims register
(1) This section applies if—
(a) the secretary receives details of a person under section 33 (2) (e); or
(b) a victim asks the secretary to enter details of the victim in a register kept by the secretary (the ***victims register***).

(2) The secretary must—
enter the details in the victims register; and
advise the person, orally or in writing, about—
the role of the board; and
the rights of victims in relation to the granting of parole to sentenced offenders.

7.
Clause 37
Proposed new note
Page 25, line 23—
At the end of the clause, add the following new note:
Note ***Parole order*** is defined in the dict.

8.
Clause 40
Page 26, line 28—
Omit "and in circumstances prescribed under the regulations".

9.
Clause 40
Proposed new subclause (2)
Page 27, line 2—
At the end of the clause, add the following new subclause:
(2) The board may rescind a parole order under this section only if—
(a) since it made the order it has become aware of information about the sentenced offender; and
(b) it would not have made the order if it had been aware of the information when it decided to make the order.

10.
Clause 42
Proposed new subclause (2)
Page 28, line 1—
At the end of the clause, add the following new subclause:
(2) If the board decides not to make a parole order for a sentenced offender and is aware of concerns expressed by or on behalf of a victim about the need for protection from violence or harassment by the offender, the board must take all reasonable steps to tell the victim, as soon as practicable, of the board's decision.

11.
Clause 43
Subclause (3)
Page 28, line 13—
Omit "To remove any doubt", substitute "However".

12.
Clause 46
Subclause (1)
Page 29, line 13—
Omit the subclause, substitute the following subclauses:

(1) Before considering whether or not a sentenced offender should be released on parole, the board must contact each victim of the offender whose details are entered in the victims register.

(1A) The board may also contact any other victim of whom the board is aware if the board is satisfied the circumstances justify it doing so.

13.
Clause 46
Subclause (2) (a)
Page 29, line 18—
Omit "give each victim any information about", substitute "give each victim contacted under this section information about".

14.
Clause 47
Paragraph (b)
Page 30, line 15—
Omit the paragraph, substitute the following paragraph:

(b) give the offender notice that the board is of the opinion that the information currently before it does not justify the board releasing the person on parole (a ***notice of a parole hearing***).

15.
Clause 48
Page 30, line 21—
Omit the clause, substitute the following clause:

8 Notice of a parole hearing

A notice of a parole hearing must—

(a) be in writing; and

(b) require the offender to tell the secretary, within 7 days after the day the offender receives the notice, if the offender wishes to make submissions to the board about being released on parole; and

(c) be accompanied by a copy of every report and other document intended to be used by the board in deciding whether the sentenced offender should be released on parole.

Note Section 95 (Security of certain information) provides that copies of certain reports and documents need not be provided.

16.
Clause 49
Heading
Page 31, line 9—
Omit the heading, substitute the following heading:

49 Further consideration by board of release of offender on parole

17.
Clause 49
Subclause (1)
Page 31, line 11—
Omit the subclause, substitute the following subclause:

(1) If a sentenced offender who has been given a notice of a parole hearing tells the secretary that the offender wishes to make submissions to the board, the chairperson must, as soon as practicable, call a meeting of the board to conduct a hearing to decide whether the offender should be released on parole.

18.
Clause 52
Subclause (3)
Page 34, line 9—
Omit "is not required to consider an application for a parole order under this section, and".

19.
Clause 52
Subclause (4)
page 34, line 12—
Omit "does not", substitute ", other than section 46 (Board to seek views of victims) and section 51 (2) to (4) (General duty of board in making parole decisions), do not".

20.
Clause 58
Subclause (4)
Page 38, line 8—
Omit the subclause, substitute the following subclause:

(4) If the board takes action under subsection (1) or (3), the board must—
(a) record its reasons for taking the action in the minutes of the board; and
(b) give the offender a copy of its reasons.

21.
Proposed new clause 61A
Page 39, line 8—
After clause 61, insert the following new clause:

61A Parole order revoked if former parolee sentenced to imprisonment for offence committed while order in force

(1) This section applies if a person who has been subject to a parole order is—

(a) convicted of an offence (including an offence against the law of the Commonwealth, a State or another Territory) committed while the parole order was in force; and

(b) sentenced to a term of imprisonment for the offence that is not completely suspended.

(2) The parole order is automatically revoked with effect from the date the offence was committed.

22.
Clause 75
Paragraph (2) (b)
Page 46, line 11—
Omit the paragraph.

23.
Clause 83
Subclauses (2) and (3)
Page 50, line 11—
Omit the subclauses, substitute the following subclauses:

(2) A judicial member may call on the sentenced offender to appear before the board and, if the offender does not appear, may authorise the issue of a warrant for the offender's arrest.

(3) However, if a judicial member is of the opinion that the sentenced offender will not appear if called on to do so or for any other reason a warrant should be immediately issued for the offender, the judicial member may, without calling on the offender to appear before the board, authorise the issue of a warrant for the offender's arrest.

24.
Clause 102
Subclause (2)
Page 58, line 26—
Omit "notice of intention to refuse parole", substitute "notice of a parole hearing".

25.
Dictionary
Definition of *notice of intention to refuse parole*
Page 68, line 10—
Omit the definition, substitute the following definition:

132 *notice of a parole hearing*—see section 47 (Initial consideration of parole by board).

26.
Dictionary
Definition of *victims register*
Page 70, line 8—
Omit the definition, substitute the following definition:

133 *victims register*—see section 34 (Victims register).

Schedule 10

Rehabilitation Of Offenders (Interim) Bill 2001

Amendments circulated by Mr Hargreaves

1
Clause 21
Subclause (1)
Page 16, line 8

Omit " , or will breach,"