

## **LEGISLATIVE ASSEMBLY**

Thursday, 18th November, 1993

---

**Mr Speaker (The Hon. Kevin Richard Rozzoli)** took the chair at 9 a.m.

**Mr Speaker** offered the Prayer.

### **BILL RETURNED**

The following bill was returned from the Legislative Council with an amendment:

Anti-Discrimination (Homosexual Vilification) Amendment Bill

### **LETONA CO-OPERATIVE (ASSISTANCE) BILL**

#### **Withdrawal**

**Order of the day for second reading of this bill discharged.**

**Bill ordered to be withdrawn.**

### **WAGGA WAGGA RACECOURSE BILL (No. 2)**

**Bill introduced and read a first time.**

#### **Second Reading**

**Mr SCHIPP** (Wagga Wagga) [9.6]: I move:

That this bill be now read a second time.

Though I come from Gumly Gumly and I live at Wagga Wagga, I do not usually do things twice. However, the purpose of the moving of this bill again is that I inadvertently, through a misunderstanding, allowed the bill to drop off the notice paper on the last private members' day. This is a reinstatement of a bill in exactly the same form as that introduced on 28th October, and what I said on that occasion applies to this particular bill, as follows:

The legislation before the House was prepared in response to an approach from the Murrumbidgee Turf Club. For over 100 years the Wagga Wagga racecourse has been occupied and used by the Murrumbidgee Turf Club for horseracing. The racecourse is located on Crown land which is administered under the provisions of the Murrumbidgee Turf Club Act, a private Act of Parliament. In 1866 the racecourse was vested in trustees under a Crown grant to be used as a racecourse training ground, cricket ground and for any other public purpose which might be approved by the Governor from time to time.

With the enactment of the Murrumbidgee Turf Club Act in 1876, the trustees were authorised to grant a long-term lease of the racecourse to the Murrumbidgee Turf Club and to confer a measure of limited liability and protection on members of the club. The existing lease for the racecourse expires in the year 2003. The current trustees of the racecourse are also committee members of the turf club. The club has expressed concern at its unincorporated status and the potential for personal liability, which is considered an unreasonable burden to be carried by the chairman, committee and members of the club. In addition, the club has indicated that it has been hindered by restrictions the Act places on it with regard to the uses to which the racecourse land can be put. It has argued that these types of constraints are not imposed upon the overwhelming majority of other race clubs which conduct race meetings on Crown land.

The Murrumbidgee Turf Club has grown into one of the major country thoroughbred racing and training venues in the State. It conducts more than 20 meetings each year, including the very successful three day Gold Cup Carnival featuring the Wagga Wagga Gold Cup and the Wagga Wagga Town Plate. In addition, with assistance provided by the Racecourse Development Fund, the club has recently finished building a new grandstand at the racecourse at a cost of more than \$3 million. Also, the club is in the process of extensively upgrading its training facilities - and, I might add, it is a total reconstruction. The racecourse provides an ideal venue for the holding of other forms of sport and recreation; and the proposed legislation will remove the unnecessary constraints on the club in regard to the use of the land.

In essence, the Murrumbidgee Turf Club is a progressive race club governed by an antiquated Act. The legislation will empower the Murrumbidgee Turf Club to be incorporated as a company limited by guarantee under the Corporations Act. Upon incorporation all assets and liabilities of the former unincorporated Act will be transferred to the company which will supersede it. This will include the lease of the Wagga Wagga racecourse reserve and other assets held by or vested in the chairman of the club, on the club's behalf, by operation of the Murrumbidgee Turf Club Act 1876. The legislation will repeal that Act and declare, for the avoidance of any doubt, that the Wagga Wagga racecourse reserve is a reserve within the meaning of and subject to the provisions of part 5 of the Crown Lands Act 1989.

The legislation will resolve any ancillary matters arising out of the repeal of the 1876 Act, namely, the transfer of assets and liabilities to the club's incorporated successor and its occupation and use of the Wagga Wagga racecourse reserve. The legislation is supported by the Minister for Sport, Recreation and Racing and the Minister for Land and Water Conservation. Officers from those departments have been instrumental in the preparation of the bill. I believe the legislation will greatly assist the Murrumbidgee Turf Club in its administration of horseracing at Wagga Wagga and no doubt will be well received by both the club and the people of Wagga Wagga.

I should like to say that this is a red letter day for the Murrumbidgee Turf Club. I do not know how far back in my parliamentary career this legislation has been required by the club. I am proud to introduce legislation which will effect changes to provide flexibility within the management of the racecourse. Further, I thank the former Minister for Conservation and Land Management, the Hon. Garry West, who implemented the necessary measures towards drafting the legislation. This matter was under his former administration. This issue was a Mexican stand-off arrangement between administrations going back to the Wran era and further, and it then came under my responsibility as Minister for Sport, Recreation and Racing. The drafting process has been facilitated by the present Minister for Sport, Recreation and Racing.

I express appreciation to everyone involved in the drafting process. I am sure the local racing industry will welcome the legislation as it is an important industry throughout Australia. Horseracing is here to stay, despite comments by the doom and gloom merchants. The

Page 5657

upgrading of the Murrumbidgee Turf Club racecourse is almost three-quarters of the way towards completion. The reconstruction process is similar to that which takes place at an industrial site, and wet weather has not helped. The anticipated completion date has been set at one meeting prior to the Gold Cup meeting in May next year, so it is hoped that target will be achieved. It is important from a financial point of view that the racecourse is upgraded quickly. I am familiar with the dilemmas that face regional race clubs when

reconstruction is taking place; those courses cannot be utilised for the better part of 12 months. When the club embarked on the redevelopment, I advised it not to set its sights on a six-month transformation of the racecourse but to accept the more realistic time frame of nine, 10, 11 or perhaps 12 months, depending on weather conditions and the like.

It cannot be expected that work requiring expenditure of approximately \$2.3 million be carried out overnight, but it should be carried out properly. I look forward to the day when the racecourse is reopened. It will then match racing and training facilities already enjoyed in Bathurst, Coffs Harbour, Ballina and all those places featured in the program commenced by the Hon. R. B. Rowland Smith when he was Minister for Sport, Recreation and Racing.

I have great confidence in the future of racing in the region. Wagga Wagga racecourse has been fully upgraded, and its magnificent grandstands, which every visitor comments on, match heritage buildings around the course. The racecourse will provide a centre for racing beyond comparison anywhere in Australia. Racing's present high standing will reach even greater heights in future. Racing, a growth industry that attracts development, will provide both entertainment and employment in the area. I convey congratulations to a long line of chairmen and committee members who at various times have had the rather arduous task of managing the racing aspects of the Murrumbidgee Turf Club.

That club, nevertheless, has survived its ups and downs and at present is doing well. Committee members, who give up their time voluntarily, deserve to be congratulated, and so do the staff who, under the guidance of the policymakers in the committee, have maintained the standing and standards of racing in the Wagga Wagga area. Greg Nicholls, a good friend of mine, who has been the secretary manager of the Murrumbidgee Turf Club for the past six years, is shortly to leave to take up the high profile position of racing manager of the South Australian Turf Club. I wish him and his family well in his new position. I recommend the bill as a most progressive step and I seek support of all honourable members in attaining its passage.

This bill received high acclaim in the local media, particularly from those involved in the galloping industry. As I mentioned on the previous occasion, this is a long-awaited measure and, at the appropriate time, at 10 o'clock today, I will be seeking the co-operation of the House to try to expedite the legislation to allow it to pass through all stages so that it can move to the other place. It is a simple and non-controversial bill. For the sake of five minutes in this House, the measure could become law. That will allow the club to obtain its incorporation prior to the restart of the racing club in the early part of next year, round about March or April. Hopefully, by suspension of the relevant standing and sessional orders, that can be achieved today. I will be asking for the co-operation and support of the House in this regard.

**Debate adjourned on motion by Mr Amery.**

## **RETAIL TENANCIES (CODE OF PRACTICE) BILL**

**Bill introduced and read a first time.**

### **Second Reading**

**Mr PEACOCKE** (Dubbo) [9.9]: I move:

That this bill be now read a second time.

In one sense I introduce this legislation with some reluctance because properly it is a piece of legislation that should have been introduced by the Government. I want to go back over some of the history of this bill and the code which is embodied within it. In 1989 when I was then Minister for Business and Consumer Affairs, and had not at that stage been made a feather duster, I determined after many years of pleading by retail tenants in large shopping centres that the time had come for a code to be evolved which would give fair, reasonable and

equitable protection to the tenants but which would also observe the necessary property rights of property owners. In 1989 I gave a speech at the annual general meeting of the Building Owners and Managers Association - BOMA - where I indicated that I required the code to be prepared by the industry. That, of course, attracted a great deal of criticism from BOMA but I informed them at the time that if they were not prepared to work with the Retail Traders Association and the Shopping Centre Tenants Association to prepare a code which was acceptable to the industry as a whole, I would do it for them and they might not like what I did.

Without at this stage going into the detailed history of the process, the situation was that for some 2½ years those three organisations put tremendous effort into funding a code that was acceptable to all sectors of the industry, and ultimately did so, with the exception of about five matters on which they could not reach agreement. Those few unresolved matters were left for decision by me, as Minister. The code involved complicated documentation. It was agreed that the code would become mandatory under the Fair Trading Act. At the time I sought approval from Cabinet for the mandatory code and amendments to the Fair Trading Act to permit that code to be produced. I was given the approval of Cabinet, in fact by a massive majority, and subsequently approval of the joint Government parties. However, after the election in 1991 I was moved from my then ministry to the Ministry of Local Government and Co-operatives.

At that stage I had caused to be published a submission to the Regulation Review Committee to examine the code and I had caused to be published the appropriate notices of that particular Regulation Review Committee examination. As it turns out, the Regulation Review Committee did not review the code at all. The reason for that was that after I passed out of that ministry the code somehow, for some reason which I will not record here, became a voluntary code. After 2½ years of hard and solid slog - and I assure the House that the amount of work I had put in was monumental - the code became simply a voluntary code.

Page 5658

In fact in December 1991 at least two of those organisations, all parties to the code - BOMA and the Retail Traders and Shopping Centre Tenants Association - signed the voluntary code. All agreed that they would observe its terms. Unfortunately, as is the nature of things, although the tenants would have liked the terms observed to get some justice in their dealings with some centre owners, the majority of the shopping centre owners did not observe the code at all. Despite the fact that all parties had signed the code it became totally and grossly ineffective. I do not believe I need to tell any member of this House the horrendous stories of what happened to tenants in large shopping centres. Some of these stories describe the financial devastation of small businesses, and some larger ones conducted by people who based stores in large shopping centres.

I have to say in fairness to some shopping centre owners that not in every case are the tenants put at severe disadvantages. However, in many cases they are disadvantaged to such an extent that I believe it is incumbent upon the Government to make mandatory the code that was evolved. This legislation seeks to embody in an Act of Parliament a mandatory code in the precise and exact terms of the voluntary code. One of our colleagues in another place, a personal friend of mine, the Hon. Bryan Vaughan, has introduced legislation into the upper House in respect of retail tenancy codes. I give full credit to Mr Vaughan for being a very sincere person who feels strongly about some of the injustices suffered by tenants in shopping centres. I congratulate him for introducing his legislation. However this legislation differs from that, in the significant respect that it embodies as a code the voluntary code that was agreed upon by all parties. I do not think any of the signatories to that code could possibly object to the code becoming mandatory. Obviously, the voluntary code has failed.

I would be delighted at a later stage to withdraw this legislation, and I so undertake, provided the Government introduces a measure that satisfactorily covers matters and creates a mandatory code. I understand that is the view of the Opposition in the upper House. It is possible that in the autumn session of Parliament the Government will introduce a code that satisfies everyone. However, if such a code and embodying legislation is not introduced and carried in the budget session I will have no hesitation in pressing forward with this legislation because it is essential that people who operate in the retailing industry, particularly in the larger shopping centres, should have a fair go. The code embodied in this bill is eminently fair. It is fair to tenants. It

is fair to owners. It does not cover every eventuality, because it cannot. It does not take out of the system the power of two free and willing parties to negotiate a lease. It does not take away any party's rights to property, a matter upon which our whole business system is based. But it does create absolute fairness, I believe, to the tenants and to the owners.

The code will evolve over time and amendments will be made as experience shows what works and what does not. The code ought to be flexible, equitable and fair to everyone. The object of the bill is to allow relief to be granted under the Contracts Review Act 1980 in relation to agreements involving retail tenancy. The bill provides for a mediation system as the first stage of resolution of problems that emerge in shopping centres between owners and tenants. If that fails, there is a right of appeal to the Commercial Tribunal. The reason appeals will be made to the Commercial Tribunal rather than to the Supreme Court is that the former is a much less expensive court in which to deal with these matters and has a much wider range of discretions in reaching equitable solutions to disputes.

The bill also seeks to regulate certain matters in connection with those agreements in order to help preserve the goodwill of business, prevent unfair business practices, and confer certain rights on parties to those agreements which are otherwise not covered. Clause 1 specifies the short title of the proposed Act. Clause 2 provides for the commencement of the proposed Act on the date of assent. Clause 3 defines "retail tenancy agreement" and other terms used in the proposed Act. The Contracts Review Act 1980 allows the court to grant relief to persons who are parties to agreements that are unconscionable, harsh or repressive. The court may, for example, vary the terms of an agreement or declare an agreement void.

However, the court's powers are restricted in that only a natural person can obtain relief under the Act, and relief cannot be granted in respect of a contract entered into for a trade, business or professional purpose. Clause 4 removes the bar, imposed by section 6 of the Contracts Review Act 1980, to obtaining relief under that Act in relation to agreements in the nature of a commercial lease for the purpose of a business providing goods and services to the public. The relief will be available even if the party seeking relief is a corporation. Clause 5 will allow the Commercial Tribunal of New South Wales to exercise the powers of the Supreme Court under the Contracts Review Act 1980 in respect to retail tenancy agreements. Clause 6 will require the proposed Act to be read and construed as part of the Contracts Review Act 1980.

Clause 7 specifies the time in which an application for relief under the Contracts Review Act 1980 may be made in the Commercial Tribunal. In part 3 of the Act, clause 8 provides that the term of a retail tenancy agreement must not be less than five years in the case of the first lease of premises to a lessee. However, the lessee may waive the lessee's right to a five-year term. Clause 9 provides that the lessor, under a retail tenancy agreement, must not unreasonably refuse to renew the agreement, subject to substantial performance by the lessee, for a further term in certain circumstances. That provision will operate only in respect of the first renewal of the agreement. Subsequent agreements shall be for a minimum period of two years.

Clause 10 prevents a lessor under a retail tenancy agreement from seeking key money or accepting any other sort of payment or benefit in

Page 5659

connection with the entering of the agreement. Any refurbishing or refitting of premises required by the lessor is to be treated as a benefit to the lessor. Clause 11 prevents a lessor under a retail tenancy agreement from requiring a lessee to refurbish or refit lease premises, except in accordance with the terms of a lease and if reasonable in the circumstances. Any such requirement in the lease must indicate the general nature and timing of the refurbishment.

Clause 12 requires a lessor under a retail tenancy agreement to notify the lessee of any proposed alterations or refurbishment of the building containing the retail premises that are likely to affect the lessee's business at those premises. Clause 13 provides that a retail tenancy agreement is not to contain a provision which terminates the lease or enables the lessor to terminate the lease if the lessee fails to achieve a certain level of turnover. Clause 14 allows a lessee under a retail tenancy agreement to apply to the Commercial Tribunal for an order if a person is contravening the provisions of the part. The tribunal may order that person to

discontinue a contravention and take specific action to rectify the consequences of the contravention. The specific action can include payment of compensation in repayment or reimbursement of money and other benefits received by the lessee in contravention of this part.

Clause 15 enables the tribunal to vary orders made under the part. Clause 16 will enable the Supreme Court to grant an injunction for a contravention or proposed contravention of an order by the Commercial Tribunal under this part. Miscellaneous provisions are contained in clauses 17 and 18. I believe the bill will achieve justice for all parties and will be a success. I am hopeful, however, that the Government will introduce, in the next autumn session of this Parliament, legislation to cover what has been sought to be covered with this measure. That course is infinitely preferable to a private member's bill. I would certainly support a good piece of legislation in that regard. I commend the bill.

**Debate adjourned on motion by Mr Amery.**

### **ANTI-DISCRIMINATION (HOMOSEXUAL VILIFICATION) AMENDMENT BILL**

**Suspension of certain standing and sessional orders agreed to.**

**In Committee**

**Consideration of Legislative Council's amendment.**

*Schedule of the amendment referred  
to in message of 18th November, 1993, a.m.*

Page 3, Schedule 1(1) (proposed section 49ZT(2)(c)), line 16. After "artistic," insert "religious instruction,".

**Motion by Ms Moore agreed to:**

That the Committee agree to the Legislative Council's amendment.

**Legislative Council's amendment agreed to.**

**Resolution reported from Committee, and report adopted.**

### **PUBLIC HEALTH (SALE OF TOBACCO TO JUVENILES) AMENDMENT BILL**

**Second Reading**

**Debate resumed from 11th March.**

**Mr GLACHAN** (Albury) [9.30]: I find myself in a unusual position in relation to this bill. I am very strongly opposed to tobacco products being sold to minors. In fact, I would be happy if tobacco sales totally ceased and no one ever smoked again. The Government also is very much opposed to the sale of tobacco products to minors as a general principle. People who smoke tobacco - if they live long enough and do not die from some other cause - slowly and surely destroy their health and make themselves extremely susceptible to lung cancer. Smoking is certainly no good for any human being. Smokers of tobacco also affect the health and lifestyle of people with whom they associate. It is well established and well documented that passive smoking is dangerous to the community. I oppose the use of tobacco in any form.

I should like to make an observation about a fairly minor but important matter. A lot of the rubbish we see on the footpaths is tobacco wrappings, matches and so on that smokers discard. Smokers are irresponsible

because their discarded rubbish adds to the litter that lies around our streets. It appears that young people have a remarkable fascination with smoking tobacco. It offers a challenge to them; they seem to regard it as a sign of sophistication, maturity and adulthood. Tobacco has a dreadful attraction for minors. It could be described as a fatal attraction because those who commence cigarette smoking are hooked on the habit for life.

I would like to see tobacco sales curtailed. The problem is that the bill will not achieve its objective, that is, the prevention of young people smoking cigarettes and tobacco products. The maximum fine imposed on retailers who sell tobacco products to minors is \$5,000. The bill proposes to raise that to \$10,000. Unfortunately, though that intention is good, it will not achieve much because instituting action against people who break this law is usually ineffective because low fines of \$10 and \$20 are all too often imposed. The paucity of the fines - the result of much hard work to identify persons and get them before courts - do not reflect the seriousness of the offence. Increasing the maximum fine from \$5,000 to \$10,000 will not make much difference. So in that respect the bill is quite futile.

I believe that the best way to achieve results is by educating young people. Totally curtailing tobacco and tobacco product advertising would be a step in the right direction. I would support the imposition of heavy taxes on tobacco products. Simply raising fines and implementing the other measures proposed by the bill will not be effective. That will be a sad result because the bill will not have the effect that the mover envisages. I fully support a program to educate children about the difficulties and problems associated with smoking.

Page 5660

I have practical experience of effective education. When my second daughter, Alice, was seven years old she and many other young children at Albury Public School were shown a film about lung cancer and its link with smoking. Alice returned home totally convinced that smoking was no good. Since that day Alice, who is now 28 years old, has been strongly opposed to smoking. She has done much to convince others that it is wrong and they should not do it. Therefore, from that example I believe the best way to deal with this problem is by educating children at school.

The Government has strategies to introduce on tobacco sales to children. It wants to be involved in better education of our children and the education of retailers about their responsibilities. The Government has announced its intention to use the proof of age card that has been so successful in relation to the sale of liquor. A proof of age card will assist retailers in meeting their obligations regarding the sale of tobacco to minors. Though I understand the import of this bill, it will not really achieve anything. The Government's strategies are the best solution. For those reasons alone I oppose the bill.

**Mr O'DOHERTY** (Ku-ring-gai) [9.37]: I wholeheartedly concur with the comments of the honourable member for Albury. I wish to register my complete and absolute opposition to smoking in any form. I offer my point of view as a former smoker. Many believe that reformed smokers are the worst advocates because they are so passionate in their cause. It is interesting to reflect on why that may be the case. Reformed smokers feel as if they have achieved something positive and beneficial not just to their own health but to the health of those around them. A reformed smoker knows how difficult it is to give up the habit. I made three cold turkey attempts. The third time I was aware that I was undertaking something significant because almost every system in my body started breaking down as it was craving nicotine and the various other things that result from cigarette smoke. Those feelings I experienced sealed my fate. The impact on my body of giving up nicotine made me realise how dependent I had become on it and the effect of that dependence on my body's chemistry.

**Dr Macdonald:** Would you like some counselling later?

**Mr O'DOHERTY:** With due respect to the offer of counselling from the medical practitioner sitting opposite, the honourable member for Manly, I shall get through this task on my own. One might ask: would you trust as a counsellor a man who sits on toilet seats in the middle of Macquarie Street without taking down his pants? I will leave that matter for another day. I started smoking cigarettes through peer group pressure.

I did not start as a youngster; I did not smoke until I was in my twenties, because at that time I moved in an industry where smoking was very much the norm in those days. Most newsrooms were the traditional smoke-filled rooms. Journalists worked in a smoke-filled atmosphere most of the time. One could not sit in front of a typewriter, make a telephone call or merely wander around in thought without lighting up a cigarette.

Behavioural dependence as well as chemical dependence are now well understood to cause addiction to cigarette smoking. For some years I smoked because of the peer group pressure of the industry in which I worked. At a time when public smoking awareness was on the increase in New South Wales I started to realise the futility and the dangers, even the fatality, of continuing down that course. It was the work of the New South Wales Health Commission all those years ago, in first raising public awareness in this area, that started me thinking about the dangers to myself and to my colleagues of my continuing to smoke. Long after I had given up smoking my then work place became a smoke-free environment. That was the most meaningful thing that took place because all the hardline smokers who could not give up smoking were then forced to smoke elsewhere. Through the program many of those people also found a way to give up smoking. It is difficult and some people cannot do it cold turkey. Some people need help, even counselling, perhaps from the honourable member for Manly.

At each point the Government, through the New South Wales Health Commission, has been pushing the barriers of what is publicly acceptable and that is very important. The Government has to determine what is publicly acceptable on issues such as this because great resistance is met at every turn. The Government has to put itself out to establish what is publicly acceptable and to determine what powerful lobby groups are saying. The most powerful lobby group of all has been the tobacco lobby. Over the years I have been horrified to hear the arguments of the tobacco lobby, to hear the way they have consistently refused to acknowledge medical evidence -

**Dr Macdonald:** Well then, do not accept political donations.

**Mr O'DOHERTY:** That is a patently ridiculous comment to make. The lobby has never made a donation to me. I have been horrified by the way the tobacco lobby has continued to refuse to accept the medical evidence and twisted the arguments on questions such as the link between advertising, sporting groups, and smoking by young people. What they have done is absolutely shameful, and the tobacco lobby stands condemned for that. It is important to relay the message among young people. As the previous speaker mentioned it is horrifying that more young people are now starting to smoke. The level of smoking among juveniles is on the increase. Previously smoking among young women was increasing but apparently more young men are now starting to smoke. As parliamentarians we should ask why. Is it because more retailers are pushing the product on them? Of course they are buying the cigarettes from somewhere and sadly there are retailers who will sell cigarettes to juveniles; and those retailers should be condemned for that.

Page 5661

Further, there are adults who are prepared to buy cigarettes and pass them on to juveniles; they also stand condemned for that shameful behaviour. The fact that the level of smoking among young people is on the increase does not mean that that is because retailers do not feel that the fines are harsh enough. If the amendment proposed by the Deputy Leader of the Opposition is accepted today, the fines will be increased from \$5,000 to \$10,000, from 50 penalty units to 100 penalty units. Will that do anything meaningful to stop the increase of smoking among young people? Of course it will not. It is not attacking the cause of the problem, it is not attacking the image related reasons and many other reasons why young people smoke.

The proposed amendment may make a few more retailers a bit more nervous but those retailers are already prepared to flout a fine of \$5,000. Presumably, those retailers could not care less if they had to pay a \$10,000 fine. These people have a cavalier attitude to the law and simply do not care; the level of the fine makes little difference. In every jurisdiction in the world, not only in this area, there is evidence that increasing the penalties even up to and including the death penalty has no deterrent effect on offenders. In some States of the United States of America that have the death penalty, very often the murder rate is greater than in those States where



that penalty is not provided. That would have to be the definitive argument for not increasing penalties alone as the means to restrict a behaviour which one believes to be wrong.

Selling tobacco to juveniles is clearly wrong, but increasing the penalties is simply window dressing. The Minister mentioned that the Opposition is continuing debate on this amendment as an example of the Opposition pulling out matters on which it can write a press release. Out goes the press release - the shadow minister for health has put a new get-tough measure through the Parliament on juvenile smoking. The Deputy Leader of the Opposition is trying to steal a march on an issue that has already been fought and won by the New South Wales Health Department and has been an apolitical issue.

**Dr Refshauge:** No, it is not; you objected.

**Mr O'DOHERTY:** I did what? The Deputy Leader of the Opposition said I objected.

**Dr Refshauge:** Your Government objected to the prohibition in advertising, you took a bipartisan approach.

**Mr O'DOHERTY:** The battles have already been fought and won on that issue. Even recently -

**Dr Macdonald:** The honourable member is defending vested interests.

**Mr SPEAKER:** Order! I call the honourable member for Manly to order.

**Mr O'DOHERTY:** The honourable member for Manly says I am defending vested interests. He has listened intently to my comments and nodded at many points in agreement as I have comprehensively said how much I disagree with the tobacco lobby and how shameful I think their actions have been over previous years. How the honourable member for Manly can say that I am protecting or defending some kind of vested interest, I have no idea. His credibility is completely in tatters. I in no way defend the smoking lobby, the smoking industry, smoking among young people, retailers who sell tobacco to juveniles, or adults who allow their children to smoke. But this bill has nothing to do with that. This bill has to do with political grandstanding.

To support this bill is to send the wrong message and that is the reason why the Government should toss it out. To support this bill is to send the message that we as a Parliament think that the only way, the most meaningful way, that we can stop smoking among juveniles is to wave an even bigger stick at retailers. The Government is already waving a big stick at retailers and the honourable member for Manly wants us to wave an even bigger stick. That action would send the message that as legislators, as lawmakers, the only effective deterrent to any kind of crime or misdemeanour, or anti-social or harmful behaviour, is to keep on increasing the fines. That is a patently ridiculous, laughingly ludicrous way to argue. I have already indicated that in the United States where the death penalty is the supreme penalty paid, the murder rate is often far greater in those States than in other States. One could extrapolate on that argument to say that if this Government increased the penalties it might encourage the increase in the rate of smoking among juveniles.

**Dr Macdonald:** That is as sound as your evidence on the whales.

**Mr O'DOHERTY:** The honourable member for Manly says that is not a sound argument. I am prepared to agree that I am comparing apples with oranges. I am prepared to say that there is no evidence that this measure by itself would do anything to decrease the rate of smoking among juveniles. It will do nothing. So why are we wasting time debating it? It is so that the Deputy Leader of the Opposition can issue a press release saying that he has waved a big stick. Let us look at the quality of the big stick that he wants to wave.

The honourable member wants to increase the fines from \$5,000 to \$10,000 despite the fact that experience shows that that is not an effective deterrent. The \$10,000 fine is out of all proportion to other fines, compared with other serious matters involving children. What is the penalty for selling alcohol to juveniles? There is absolute silence from the Opposition. The maximum penalty for selling alcohol to juveniles is \$2,000.

What is the penalty for using a child in pornographic films? Again there is silence from the other side of the House. The penalty for that offence is \$4,000 or a two-year gaol sentence. This bill suggests that selling tobacco to juveniles is a more serious offence than using children in a pornographic film. Is that the opinion of members opposite? That certainly will be the case if this bill is passed. [*Extension of time agreed to.*]

Page 5662

If the House passes this bill, it will be saying that selling tobacco to juveniles is a worse offence than using children in pornographic films. That is patently ridiculous. The offence of selling a category one restricted publication to a juvenile attracts a fine of \$5,000 for corporations and a fine of \$1,000 and 12 months gaol for individuals. Are we saying that that is a lesser crime than selling tobacco to juveniles? Of course that should not be so. The list goes on and on. When the House hears eventually from the Deputy Leader of the Opposition and the honourable member for Manly, they will say that members of the Government who oppose the bill support smoking. Let it be made clear now that Government members do not support the sale of tobacco to juveniles. That cannot be said. I hope that the quality of the arguments of those honourable members will be better than simply parroting those ridiculous phrases that we have heard by way of interjection from members opposite.

The issue is more complex. I say upfront for the record that in no way do I condone or accept the sale of tobacco to juveniles. Parliament must attack the problem by dealing with the severe crisis of self-image that is causing young people to take up smoking. It is a crisis of self-image that relates to the way society promotes itself, the way products are promoted, the promotion of relationships between people and the way we allow our children to grow up. Mr Speaker, I draw your attention to the fact that the Deputy Leader of the Opposition is continually parroting a kind of chant. I ask that you call him to order for parroting a type of chant in gross defiance of previous rulings from the Chair.

**Mr SPEAKER:** Order! I apologise for not having heard the interjections. For that reason I cannot call the Deputy Leader of the Opposition to order, however I shall listen carefully from now on, and should he transgress in a similar manner I shall certainly pull him into line.

**Mr O'DOHERTY:** I do not know what the mantra of the Deputy Leader of the Opposition was, but it certainly was not relevant to the debate. We must attack the image problems that cause young people to take up smoking, but we must act compassionately to ensure that we do not encourage them to take up something else that will affect their health or the health of people around them. The most important thing the Parliament can do is to send the right message about juvenile smoking. This bill sends the wrong message. It suggests that retailers alone should be blamed and that the Parliament places the sale of tobacco to juveniles in a higher category of offence than offences that involve more dangerous practices among juveniles - though dangerous in a different way - including the poisoning of their minds with pornographic literature. This bill is a political ploy; it is just a game. And the game must stop. The amending bill is unnecessary. We do not need the continual chanting and other irrelevancies of the Deputy Leader of the Opposition.

**Dr MACDONALD (Manly) [9.54]:** The contribution of the honourable member for Ku-ring-gai lacked substance, although I am sure that his heart is in the right place. I agree with him that the bill is flawed in a number of ways, which I shall address in a moment. However, I do not believe that the honourable member for Ku-ring-gai understands the value of having a private members' day that enables members to raise this type of matter. It is all about political pushing and shoving to put matters on the agenda. For that reason I commend the Deputy Leader of the Opposition for bringing the bill before the House. I do not consider that the Department of Health has done nearly enough to deal with this problem. I am not entirely happy with some elements of the bill, but it is the beginning of a process of improvement.

I have a particular interest in this subject, as I believe it is one of the most important health issues confronting society today. My research staff have been working on the subject, and I commend them for their efforts. I foreshadow that, because of the number of issues that have been flushed out, I will introduce a bill in the next session in an attempt to address the shortcomings of this legislation. In discussions with the Minister

for Health and the Deputy Leader of the Opposition it was anticipated that debate on the bill would be adjourned until next session to enable honourable members to address their concerns.

The aim of the bill is to discourage the sale of tobacco products to minors by doubling the penalty and cancelling the licence of a convicted retailer. The philosophy behind limiting access to tobacco products is that if minors have difficulty obtaining tobacco products, they may be prevented from experimenting and later becoming addicted to tobacco. If the existing law is inadequately enforced, it is questionable whether simply increasing penalties will have any effect. That should be the Minister's focus in the future. Enforcement is the key. The incidence of smoking among children has increased by almost 5 per cent in the years that the coalition parties have been in office. I do not suggest that has occurred necessarily because they have been in office. In the past four years the incidence has increased to the stage where, according to a recent forum, 83,970 children in New South Wales now smoke. That is 83,970 too many, as I am sure the Minister will agree.

In March this year a child smoking forum made several excellent recommendations in a document that I am sure the Minister's staff have examined carefully. The document notes that it is urgent to take action. I have had the opportunity of looking at the recommendations, many of which should be enshrined in other legislation and are not covered by the provisions of this bill. The recommendations include making it an offence for juveniles to purchase tobacco; introducing on-the-spot fines for juveniles who smoke in a public place; making it compulsory for juveniles to supply identification when purchasing tobacco; and penalising those who sell tobacco

Page 5663

products by standardising the penalty imposed on retailers by increasing it to \$10,000. They were the recommendations made by that forum. It suggested also that the number and type of outlets selling cigarettes be restricted, and that a large proportion of the tobacco tax collected in each State be allocated to anti-smoking programs.

That is not a political message. There is no reason why those recommendations should not be adopted. They have come from a forum that examined specifically the problems of juvenile smoking. I ask that the Minister give consideration to adopting them in his own bill or working with me to develop a private member's bill. Tobacco smoking is the single greatest preventable cause of disease and death. More than 80 per cent of all smokers begin their addiction during their youth. The addictive product is widely available, in supermarkets, general stores, newsagencies, milk bars, service stations and tobacconists. Anyone can obtain a licence to dispense this addictive, deadly product. Though there are more tobacco retailers than bread and milk retailers in this State, the New South Wales Office of State Revenue admits that it has no way of knowing how many unlicensed tobacco retailers operate in the State.

Recent research has shown that juveniles who attempt to purchase tobacco are successful 84 per cent of the time. Clearly we have been failing to deny children access to this product. I particularly wish to draw to the attention of the Minister for Health that I am disappointed that though it is estimated that one-third of children smoke, there has never been a New South Wales Department of Health prosecution for the sale of tobacco to juveniles. Why? One of the reasons might be that the hurdles and obstacles that have to be overcome - and the loops that have to be gone through - to initiate a prosecution are horrendous. I refer to a document distributed by the Drug and Alcohol Directorate. It states:

Decisions to initiate a prosecution should be made by the Director of the relevant Public Health Unit.

Recommendations of the Director must be ratified by the Deputy Chief Health Officer.

A recommendation to prosecute should be made to the Director General of the Department of Health.

The Director General or his nominee will be required to approve an initiation of prosecution proceedings.

Why make it so difficult? I will refer now to the advantages of the bill. It puts an onus on retailers. Some

retailers, particularly those in non-typical tobacco outlets, such as corner stores and milk bars, may be discouraged from selling tobacco, thus restricting the number of outlets. That clearly would be an advantage. The Deputy Leader of the Opposition knows that I am not happy with the bill. That is why I indicated to the Minister, who said that he would be disappointed if I supported it, that I was not happy with increasing the fines. That is not the way to do things, because it still does not address the main issue.

One of the biggest problems not addressed by the bill is a lack of enforcement provisions. There must be an easier and more effective system of imposing fines. The bill does not address the problem of compliance monitoring. Neither the existing laws nor this bill pass the tobacco access legislation checklist for enforceable laws. If we are to have tobacco access laws, we must make sure that they work and are enforceable. We have to ask questions of ourselves when enacting laws of this nature. For example, we should ask: Does the law name a primary agency responsible for enforcing the law? The answer, of course, should be yes. Another question is: Does the primary enforcement agency have the resources to conduct enforcement? Again, the answer should be yes. A further question is: Is the enforcement funded? We have to make sure that the tobacco access legislation checklist is met.

As I have already said, I am not happy with the bill. In fact, I was going to move a whole raft of amendments. However, Parliamentary Counsel indicated that my amendments were either outside the leave of the bill or would require a whole lot of other Acts to be amended. I want to refer to a number of issues with which I believe the Minister will share my concerns. Megafines do not work. The concept of having smaller fines, such as those applying to traffic infringements, would be an advantage. Perhaps we should look at a points system. I suspect that the fines are not applied because they are too large. It may well be that we are doing the wrong thing. We are certainly sending out the right message with respect to penalties, but perhaps the fines should be smaller. However, I have received advice that if we were to do that, the Justices Act would require amending. I put it on notice that if I am to be party to any such legislation moved in this place, I would like to see that fines are not increased but decreased. They should be applied, enforced and effective. That system works very effectively with traffic infringements. Why not have similar fines applied to the selling of tobacco to minors?

I wish to refer now to enforcement. There should be a single agency responsible for enforcement. There must be sufficient resources to conduct that enforcement. An ideal system is one that sets licence fees to fund the cost of enforcement. Indeed, in a sense, that is a user pays system. I sought the advice of Parliamentary Counsel on that matter. I was advised that the Business Franchise Licences (Tobacco) Act would have to be amended. This issue gets complex because a number of different Acts are involved. The law should also provide for a mechanism for enforcement such as test purchases, using under-age buyers. That may be unsavoury to some, but it is important that the system be tested. If a diverse number of outlets are selling tobacco to juveniles, there should be an opportunity to encourage enforcement by way of test purchases. *[Extension of time agreed to.]*

The British system has a provision for test purchases. I have already pointed out that test purchases have shown that, in many cases, it is very easy for juveniles to obtain access to tobacco. The prosecution of violators should not be unduly cumbersome. There needs to be a better way to

Page 5664

handle such cases as a civil offence, for example, similar to procedures involved in issuing a parking ticket, or a matter could be handled administratively. The penalty should be specific so that an enforcing officer could write out a ticket for an offence. There could be a system of on-the-spot fines. The police department currently collects fines on behalf of WorkCover inspectors. Its brief could be extended to include tobacco sale fines. I do not know why such a provision cannot be included in the self-enforcing infringement notice service system.

I have indicated I will move amendments in Committee. However, I am happy for the matter to be adjourned to the next parliamentary session. One of my amendments relates to the requirement of proof of age, such as the proof of age requirement with respect to the purchase of alcohol. Retailers should be required to obtain proof of age; the lack of proof would mean that selling tobacco to a minor is a statutory offence.

Another thing that would improve enforcement is signage. Signage should be recommended by the Department of Health. Plenty of work has been done in this regard. Under the Public Health Act 1991, the Department of Health produced a sign that must be displayed, checked and monitored. There should be a statutory requirement for the Department of Health to monitor the complaints about signage and for it to take the necessary action. The identity of minors, such as those currently in the public gallery, should be protected in court proceedings, although evidence would have to be given about their age. They would not need to be otherwise involved in court proceedings.

I refer now to licensing. Licensing must be enforced. Indeed, I have already pointed out that far too many licences are handed out and there is very little monitoring of them. We need to have a workable licensing system. I am glad to have the opportunity to put this on the public record so that the Minister can be reminded of it at a future time. There will be resistance to a workable licensing system. There will be needless red tape and bureaucratic interference. But we must have a proper licensing system, which should be monitored.

Licensing must be enforced. There must be no unlicensed sellers. If there is a tax differential between States, it may allow for better policing of cross-border smuggling. Good, tight licensing and proper monitoring of licensing is required. There must be knowledge of who the licensees are. I will come to that in a moment when I speak about compliance monitoring. Withdrawal of a licence should be subject to an automatic sanction. I understand the bill would provide six months in that regard. The funding derived from the licence system will provide for three things: the enforcement of provisions that apply to the sale of tobacco to minors; the appointment of inspectors to inspect the licences; and the development of an action hotline to report to the Public Health Unit complaints about juveniles having easy access to tobacco products.

Had the bill gone into Committee, I would have moved an amendment in regard to compliance monitoring. Compliance monitoring of tobacco retailers by officers of the Public Health Unit is difficult, because they are precluded from obtaining direct information. The Business Franchise Licences (Tobacco) Act 1987 should be amended to include the Director-General of the Department of Health, the director of a public health unit and the general manager of an area health service. There should be access to information about who is and who is not licensed. Once that information is available, it will have an opportunity to deliver the necessary public health messages, to give the necessary advice, to check on the signs, and so on.

The Minister is operating in the dark. He does not have the statutory backing of a number of useful Acts that are available. The bill presents a range of opportunities to address this issue from a very diverse and more intelligent aspect, rather than just providing for heavier fines. I congratulate the Deputy Leader of the Opposition on introducing the bill. It has raised more questions than it has answered, but it has provided us also with an opportunity to work together as a Parliament to strengthen the laws on tobacco sales to minors, and to strengthen the laws in regard to enforcement and licensing. Finally, in the new year it would be my wish that this should not be a political issue. Both sides could work with the crossbenches to produce meaningful legislation that will give the Minister the necessary powers to enforce the law.

**Mr HUMPHERSON** (Davidson) [10.12]: This bill, which was introduced by the Deputy Leader of the Opposition, is typical of the ad hoc nature of many of the bills introduced by the Opposition. One only had to listen to the number of matters that were called through at nine o'clock this morning to understand the type of agenda that the New South Wales Opposition is running. A member of the Opposition will pick up every topical issue and run a private member's bill. In many cases that member has no intention or desire to see the bill's provisions enshrined in legislation. The bill is typical of bills that many other honourable members opposite have sought to introduce.

The media has flagged other proposed legislation, but those matters have never seen the light of day in this Parliament. A perfect example is the Anti-Duck Hunting Bill, which was flagged by the honourable member for Londonderry earlier this year. It never saw the light of day in this Parliament. It is a shame that an issue such as the sale of tobacco to juveniles should be trivialised in the way it has been by the introduction of this private member's bill. It is grandstanding. The bill is impracticable. However, this issue is an important one. I am sure that would not be lost on the students from Pymble Ladies College, and others, who are in the gallery

today.

As I say, the sale of tobacco to juveniles and smoking by juveniles is a most important issue. As the honourable member for Manly said, people who

Page 5665

take up smoking at a young age and who are influenced by peer group pressure generally smoke for life and; as a result, their life expectancy is severely retarded. Smoking has a significant impact on a person's health, particularly at a later age. It is incumbent on all of us to recognise the problems caused by smoking, the associated health costs, the human cost and the cost and burden to the families of those afflicted by the diseases that emanate from smoking. We should do all we can to discourage people from smoking their first cigarette at a young age.

I have never smoked but when I was seven or eight years old I took one or two puffs of a cigarette. I am glad that I have not smoked since then. I coughed for about three or four minutes, and I knew then that smoking was not good for my health. I have refrained from smoking without any great difficulty. In fact I do not have any temptation to smoke. I find it very irritating when someone smokes near me or when someone near me has been smoking. I am sure many other people in the community feel the same way. I am gravely concerned about the number of people who take up smoking, many of whom do so at a young age. Any action that can be taken to prevent or reduce the number of young people taking up smoking should be considered.

Public attitudes to smoking are changing. It is no longer acceptable to go into a person's home and automatically light up and look for an ashtray. Many people now do not have ashtrays in their homes. Many restaurants provide non-smoking sections, and taxis carry no smoking signs. This morning I caught a taxi into Parliament House and as soon as the driver arrived I was amused to see he had his cigarette hanging out the window. I should have been careful to order a taxi in which smoking is prohibited. People smoking in taxis irritates me. Parliament House is the only public building in New South Wales where people have unfettered freedom to smoke, regardless of the legal impacts that could have. However, that issue will be addressed on 1st January next year. This building, and every room in it, will become a non-smoking area, and therefore the rights of those who do not smoke will be protected. The Parliament is being hypocritical in exempting itself from the smoking restrictions that apply in other places. After many years the restrictions that apply elsewhere will be applied to this Parliament.

This bill seeks to achieve a number of things, including an increase from \$5,000 to \$10,000 in the penalty provisions that apply to the selling of tobacco to children and young people under the age of 18. It is a significant increase, but I do not believe it will be a deterrent to people who retail cigarettes. The bill also provides for the cancellation of a retailer's licence and can prevent that retailer from reapplying for a licence for up to six months. The bill has the potential to have a significant impact not only on retailers, but also on their staff and their families because many retailers are small business people.

The object of the bill, which is to reduce the sale of tobacco to minors, will not be achieved. The bill is flawed in that respect. There is no doubt that society is moving rapidly towards reducing the incidence of smoking in the community. Medical evidence shows that smoking is the largest single preventable cause of disease and premature death in Australia. In New South Wales alone the cost to taxpayers is \$6.8 billion. To put that into perspective, the total State Budget for recurrent and capital expenditure this year was \$21 billion. The \$6.8 billion is equivalent to one-third of the State Budget - a significant cost to be borne by the community. The health effects of smoking are cumulative and the earlier a person takes up smoking, the greater the chance that they will suffer serious health effects, including cancer.

Because of the lack of action by the former Government, the present Government took appropriate initiatives in 1991 and made significant legislative changes which have achieved a range of results. At that time the Government raised the legal age for the purchase of tobacco products from 16 years of age to 18 years of age. That was a significant innovation, which has not been taken up by other Australian States. At that time the maximum fine for the sale of tobacco products to juveniles was only \$200. The Government increased the

maximum fine to \$5,000. The steps taken in 1991 were vital in the war against tobacco use. However, legislation is only one aspect of the problem. Community programs and education are critical and should play a substantial role in seeking to reduce the incidence of tobacco use. In New South Wales education programs have informed the community and retailers of the relevant laws. Members of the public in the gallery and members of this House will be interested to know that in 1991 the Deputy Leader of the Opposition, who introduced the bill, supported education programs as a means of reducing the incidence of tobacco use, particularly by juveniles. He said, in relation to the Public Health Act:

This is legislation designed by medical policemen. It is not designed to support the community in taking responsibility . . . I am disappointed that the legislation is penalty driven; it is not public health driven legislation.

The Deputy Leader of the Opposition was disappointed that the legislation did not contain significant penalties, but he is now keen to introduce those significant penalties. At that time he focused on the need for education programs. He now seeks to throw them aside and to override New South Wales public health units. That is another example of the political posturing and grandstanding in which members of the Opposition regularly indulge in this House, to the detriment of the Parliament. The Government and the Department of Health have been working with New South Wales retailers to effect change. The Deputy Leader of the Opposition plans to put the boot into retailers by threatening them with huge fines. He totally ignores the research and experience that demonstrates that working with the community is effective. I remind the Deputy Leader of the Opposition that in 1991, only two years ago, he also said:

Page 5666

The measures of [the Public Health Bill] will enable authorities to impose penalties for offences committed against public health. There is little in this bill to encourage the community to become involved in public health issues. If public health issues are to work the community must become involved.

At that time he accepted the role of the community. In this bill he seeks to place the emphasis on fines by doubling them. Working with the community and retailers is clearly the way to go. Honourable members might be interested in the findings of a study conducted at Westmead hospital by Dr Simon Chapman. The study found that the combined effects of publicity and warning notices sent to retailers who have broken the law are capable of reducing the sale of cigarettes to young people by 70 per cent. So results can be achieved by working with retailers and the community. The Deputy Leader of the Opposition, who has the carriage of the bill, wishes to override the work done by the public health units, which were responsibilities under the Public Health Act 1991 to enforce the law. The community and retailers are being educated about their responsibilities. In 1991 the Deputy Leader of the Opposition he said this about the public health units:

It is important not to expect them to come up with all the answers in one fell swoop or to change everything within a year . . . Pressure should not be applied to the units during their development.

What does he seek to do two years down the track? He seeks to apply pressure and, more than that, to override the public health units. In 1991 he continued:

The units can also be important in resolving problems that still occur in a health system dominated by illness as opposed to prevention.

I cannot disagree with that, but that is not what he is seeking to do under this bill. He is contradicting the statements he made two years ago. He seeks to tell the units how to do their job. The maximum penalty for selling alcohol to juveniles in New South Wales is \$2,000. The sale of a restricted pornographic publication to a juvenile attracts a fine of \$1,000 or a 12 months' gaol sentence for individuals. The proposed \$10,000 fine is completely out of proportion to fines for comparable offences as my colleague the honourable member for Ku-ring-gai mentioned earlier, bearing in mind the existing statutory fines to which I have referred. I wonder where the figure of \$10,000 came from. Did the Deputy Leader of the Opposition use scientific research? Is the figure based on an exhaustive analysis of fines for other misdemeanours? Perhaps he plucked the figure

out of the air. Does the figure relate to other fines that apply to the sale of tobacco by retailers? No. He seeks to arbitrarily double the fine without any understanding that that will do little, if anything, to impose greater restraints on retailers who sell tobacco to juveniles. [*Extension of time agreed to.*]

The necessary legislation and community education programs are in place. The House should not be wasting time debating a bill of this nature, which, by taking a fairly narrow approach, seeks to advance a cause on which all honourable members should agree in principle. I wish to allude to some other Government initiatives. The Government has assisted retailers and encouraged the use of proof-of-age cards, which can be applied to the acquisition of both alcohol and tobacco. The Government has taken significant, difficult and controversial steps to restrict tobacco advertising. By the end of this year, tobacco sponsorship of all sporting and cultural events, particularly those that appeal to children and young adults, will be eliminated. That is a significant achievement, which recognises the impact that advertising has on young children and the impact it can have on encouraging children to take up smoking in the first place.

All honourable members must be proactive in adopting and supporting moves to restrict the advertising of tobacco. The New South Wales Government is taking other initiatives and setting the lead in relation to this issue. As I have said, the legal age for the purchase of tobacco products has been raised. As a further step towards a national prevention perspective, the Government convened a workshop and is continuing to show true leadership and commitment to this important public health issue. The Government is working with retailers and the community, the Department of Health, the public health units, the police and, most importantly, the young people themselves. I shall conclude with a few well-chosen words from the Deputy Leader of the Opposition:

[The community] will collectively have in their hands the power to make public health safe or destroy it - not the legislation; not the power of the courts; not the penalties that are imposed; not the drafting of the legislation.

**Dr Refshauge:** They are good words.

**Mr HUMPHERSON:** They are good words. They were spoken in 1991. Members of the Government would not disagree with those words, but they are not reflected in the bill. The right strategy is now in place - a strategy developed through community consultation and the most up-to-date research. The Government will continue to work with the community to reduce the incidence of smoking and to eliminate the sale of tobacco products to juveniles. For those reasons the Government and I oppose the bill in its entirety.

**Mr BLACKMORE** (Maitland) [10.29]: I join in the opposition to this bill. My comments might sound strange coming from a self-admitted addicted smoker. I do not deny the fact that, during debate on this bill, I have gone out of the Chamber to have a couple of quick drags just to keep me going. I first started smoking at the tender age of 11. I am pleased to see many young people in the gallery today. At some stage in the future they will be faced with the problem of whether to smoke. They might think smoking is cool, that it is great and that, if they smoke, their mates will think they are tough. My uncle gave me my first cigarette. I remember coughing and coughing and then eating a few jelly

Page 5667

beans to try to prevent the dizziness I was feeling. I graduated to smoking cane when we were doing research on it at school. When I went into the bush I used to roll up leaves in paper. The Parliament can impose increased penalties on retailers for selling tobacco to juveniles - people under the age of 18 - but they will find alternatives; they will find other ways of obtaining cigarettes.

This legislation is not the answer. Have honourable members seen young people engaging in the dirty, filthy habit of bumper picking? Young people visit buildings where smoking is banned, pick up the bumpers and take out the tobacco. As a young fellow I used to enjoy sneaking up to the shop to buy a packet of Peter Stuyvesant cigarettes, because for 20¢ I could get 12 cigarettes as opposed to 10 cigarettes from a Rothmans pack. Those extra cigarettes came in handy on a Saturday night out. It is most alarming that in Australia at the moment almost as many young women as young men are smoking. We must address this problem that is confronting our young people. There is provision in the bill we are debating to increase the penalty from



\$5,000 to \$10,000 if a retailer is caught selling tobacco products to young people under the age of 18. That is hypocrisy. Having owned a service station for 16 years I can speak from experience. Young people used to come to my service station and buy a packet of matches, a lighter or a packet of cigarette papers. I knew very well why they were buying those products, but there was nothing to stop me from selling them.

Let us be fair dinkum; this legislation will penalise retailers. Currently, the fine for selling tobacco products to a person under the age of 18 is \$5,000, but the Opposition, through this legislation, is attempting to increase that fine to \$10,000. If the Opposition persists with its legislation and the bill is passed, I will go to every tobacconist and retailer in Maitland and say, "The Australian Labor Party did this to you". We have been told that not one retailer has been caught selling these products to people under the age of 18. So this legislation will not alleviate the problem. I am the first person to say to young people, "Give up smoking. Look what happened to me. I cannot stop". I have given up smoking for periods of three years and five years, but I have recommenced after that time. I will not let any young person under the age of 18 light up a cigarette in my house. As I have said, I have been in the retail business and I am used to dealing with regular customers who used to send their kids to my service station to buy a loaf of bread, some milk and a packet of cigarettes for mum. The thought used to cross my mind that it was illegal to sell cigarettes in that way, but I used to do it because I knew that the young person's mother smoked. Retailers sell cigarettes to young people if they have a note from their parents. There is always the lure of the mighty dollar.

A \$10,000 penalty will not alleviate the problem. The Hunter Valley area is very involved in running programs on the disadvantages of smoking. My daughter, who is 12 years of age, has cried in front of me and my wife while pleading with us not to smoke. Not so long ago in this Parliament we debated legislation aimed at preventing people smoking if they were accompanied in a car by a child under the age of 12. I support that legislation. With education this message can be transmitted to young people. A \$10,000 penalty will not achieve as much as honourable members can achieve by introducing appropriate legislation to try to stop young people smoking. Today notice was given by the honourable member for Manly that he would move a motion to that effect. The Deputy Leader of the Opposition also said that the Opposition intends to go further than it has today. We must have more appropriate ways of informing people that smoking is bad for them. However, this is increasingly hard from the business angle. It is difficult for retailers to determine the age of young people when they are dressed up. I applaud the introduction of a proof of age card.

I know that the Chief Secretary and Minister for Administrative Services has been asked to look at the production of proof of age cards when people are attempting to buy tobacco products. I would support such a move. Most retailers would be aware of the problems involved with a proof of age card. If they refuse to sell tobacco products to a person under the age of 18, they have no power to prevent the sale of tobacco to anyone within a group of people who produces a proof of age card. That happens every day. My best mates were the blokes who had a packet of cigarettes in their pockets. Because they looked older than I did, they were able to buy cigarettes.

We are talking about an important matter - the health of our young people; our future generation; the people who will sit in this Chamber in years to come and run this State or, for that matter, Australia. Honourable members have a responsibility to those young people. I will not support this legislation as it is only a bandaid measure. Though I am a smoker, I will try to prevent young people from becoming addicted in the way that I have become addicted. We are passing the buck, which is easy to do. By increasing the penalty to a retailer we are transferring the problem to him. But we still have not done anything to help the young people who smoke because they think it is cool and because it is part of the sporting scene to smoke a cigarette before taking the field in the hope that it will increase sporting ability.

Statistics will show that it is tobacco today, marijuana tomorrow and then headache tablets. Tobacco smoking becomes addictive. If the Deputy Leader of the Opposition can convince this House that simply doubling the penalty from \$5,000 to \$10,000 will play any part in reducing the number of young people under the age of 18 who purchase cigarettes, I might be interested in listening to him. Honourable members have heard the old adage about alcohol - I have used it myself - that one sees more old drunks than old doctors. That is not an excuse any more. As legislators, we have an educative role to play.

It has been suggested in this House, and mentioned also by the honourable member for Manly, that to raise the penalty will not be a deterrent. I support the suggestion - and the Minister for Health has mentioned this privately in discussions - that if inspectors were to go into some of the premises in question and find people who are prepared to sell cigarettes, we would then have a conviction. In 16 years not one inspector came into my premises. I can safely say that that is the situation with every other facility in Maitland. No inspector has said, "You have sold cigarettes to someone under the age of 18, and here is the evidence".

Not one parent has come into my service station and said, "You sold a packet of cigarettes to my child. I admonish you for it and take you to task". If we raise the penalty from \$5,000 to \$10,000, it will not make people more responsible. The House will spend time debating this bill and, if the amendment is agreed to and the bill is passed, we will say, "We have done our part". That is rubbish. The only part we will play is to satisfy an agenda to take up valuable time. Not one cent of that money has made its way into the Government's coffers. If it does collect money, will that money be spent in educating young people on the dangers of smoking and tobacco addiction? I am willing to talk to young people about that. I know all about the terrible addiction.

The last thing I put out before I go to bed is a cigarette and the first thing I do when I get up in the morning is light up a cigarette. I certainly do not want to see any beautiful young people under the age of 18 addicted to such a habit. The average price of a packet of cigarettes is \$5, yet we are proposing to increase the penalty on the retailer from \$5,000 to \$10,000. That is not the way to go. This legislation is ill conceived. A lot more can be done if the Opposition - and, for that matter, the Government - is serious about reducing the risk to young people of the filthy habit of smoking.

**Debate adjourned on motion by Mr Phillips.**

## **POST-CONVICTION INQUIRY (DOUGLAS HARRY RENDELL) BILL**

### **In Committee**

#### **Clause 1**

**Mr MILLS** (Wallsend) [10.44]: I move:

Page 2, clause 1, lines 3 and 4. Omit "(Quashing of Conviction)".

On 28th October this House agreed to the Crimes Legislation (Review of Convictions) Amendment Bill, which had come from the lower House. That bill, which subsequently received the Governor's assent, referred in paragraph (a) of the explanatory note to the quashing of the conviction of Douglas Harry Rendell. Paragraph (a) of my bill is no longer necessary because the Government's bill, with the quashing of convictions, has been assented to. Paragraph (b) provides for judicial assessment of compensation for Doug Rendell. The proposed amendment will achieve that purpose, so my bill is not made redundant by the Government's bill.

**Amendment agreed to.**

**Short title as amended agreed to.**

#### **Clause 3**

**Mr MILLS** (Wallsend) [10.46]: I move:

Page 2, clause 3, lines 10 and 11. Omit all matter on those lines.

This amendment relates to paragraph (a), the explanatory note to my bill, which I outlined when speaking to the previous amendment.

**Amendment agreed to.**

**Clause as amended agreed to.**

### **Long Title**

**Mr MILLS** (Wallsend) [10.47]: I move:

Page 1, long title. Omit "quashing of the conviction for murder imposed on Douglas Harry Rendell and to provide for the assessment of compensation in relation to that conviction", insert instead "assessment of compensation in relation to the conviction for murder imposed on Douglas Harry Rendell".

The reasons I outlined when moving the previous two amendments are relevant to this amendment.

**Mr O'DOHERTY** (Ku-ring-gai) [10.48]: I passively oppose the amendment for reasons that will become obvious. Honourable members need to reflect on the fact that the honourable member for Wallsend has already gutted his bill, cut it in half, on the basis that the New South Wales Government has already dealt with the problem he raised initially in his bill. The Government has already dealt with the substantial problem, the question of the quashing of the conviction, as the honourable member has so happily agreed this morning, in the amendments that have already been passed. The quashing of the conviction against Mr Rendell is already well under way as a result of changes the New South Wales Government has instituted under section 475 of the Crimes Act. Those provisions were comprehensively reviewed. The quashing of a conviction is an important process that will be undertaken, not just for Douglas Harry Rendell or even Ziggy Pohl, but for persons who bring similar cases in the future. The question of compensation that is raised by the proposed amendment, and which remains in place in the already amended bill, ought to be totally unacceptable to all members of this House.

The question of compensation for Douglas Harry Rendell has already been dealt with by the Executive. A sum of money has already been paid to him. On 18th January, 1993, Mr Rendell's solicitors advised that they were prepared to accept the sum offered, and on 30th March this year a cheque was drawn and forwarded to Mr Rendell. In return, a partial deed of release setting off that amount against any future amounts that Mr Rendell might obtain by legal action was executed by Mr Rendell. The Government has

Page 5669

said there have been irregularities in this case, the original decision was found to be unsound, and it has been set aside.

The quashing of Mr Rendell's conviction has been dealt with under the amendment to section 475. Mr Rendell's rights under the law are being protected and pursued. The Government offered an ex gratia payment because of the doubt and difficulty Mr Rendell suffered and the undoubted hardship on him and his family. He had a chance to consider his position and, in consultation with his legal advisers, decided to accept the ex gratia payment of \$100,000, which is not a small amount of money. His legal advisers have undoubtedly advised him that he can pursue further compensation. He has the full rights of any citizen to pursue the question of further compensation, and he will presumably do so if he thinks he has a strong enough case.

In recognition of that fact, he has already agreed, by the partial deed of release that he signed, to set off his ex gratia payment against any money that may be paid to him at a later stage. The Government opposes the amendment because it sets a bad precedent. It is not a judgment about the case of Douglas Harry Rendell per se; it is a judgment about all the cases that may come before this Parliament in the future. The Parliament is a democratic machine that is driven by the numbers, and the numbers might be there in the future for any member opposite to convince the Parliament to provide compensation for any number of people. Their cases may be

strong; their cases may be weak. There is no provision for that to be tested. Members could start to vote for money for people. It is not an appropriate process. It is a bad precedent to set, a precedent that would bind the Parliament in the future in an inappropriate way.

This matter has already been dealt with by an ex gratia payment of \$100,000. The Executive has recognised the validity of Mr Rendell's claim. Mr Rendell has the option to pursue his rights through the courts. That is entirely appropriate, and it would be appropriate for cases that may arise in the future. However, it is not appropriate for the Parliament to refer specific cases to bodies for assessment and to vote for extra money for people in these cases without having heard any of the evidence. Members of this Parliament have only been privy to information placed before them by the honourable member for Wallsend. Compelling though that is, it is not the same as sitting in a court of law or a tribunal. It would not be right to agree to the honourable member's amendment. Therefore, I strongly oppose it.

**Mr HARTCHER** (Gosford - Minister for the Environment) [10.54]: I understand the reasons that motivated the honourable member for Wallsend to move the amendment. However, the Government is opposed to the amendment for the simple but clear reason that the prior legislation to which the honourable member referred has now been passed by the Parliament. It has received the assent of His Excellency the Governor. Accordingly, the Court of Criminal Appeal now has a mechanism to quash the conviction if it so determines. It is open now by law for Mr Rendell to apply for a quashing of his conviction in accordance with those provisions. Therefore, this morning's debate on the bill is irrelevant. I understand the honourable member for Wallsend wishes to have his day in court, but it is pointless for the Parliament to pass legislation when the issue that the legislation seeks to address has already been addressed. Mr Rendell now has all the rights that the bill sought to give to him some weeks ago. He has the right to go to the Court of Criminal Appeal, and that court has the power to quash his conviction as a result of legislation recently passed by the Parliament. Accordingly, the Government is opposed to the amendment.

**Mr KERR** (Cronulla) [10.55]: In speaking to the amendment, it is necessary for me to consider the objects of the bill that are included in the title. The honourable member, in moving this bill, sought to establish a judicial procedure to enable Douglas Rendell's conviction for murder to be quashed and to provide for the Supreme Court to direct a judge to assess the amount of compensation that the Government should pay Mr Rendell for damages, for loss suffered because of his conviction. That is what the title of the bill seeks to convey. However, in order to determine the appropriateness of the title and of the amendment, one should look at the history of the matter.

On 4th March, 1980, Douglas Harry Rendell was found guilty of the murder of Yvonne Kendal and sentenced to penal servitude for life. His appeal to the Court of Appeal was dismissed on 4th July, 1980. On 14th December, 1987, following application to the Supreme Court, Mr Justice Hunt directed that an inquiry be conducted into Mr Rendell's conviction pursuant to section 475 of the Crimes Act 1900. Mr Arthur Reidel, a magistrate - and a very experienced magistrate, who may well be known to you, Mr Chairman, because of his service in the Justice Department - was nominated to conduct the inquiry.

On 23rd June, 1989, Mr Justice Hunt reported to His Excellency the Governor that he was satisfied that Mr Rendell's conviction for murder was unsafe and unsatisfactory, and he recommended that he be granted a pardon. On 26th July, 1989, His Excellency granted Mr Rendell an unconditional pardon. Thereafter, Mr Rendell's solicitor wrote to the then Attorney General requesting that he refer the matter to the Court of Appeal so that, pursuant to section 26A of the Criminal Appeal Act 1912, a solicitor might proceed to seek the quashing of Mr Rendell's conviction. However, since the pardoning power had been exercised, there was no basis for referring the case to the Court of Criminal Appeal as any purported reference would not vest the court with jurisdiction to make such an order.

In relation to the question of compensation raised by Mr Rendell's solicitors, Brennan Blair and Tipple, it was determined that, as Mr Rendell was convicted by due process of law, there was no legal basis for

such a claim. However, it was open to the Government to make an ex gratia payment to assist in his

rehabilitation in recognition of the fact that he had received a pardon after serving a long term of imprisonment. On 17th November, 1992, approval was given for the payment of \$100,000 to Mr Rendell. On 18th January, 1993, Mr Rendell's solicitors advised that they would be prepared to accept the sum offered on his behalf, and on 30th March, 1993, a cheque for that sum was forwarded. A partial deed of release was executed by Mr Rendell, setting off this amount against any future amount he might obtain by legal or other action.

The long title of the bill necessitates that action. The provisions of section 475 of the Crimes Act 1900 have been comprehensively reviewed, and the Government intends to introduce legislation in the current session to amend that section. The proposed amendments include the introduction of a mechanism for the referral of a case to the Court of Criminal Appeal following the grant of a pardon to allow the court to determine the conviction or to quash it. It is proposed that these provisions will also apply to persons such as Mr Rendell, who has already received a pardon. The Government's action in assessing compensation in relation to this amendment is important. The Government wants to ensure that fairness is provided, and I guess that is why we are here, to ensure fairness from the Government - which is really about regulating the lives of people. Given that it is proposed that the legislation facilitating this procedure will be introduced into Parliament, the Government does not support the passage of the bill on this point. I think the Minister said we should be governed by law and not men.

**Mr Hartcher:** He was quoting the Constitution of Massachusetts of 1634.

**Mr Mills:** I did not know that Massachusetts existed in 1634.

**Mr KERR:** It existed as the colony of Massachusetts.

**CHAIRMAN:** Order! The honourable member for Cronulla has the call.

**Mr KERR:** I am surprised that the honourable member did not know that. One does not have to be a Peter Nagle to know that sort of legal detail. Similarly, the proposal for a judge to assess the ex gratia payment is not supported. Mr Rendell has already received an amount of \$100,000 as an ex gratia payment to assist in his rehabilitation. Ex gratia means no liability, so the normal framework for assessment is not there. Mr Rendell is entitled to compensation as an act of grace, so there is no question of legal liability. That is a fundamental difficulty of this measure and that is why the Minister's interjection was appropriate. If one attempts to make laws subjective, they will contain a range of anomalies. Every citizen is entitled to certainty before the law and to be confident that the substantive law will not be tailored to an individual. That is so in relation to the payment of State funding. The deed of release executed by Mr Rendell in return for the payment of \$100,000 did not seek to inhibit any legal action that he might pursue. That is important. When whistleblower Phil Arantz was causing trouble for the previous Labor Government a payment was made -

**Mr Crittenden:** That was in Askin's time.

**Mr KERR:** I will give the honourable member a history lesson. In 1976 when Neville Wran came to office he made certain promises to Mr Arantz that were never kept.

**Mr O'Doherty:** Tell us about it.

**Mr KERR:** The honourable member for Ku-ring-gai wants to know about it because it is relevant to the amendment that the Committee is considering. Opposition members say that Mr Arantz was unfairly dealt with by Askin and that Mr Arantz should have been reinstated. But for the 12 years the Labor Government was in office did the Wran Government do that? No. A payment was made to Mr Arantz as hush money, to ensure that he would keep his silence. I hope the honourable member for Wyong would not sanction such a grubby deal. The honourable member for Wyong was not a member of Parliament when that deal took place, and therefore I accept that he has an alibi. Nevertheless, he has a responsibility to the people of New South Wales. This is not a similar situation, because Mr Rendell is entitled to pursue his legal course. As I said, an ex gratia payment is not dependent on legal liability as an act of grace.

Clause 3(1)(b) of the bill refers to a Supreme Court judge assessing compensation for Mr Rendell for damage or loss suffered because of his conviction. There are no principles enunciated upon which the assessment of compensation is to proceed. There is a fair amount of good will on both sides in relation to this issue, but because of the difficulty and the assistance required I hope the honourable member will address this measure. I do not want to see the Government vote against the measure, but the Committee needs assistance because there are matters of general principle involved. The payment of compensation by way of an ex gratia payment has to be kept within reasonable bounds, and I take it the honourable member would appreciate that. Funds have to be available for hospitals, for police, for ambulance stations, as the honourable member for Wyong would be well aware of. The method for determining such an amount should rest with the Executive Government.

It is appropriate that I raise these matters, given that the Committee is considering an amendment to the long title of the bill. The Committee will be seeking some guidance, given the nature of the payment made and the avenues that are open to Mr Rendell. There is considerable good will and sympathy for Mr Rendell. Honourable members wish to ensure that justice is blended with mercy to achieve an acceptable outcome. One must consider the impact of this bill if it becomes law. Those are merely some of the matters that should be dealt with. I acknowledge the presence in the public gallery of students from Monte Saint Angelo school. We welcome them here, and trust that today will be informative. We wish them all the best in their future careers and no doubt some of them will be joining us in the future.

Page 5671

**Mr MILLS** (Wallsend) [11.7]: It is necessary for me to make a couple of points. Doug Rendell did receive an ex gratia payment but it was considered inadequate by him, and that is why this matter is proceeding. In my second reading speech in May I outlined why it was considered inadequate and I gave comparisons of similar cases. I think the honourable member for Ku-ring-gai said that if Parliament intervened it would set a bad precedent. That issue was debated in the second reading of the Crimes Legislation (Review of Convictions) Bill. Indeed that was generic legislation. Honourable members would acknowledge that this measure would involve only three or four cases in New South Wales. If injustice is occurring to three or four individuals, and delay is a form of injustice, it behoves this Parliament to redress that injustice while we consider a way to develop generic legislation. The slow private member's bill process will eventually be overtaken by the Government's legislation. Therefore, I do not resile from this bill. It will provide for an assessment of compensation to be made by a judicial officer rather than by a political officer.

It will be good for Mr Rendell to have an assessment made by a judicial officer rather than by a political officer, which is the way an ex gratia payment is made. It will also keep the process for reform of the law going forward, an area in which I believe New South Wales is behind the times. I was also asked to consider the basis on which an assessment would proceed. I am aware that Doug Rendell's advisers have received legal advice from his original lawyers that it is not necessary to provide terms of reference because the assessment would be based on normal common law principles. Those principles are enunciated in *Criminal Law Journal*, volume 12, 1988 in relation to the Ananda Marga case. The article by Tom Molomby dealt with the basis on which Mr Justice Wood determined compensation for the people involved, referring to procedures in England and in New Zealand to justify a judicial officer being asked to assess compensation, which is what happened in that case.

A bill was not needed for the Chamberlain case in the Northern Territory because the Northern Territory Attorney-General asked Mr Justice Trevor Morling, who conducted the royal commission into the Chamberlain case, to undertake an assessment and to provide advice to the Northern Territory Cabinet. A political decision was not made about the sum of money to be paid to the Chamberlains. The Government asked a judicial officer - in this case the one who had conducted the royal commission - to make an assessment. There were no public instructions on the basis of the assessment. Mr Justice Morling had to develop, essentially, his own terms of reference. I presume that would have been done in consultation with the Northern Territory Attorney-General. It would be wrong for this House to legislate as to the basis of the compensation. It is far

better that common law principles be developed in this case, as they were in the Chamberlain case. In the United Kingdom the Criminal Justice Act was amended in 1988. Part XI, section 133(1), under the heading "Miscarriages of justice", states:

Subject to subsection (2) below, when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.

In introducing that legislation the Home Secretary clearly stated that the legislation was introduced so that Great Britain would honour its obligations under the International Covenant on Civil and Political Rights, Article 14.6. I have quoted that Article in *Hansard* before, and its words are virtually identical to those in section 133(1). New South Wales is behind the times; the rest of world is moving towards an automatic procedure to compensate people who have suffered miscarriages of justice. I would like to see a judicial assessment of compensation for Doug Rendell but I urge this Government and any future government to get on with the job of law reform and make compensation automatic, just as it is in Great Britain, so that the Parliament does not have to intervene in cases of miscarriages of justice.

**Amendment agreed to.**

**Long title as amended agreed to.**

**Bill reported from Committee with amendments, including amendments in the titles, and report adopted.**

### **Third Reading**

**Mr MILLS** (Wallsend) [11.17]: I move:

That this bill be now read a third time.

**Question put.**

**The House divided.**

**Ayes, 46**

Ms Allan	Mr Martin
Mr Amery	Mr Mills
Mr Anderson	Ms Moore
Mr A. S. Aquilina	Mr Moss
Mr J. J. Aquilina	Mr J. H. Murray
Mr Bowman	Mr Nagle
Mr Clough	Mr Neilly
Mr Crittenden	Mr Newman
Mr Doyle	Ms Nori
Mr Face	Mr E. T. Page
Mr Gaudry	Mr Price
Mr Gibson	Dr Refshauge
Mrs Grusovin	Mr Rogan
Mr Hatton	Mr Rumble
Mr Hunter	Mr Scully
Mr Iemma	Mr Sullivan

Mr Irwin	Mr Thompson
Mr Knight	Mr Whelan
Mr Knowles	Mr Windsor
Mr Langton	Mr Yeadon
Mrs Lo Po'	
Mr McBride	<i>Tellers,</i>
Dr Macdonald	Mr Beckroge
Mr McManus	Mr Davoren

Page 5672

#### Noes, 42

Mr Armstrong	Mr W. T. J. Murray
Mr Baird	Mr O'Doherty
Mr Beck	Mr D. L. Page
Mr Blackmore	Mr Peacocke
Mr Causley	Mr Petch
Mrs Chikarovski	Mr Phillips
Mr Cochran	Mr Photios
Mrs Cohen	Mr Richardson
Mr Collins	Mr Rixon
Mr Cruickshank	Mr Schipp
Mr Downy	Mr Schultz
Mr Fraser	Mr Small
Mr Glachan	Mr Smiles
Mr Griffiths	Mr Smith
Mr Hartcher	Mr Souris
Mr Humpherson	Mr West
Dr Kernohan	Mr Yabsley
Mr Kinross	Mr Zammit
Mr Longley	
Ms Machin	<i>Tellers,</i>
Mr Merton	Mr Jeffery
Mr Morris	Mr Kerr

#### Pairs

Mr Carr	Mr Chappell
Mr Harrison	Mr Fahey
Mr Markham	Mr Hazzard
Mr Shedden	Mr Rozzoli
Mr Ziolkowski	Mr Tink

**Question so resolved in the affirmative.**

**Motion agreed to.**

**Bill read a third time.**

### CRIMES (REPUBLICAN DEBATE) AMENDMENT BILL

#### Second Reading



**Debate called on, and adjourned on motion by Mr Bowman.**

## **WORKERS COMPENSATION (JOURNEY CLAIMS) AMENDMENT BILL**

### **Second Reading**

**Debate called on, and adjourned on motion by Mr Hunter.**

## **PUBLIC FINANCE AND AUDIT (SPECIAL DIVIDENDS) AMENDMENT BILL**

### **Second Reading**

**Debate called on, and adjourned on motion by Mr Thompson.**

## **LAKE MACQUARIE STATE RECREATION AREA BILL**

### **Second Reading**

**Debate resumed from 9th September.**

**Mr SOURIS** (Upper Hunter - Minister for Land and Water Conservation) [11.27]: The Lake Macquarie State Recreation Area Bill will reserve six separate areas on the foreshores of Lake Macquarie as a single State recreation area under the provisions of the National Parks and Wildlife Service Act 1974. The bill is the most irresponsible and poorly inspired piece of legislation that this House has had to deal with for a long time. It is a clear example of how poorly conceived ideas translate into bad legislation. The bill provides that certain land identified in accompanying maps are to be reserved, and that from the date that the reservation takes effect the lands in question become Crown land.

It would have been helpful if the bill referred to the definitions relating to the creation of State recreation areas contained in the National Parks and Wildlife Service Act. Section 47A of that Act defines certain Crown lands to be prescribed lands. However, only prescribed land may be included in notifications of State recreation areas. As the definition of prescribed lands specifically precludes the notification of freehold land, some of the sites identified for inclusion in this State recreation area would be eliminated. As an example of this supercilious attempt to grab freehold land, the bill includes land owned by Coal and Allied at Chain Valley, lot 1 in deposited plan 226133. The bill is totally silent on the compensation, if any, that this company will receive for the loss of its land. The bill also seeks to change the use of land owned by a number of government instrumentalities, a move which will have adverse consequences for the operation of these agencies. The Awaba Bay land of the Land and Housing Corporation, the Wangi Point South land of Pacific Power, and land used by the Department of Health at Morisset will be removed from the control of those agencies without any form of compensation.

This retrograde step in the transfer of assets should not be supported. The cost of the lands involved is very significant. In total, excluding vacant Crown land or land reserved for public recreation, the lands identified for inclusion in the proposed State recreation area are conservatively valued at more than \$6.05 million. The following figures give an indication of the value of the lands: Chain Valley, which belongs to Coal and Allied, \$700,000; the Electricity Commission, \$700,000; Wangi South, which is owned by Pacific Power, \$250,000; and the Morisset area, which is owned by the Department of Health, \$4.4 million.

In addition, Lake Macquarie City Council has invested considerable capital funds in the Wangi Point Caravan Park and its improvements are valued at a further \$1.5 million. I wonder whether the people of Lake

Macquarie are happy at the transfer of these assets from their council's control and management. The bill could be amended to allow adequate compensation to be paid to landowners adversely affected by this proposal. However, other equally important interests are completely overlooked by the bill and a number of significant Aboriginal land claims have yet to be determined.

**Mr Hunter:** They support the bill.

Page 5673

**Mr SOURIS:** It does not matter whether they support it, I am responsible for the statutory obligations in the Act. The honourable member for Lake Macquarie can get a petition with thousands of signatures. Why not get a petition from the United States? It makes absolutely no difference; there are obligations within the Act. That interjection is typical of the brainlessness of the Opposition in its attitude towards the bill. This bill has been brought on as a blatant, localised political exercise.

Wangi Point South is subject to Aboriginal land claims No. 3307 and No. 3306. The Morisset hospital site is subject to claim No. 3514. Clearly the honourable member for Lake Macquarie could not care less about the future of the Aboriginal land claims or the Aboriginal people of the area. Honourable members will be aware that the Lake Macquarie area is significant for its coal reserves. No doubt one of the reasons for proposing a State recreation area rather than a national park is to avoid any suggestion that the resources of the area would be sterilised.

In case there is any doubt about the value of the coal resources affected by this proposal, the Department of Health has been advised that approximately \$800 million of recoverable coal deposits are located under the Morisset site alone. This resource should not be put at risk. The savings and transition provisions of the bill are totally defective. Members will also be aware that this important region generates substantial amounts of the State's electricity. The lands identified for inclusion in the proposed State recreation area are subject to a substantial number of easements for transmission lines.

While the provisions of the bill do not extinguish the easements, a more thorough drafting would have removed any uncertainty about the future of these very important interests in land. The bill also provides that the proposed State recreation area will be managed by a trust. Let me be the first to say that I fully support the management of public land by community based trusts. However, the task that has been given to this trust is an enormous one for which no financial support has been provided. It is probably envisaged that the National Parks and Wildlife Service will fund the cost of the plan of management. Such a plan, if it is to address the management requirements of six separate sites, would cost a minimum of at least \$40,000 and more likely \$50,000 to \$60,000.

When the honourable member for Lake Macquarie introduced this bill he probably thought that the National Parks and Wildlife Service would trim its budget to find the additional \$1 million capital funding required to establish such a State recreation area. Perhaps he does not think that it will need signposting, visitor facilities and amenities worthy of a State recreation area. Perhaps the honourable member for Lake Macquarie also believes that the National Parks and Wildlife Service will find from its budget the operational funds required for the day-to-day costs of running a State recreation area.

In case no thought has been given to this issue, at least \$250,000 per annum will be required to allow base level operations. Two examples from existing State recreation areas reinforce this point. In 1992-93 the Arakoon State recreation area's operating budget was \$310,000 and the Wyangala State recreation area's budget was \$590,000. The only logic behind the nomination of these six areas is that they have foreshore access to Lake Macquarie. The operational difficulties of effectively managing the six widely separated areas will be significant and should not be underestimated.

Some of the lands are already under effective management, such as the Lake Macquarie City Council operation of the Wangi Point Caravan Park or the Department of Sport, Recreation and Racing operation of the

Point Wolstoncroft facility. The creation of another management body cannot be justified. Another generous feature of this bill is the proposal to provide remuneration to the trustees of this State recreation area. Normally a trust is comprised of seven members. The bill proposes that this State recreation area will have 12 trustees. The proposed membership will give all sections of the community an opportunity to participate. In practice, however, such a trust is likely to be unworkable: it is just too large and too expensive. Each member could receive up to \$1,500 per annum in remuneration. Excluding the manager of the Point Wolstoncroft sport and recreation centre, Department of Sport, Recreation and Racing remuneration to trustees would cost \$16,500.

Payment to trustees would represent a major departure from current policy. The 64 trustees of the 10 State recreation areas under my responsibility do not receive any remuneration; nor do the trustees involved in the care, control and management of more than 1,500 community trusts established under part 5 of the Crown Lands Act 1989. If it is now proposed that trustees should be paid for their important community contribution, the cost to this State will be enormous. The Department of Conservation and Land Management has estimated that the cost of providing remuneration to all trustees of Crown reserves would be of the order of \$11.25 million per annum.

The issue of remuneration does not stop there. Local government also manages extensive areas of reserved Crown land throughout the State, and it could be expected that councils would also seek some recompense for the cost of managing these assets. If each council were compensated as if it were a single trust, the State would need to find a further \$1.785 million. The total cost of this precedent could therefore run as high as \$14.035 million per annum. In summary, it is quite clear that the bill is badly flawed in conception and is poorly drafted. There is no compelling reason for the creation of a State recreation area over the nominated sites.

Page 5674

The Government cannot support the proposal because of the costs involved, the administrative difficulties and the potential impacts. The Government opposes the bill in its entirety. One of the implications of the bill is that - the departure from normal practice, of putting this trust under the care and control of the National Parks and Wildlife Service, which would create the precedent I have referred to - it implies that the Department of Conservation and Land Management is somehow incapable of or is not performing up to expectations in respect of the management of all other State recreation areas and similar trusts in this State. That is a preposterous suggestion.

To suggest this area come under the National Parks and Wildlife Service is probably more philosophically based than anything to do with conservation. Because of the transfers of freehold land, the enormous cost that would be involved and the precedent it would create throughout the State - for instance, if trustees were to be compensated - the bill cannot be supported. That such a recreation reserve was to be established and ought to be established within the Department of Conservation and Land Management has been completely overlooked.

**Mr BOWMAN** (Swansea) [11.39]: I am disappointed that the Minister for Land and Water Conservation has in such a bloody-minded way rejected the bill, which would establish a Lake Macquarie State recreation area, as proposed by my colleague the honourable member for Lake Macquarie. The Minister was anxious at every point to rubbish the idea in principle and to make a number of generally spurious detailed criticisms of the terms of the bill. I was amazed by his vehemence and obvious distaste for providing the people of the region with a facility similar to those enjoyed by people in many others places. I was unhappy that he failed to give recognition to the extraordinary importance of Lake Macquarie itself. Lake Macquarie is the largest saltwater lake in the Southern Hemisphere - about 170 kilometres around - and is a most significant feature of the Hunter and New South Wales environment, and indeed of the Australian environment.

Over the past few decades especially, considerable development has put Lake Macquarie under stress. It is essential for the benefit of those who live nearby and the people of Australia that opportunities to conserve the water and land environs of Lake Macquarie be seized. This opportunity should not be passed up because of nit-picking criticisms by the Minister, many of which are not based on a clear understanding of the bill. There

is no proposal to include privately owned land in the Lake Macquarie State recreation area. The map and the appropriate wording specify that in the areas hatched, or coloured, only Crown lands should be considered eligible for placement within the State recreation area. No problem arises about compensation for Coal and Allied. It is not proposed to include its land in the State recreation area. No privately owned land is proposed for inclusion within the area.

It is appalling that the Minister should - no doubt inadvertently - misrepresent the proposal that is before the House. The areas proposed for inclusion are Crown lands that generally abut a substantial part of the lake's foreshores and would provide recreational facilities and enhance any conservation measures that have been taken in the past and will be taken, one hopes in greater measure, in the future. We cannot undo altogether the ecological damage that has been done to Lake Macquarie by past industrial and residential developments. Where possible we should now take the opportunity to protect the lake as much as we can. It is possible to do so without incurring any significant expenditure. The Minister made the point that if a State recreation area is established, the maintenance of it will not be completely without cost. Of course it will not. The plan of management costs of approximately \$40,000 or \$50,000, about which the Minister spoke, are hardly mammoth amounts when one has in mind that we are speaking about the largest saltwater lake in the Southern Hemisphere - a substantial body of water indeed.

The adjacent lands, none of them privately owned, that are proposed to be included in the State recreation area will provide recreation and conserve national bushland, flora and fauna around that magnificent body of water, to the benefit of people who live in the city of Lake Macquarie, the Hunter region, New South Wales, and visitors from other States and overseas. A number of international visitors come to Lake Macquarie, particularly for sailing events. One could expect a significant tourist payoff from the creation of a State recreation area adjacent to Lake Macquarie. One could expect also that, together with other conservation measures that will be taken in the Hunter, much greater attractions would be available for visitors from New South Wales, other States and overseas. The up side of the economic equation was ignored by the Minister, who simply spoke about cost. He was like someone who has 25 children, becomes aware that a new baby is on the way and says, "Oh hell! There will be another mouth to feed".

New South Wales has a number of State recreation areas, and I have been to many of them. I am prepared to say that under the management of this Government those areas provide cost-effective conservation and recreation. They are the bottom line of the tourist attractiveness of New South Wales. During any tourist campaign people certainly speak about Sydney and other urban areas, but to a significant extent the natural regions of the State are prominently featured. It is appropriate that this extremely important natural feature of New South Wales be better conserved and provide better recreational facilities for residents and the large numbers of visitors to the region. That will be the effect of the passage of the Lake Macquarie State Recreation Area Bill. It is a nonsense for anyone to think that it was intended that members of the proposed trust should be paid. However, I foreshadow that the honourable member for Lake Macquarie, who introduced the bill, will move an

Page 5675

amendment that will spell out definitively that it is not proposed that any payment be made to members of the trust.

The Minister was ambivalent about democratic control. He favours community control. One had to infer from that that he likes the idea of having trusts and relevant local government and community groups involved in the management of this area. However, when it came to the crunch he seemed to demur from that and harped about how much it would cost. It will cost nothing to have a trust. If the Parliament is to keep faith with the words uttered regularly by members on both sides of the House about the virtues of self-management, responsible citizenship and participation by citizens of the State in the management of their own destinies, the reinstitution of trusts, not only in the Lake Macquarie State recreation area but in other similar areas in New South Wales, would be worth while and ought to be supported by all honourable members. The nominated portions of the State recreation area are separated, but the body of water binds them together. At present they are separated and subject to certain management. Under the rubric of a State recreation area trust that will provide greater co-ordination and State assistance for this important task, and management will be better.

Lake Macquarie City Council has done what it can with the tremendous responsibility it has of managing the Lake Macquarie area and adjacent lands, open space, Crown lands, et cetera, but it would certainly benefit from and deserves assistance from the New South Wales public purse to ensure that this important conservation task is discharged in the best possible way. Certainly there are some transmission lines and other impedimenta within the areas prescribed - impedimenta so far as the Government is concerned - but so far as the Opposition is concerned, these necessary features of the environment will not be threatened. They are important.

It is not proposed that the easements be extinguished. If there is any proposal to suggest an amendment that will clearly protect those necessary facilities, I am sure that the proposer of the bill, the honourable member for Lake Macquarie, will be happy to accept it. The Labor Party is accepting things the way they are. The only change is the transfer of Crown land to a new type of existence. To hear the Minister talk, one would think grand theft was being perpetrated. Pacific Power is so far corporatised and so far removed from the ambit of government that the Government will have to pay compensation to it. [*Extension of time agreed to.*]

One would imagine that there is no connection between Pacific Power and the Government of New South Wales. One would imagine also that Pacific Power is privatised already and, therefore, if some land that it occupies is put to another purpose, compensation will have to be paid. Perhaps the guard is dropping. Ultimately, the desire of the Government to fully privatise everything in New South Wales that is not nailed down is becoming more apparent. When governments have responsibility for compensation there will be zero compensation. In the production of a management plan, ongoing management and the organisation of conservation measures, et cetera, expenditure will occur, but I do not accept that there is something evil or strange about suggesting that money should be expended for conservation adjacent to the biggest saltwater lake in the Southern Hemisphere.

One would think that the Government considers it perfectly all right to spend money elsewhere, but not where the honourable member for Lake Macquarie and other Opposition members for electorates in the Hunter region happen to live. I do not believe there is any particular need to justify expenditure where I happen to live. I am not putting the parochial view that, because I happen to live in a particular area, money should be spent there. Anyone who is aware of what an extraordinary natural feature Lake Macquarie is - and the advantages it has not only to residents, but also to interstate and overseas tourists - and anyone who understands what is being proposed, ought rationally not only to support the bill but also to be enthusiastic about it. There is no intention of paying trustees of the State recreation area or Munmorah State recreation to the south, which is a credit to the past farsightedness of governments, including this one. It is an extraordinarily valuable natural resource and attracts a large number of visitors.

Although it costs money to run Munmorah State Recreation Area, it is very cost effective in terms of conservation and recreation. The fact that there is another State recreation area not far away is hardly an argument. It is not an argument that is adopted in relation to national parks or State recreation areas whenever the situation is examined in a commonsense way. If one looks at the environment, the claims that can be reasonably made - and if it happens that a national park or a State recreation area is in the general region - and all the criteria for a national park or a State recreation area are satisfied by some place not very far away, one does not say, "No. We are doing it on a grid pattern. We will go a minimum number of kilometres before we have another State recreation area or a national park". It would be an absurdity to operate in that way, and no one, including the Government, operates in that way.

One conserves, where it is appropriate, in the public interest. This is not by any means a suggestion that the Hunter or the lower Hunter ought to get some goodie, although it might be worth noting that there has been no support for the acquisition of open space by local government authorities in the Hunter, as there has been in the County of Cumberland for many, many years. I am not scorning the Government for that; I am merely pointing out that successive governments have given no support to local government authorities in the lower Hunter for the acquisition of open space. However, there has been significant support for the acquisition of open space in the County of Cumberland. The Sydney Harbour National Park, which is rather like this proposition in

that it includes a significant body of water and key pieces of land around the perimeter of that body of water, is proposed for conservation. It was the creation of several governments and it is a credit to all of them, just as it would be a credit to this Government if it were to accept that this proposal is a good one. Ultimately, for a moderate cost, New South Wales will receive a tremendously beneficial addition to its conservation and recreation areas.

The fact that Aboriginal sites within the area will need further processing is hardly a problem. The Aboriginal land councils involved are supportive of the proposal, Lake Macquarie City Council is supportive of the proposal, and the overwhelming majority of community and environmental groups within cooee are supportive of the proposal. I beg the Government to put aside any narrow-minded approach by people who might say: "These are lands that the Government could flog off for real money". Let us keep that at the forefront of our minds and resist fiercely any suggestion that these lands ought to be made available for open space by creating a Lake Macquarie State recreation area. I beg the Government to look at the bigger picture and not just think about ultimately selling off the land concerned. I can only assume that is the Government's sole motivation.

The Government should see not only the desirability but also the environmental necessity of doing everything possible to protect Lake Macquarie from further siltation and further stress caused by industrial and residential development. More people will come into the region. More industrial and other developments will take place. By and large, local people accept and welcome these changes. But, while those activities are taking place, it should be remembered that conservation and recreation are important. The Government can properly use its discretion to donate these lands not only to the people of Lake Macquarie and Wyong, but also to the people of New South Wales and, indeed, Australia. I ask the Government to take the larger view. [*Time expired.*]

**Mr W. T. J. MURRAY** (Barwon) [11.59]: I speak on this bill not specifically because it is in the Lake Macquarie area or any other area of the State, but because it is another exemplification of the land grab that is occurring across this State. It is another classic example of the Labor Party putting into effect processes by which land and land title will be further denigrated. This measure can only be described as another land grab by way of a private member's bill, following the private member's bill introduced by the honourable member for Port Stephens. That bill sought to remove land title rights, even the statutory right of the landholder under the Act not only to apply for but to have his land converted. The bill now before the House seeks to put into effect a similar process. The proposal in this bill is a departure from standard and accepted management practices that have worked well, and should be allowed to continue to work well, in New South Wales. For many years State recreation areas have been under the control and management of the Minister, in this case the Minister for Land and Water Conservation, through the Department of Lands.

This proposal takes that system apart. It puts the management of this State recreation area under the control of the Minister responsible for national parks. As a result it totally turns around all that has been done by many State recreation areas across the State. I am gravely concerned. If the Opposition want these lands to be under the control of the National Parks and Wildlife Service why does the bill not seek to declare these areas as a national park? If the Opposition were totally honest about the whole process proposed in this piece of legislation, it would be seeking that these areas be a national park, with the result that Aboriginal land claims over it would be extinguished.

Awaba Bay, lot 100, deposited plan 810760, is held by the New South Wales Land and Housing Corporation. The Wangi Point section is reserved Crown land under the management of the Lake Macquarie Council. Wangi Point South is reserved and vacant Crown land subject to Aboriginal land claims Nos 3307 and 3306. Lot 38, DP 755207, comprises land resumed for the Lake Macquarie power station. I will go through each of these individually as I deal with this bill. The Chain Valley Bay section is freehold land owned by Coal and Allied, lot 1, DP 226133, and is subject to Aboriginal land claim No. 3514.

[*Interruption*]

I will answer the interjection of the honourable member for Lake Macquarie, who has put together what has to be one of the most badly drafted bodgie pieces of legislation I have seen. Even his maps are unclear. The maps accompanying the bill do not clearly define where the boundaries are. The problems in respect of this land are serious. Suddenly, the member proposing the bill, finding himself under pressure because of poor drafting and ill-definition, does an about face and says, "No, that is not the case; at this particular time we are not going to include that particular land, despite the fact that it has been reserved for future works."

Then I come to the Morisset Hospital reserve sight, reserve R31357 and R42541, which likewise is subject to Aboriginal land claims. It is unclear again from the maps whether the hospital facilities have been excluded from this legislation. That is how poor it is. It is a pity that the honourable member for Swansea did not get his facts right and include proper definitions, instead of bringing this sort of rubbish before the Parliament. The honourable member for Swansea said no private land is covered by this bill. The definitions and the map do not make that clear. Until such time as the freehold land owned by Coal and Allied, lot 1, DP 226133, is defined as not being covered by the bill, it can be assumed that it is. It is absolutely wrong to make the statement that no private land is affected by this bill.

The honourable member for Swansea made points about anti-privatisation and his total opposition to privatisation. It seems from his speech today that he totally supports socialisation and the taking over of as much land by the Crown and his own people as possible. This needs to be recognised for what it is - another classic case of land grab, which the Opposition is promoting regularly in this House. An

Page 5677

example is the demonstration outside this Parliament today by groups of people who want access to land owned by the Crown. Those people from the electorate of Monaro, who brought their kids and stock and four-wheel drives with them, and other groups, want access to the land available to the people of this State. This bill is a Labor Party ploy to prevent access to that sort of land by wilderness declaration. This is wilderness declaration over parks in this State to which the people have the right of access. How long will it be before the land to be converted to State recreation areas under this bill is the subject of a wilderness application by some of the mates of the honourable member for Swansea, excluding more people from the use of this particular land?

Over the years Ministers for lands such as the present Minister for Land and Water Conservation have managed State recreation areas. I am very closely associated with one in the northwest of the State, the Copeton State recreation area, based around Copeton Dam. The work that has been done in that area, with the support of government and by individuals in the community coming together and forming a trust such as that proposed in the bill, has been rather remarkable. Their management structure is excellent. They are not paid for managing that recreation area in the way that this bill suggests the trustees will be paid for managing the Lake Macquarie State recreation area. The Copeton trustees put their time and effort into managing the Copeton State recreation area. As a result their support by the Government and the community is great, and they have created a genuine recreation area in that particular part of New South Wales. The recognition of the Copeton trustees by the department and the funding that they have received over the years clearly indicate that this nonsense of a proposal is not needed. If there is a need for a State recreation area, then let it be through the normal processes that have been proved and are in operation today.

The bill provides that the trustees will be paid. The honourable member for Swansea and the honourable member for Lake Macquarie can jump up and down to their hearts' content and say, "That will not happen as we will move amendments to prevent it". Their only claim to fame is that they can jump up and down and make asses of themselves in front of the schoolchildren present in the gallery. Their behaviour and this legislation are relative. Opposition members are now claiming that the trustees will not be paid, despite the fact that the bill provides that they will be.

Opposition members have said they will move amendments to delete any reference to payments. Why was the bill not properly drafted in the first place and why were the intentions of the honourable member for Lake Macquarie not known before the bill was introduced? It is nonsense for legislation to be introduced when it has not been put together properly. Applications have been received from Aboriginal land claim groups in

respect of the land involved in this legislation. Those Aboriginal groups have made land claims in respect of two areas - Wangi Point South and the Morisset Hospital site. It is reasonable to suggest that this legislation will remove from the Aboriginal Land Rights Act the right of people in that area to make land claims. *[Extension of time agreed to.]*

This legislation could enable the granting of an Aboriginal land claim without due processes being followed. Processes that have been in place over the years in regard to Aboriginal land claims could be bypassed. The Opposition cannot have it both ways. An Aboriginal land claim should be subject to the due processes of law. Bodge legislation such as this could extinguish land claims yet result in the handing over of management of the lands to the Aboriginal communities that made claims to those lands. The management trust which this legislation will establish will comprise two representatives from the Koompahtoo Land Council and a representative from the region's Aboriginal custodians. Three of the 10 proposed members of the management trust are more than are required to represent the rights of Aboriginal people.

If these Aboriginal people owned the land it would be reasonable to suggest that they should have such representation, but they do not own it. They are interested in this area only because they have a land claim. To create a trust with such representation on it makes a complete mockery of the land claim process. I suggest that the purpose of this legislation is to bypass the due processes of law in regard to land claims. In effect, this legislation will grant by backdoor methods land claims which are being sought by Aboriginal communities in this area, which is something I will not accept. The management trust which is to be established by the bill will also compromise two representatives from Lake Macquarie City Council. The honourable member for Swansea made impassioned statements about Lake Macquarie and all the problems associated with that area. I have no problems with that at all.

I set up the management structure for the rehabilitation of Tuggerah Lakes. A management system was devised to enable the return of good quality water to Lake Macquarie, which is what the people of that area need, demand and should have. Lake Macquarie City Council could do a lot to clean up Lake Macquarie. It should direct its attention towards cleaning up that lake and the areas surrounding it rather than becoming involved in the proposed management trust. Land management of Lake Macquarie and its surrounds is critical for the future of that area. We cannot guarantee that the establishment of this trust will provide a basis from which that management structure can be built. The trust will compromise two councillors from Lake Macquarie City Council and one councillor from Wyong Council. Wyong Council would be able to assist in the Lake Macquarie project because work that it has done on the Tuggerah Lakes operation has been excellent.

Page 5678

The trust will also compromise the manager of the Point Wolstoncroft Sport and Recreation Centre, the Chairman of the Lake Macquarie Total Catchment Management Committee and a representative of the United Residents Group for the Environment of Lake Macquarie. It would be better for them to get together to clean up Lake Macquarie and its surrounds rather than involve themselves in this bodgie State recreation area. We should not overlook the fact that, in the past, governments made decisions to reserve land for future government use. The Government reserved Crown land for a national fitness and physical education centre at Point Wolstoncroft. Will that land still be reserved for this new recreation area? The honourable member for Swansea made a rather fascinating statement about transmission lines and other impedimenta not being affected. What will happen to the area that has been reserved for the new national fitness and physical education centre, which was to provide facilities for children and adults in this State? What will happen to the Morisset Hospital site?

This legislation is ill defined and ill prepared. Vacant Crown land at Wangi Point South has been reserved for Lake Macquarie power station - an essential part of the future development of the Central Coast of New South Wales. Where will replacement land come from for Lake Macquarie power station? The honourable member for Swansea suggested that this land should be donated for the new State recreation area. I am opposed to this legislation. It is irrelevant to the future needs of the State. It will create new management structures which will not work. It will supersede land provisions that have been made in the past. Quite



frankly, the sooner it is thrown out, the better.

**Mr FACE** (Charlestown) [12.19]: I support the Lake Macquarie State Recreation Area Bill. I do not intend to be long with my remarks, because it is obvious that the Government is attempting to circumvent the will of the Parliament by filibustering. The former Deputy Premier has put on record once again the time warp in which his party lives in regard to land use in this country. This measure is supported by those who are concerned about land use, even by those of his own political persuasion including councillors of the Lake Macquarie City Council. Much of the land that is proposed to be incorporated into the State recreation area is government owned land which, like many other State recreation areas and national parks, has been retained by government for a variety of reasons. In most cases those reasons have nothing to do with any long-term strategy for national parks or State recreation areas.

As an example, the Defence Department retained large tracts of land on the foreshores of Sydney Harbour for many years, and as a consequence those lands were able to be saved and not desecrated by development. The Hunter District Water Board, subsequently the Hunter Water Corporation, held on to a variety of holdings of consequence in the Glenrock State recreation area because of mining leases in the area. It has been argued today that we do not need this State recreation area in Lake Macquarie because it is on the doorstep of Munmorah. That argument is ludicrous. Munmorah and Glenrock adjoin the State recreation area, which ensures the preservation of the environment in that area. The area is used for recreation by many people who live in the Sydney metropolitan area. As a consequence of the major national highway Lake Macquarie is being used by people from the Sydney metropolitan area who holiday in the area and use it for recreation. The area is coming under increasing pressure. This pressure will continue because of the heavy concentration of population in the greater metropolitan area.

I holidayed at Marks Point when I was a child, about 40 years ago. The lake has come under extreme pressure, both on its foreshores and on the water. Boating supervision has had to be increased, which indicates how much it is used, especially in holiday periods. This matter was touted by the former member for Swansea, Ivan Welsh, when he was the mayor of Lake Macquarie and a conservative Independent in this Parliament. His proposal was lifted straight from the United Residents Group for the Environment of Lake Macquarie, a well meaning and well justified organisation. The proposal was agreed to by the population in and around Lake Macquarie, Newcastle, the lower Hunter and the Hunter. Anything contained in this bill results from consultation not only with URGE but with the community in the period leading up to the introduction of the bill.

It is sad that a fairly senior member of the National Party would speak critically of the Parliamentary Counsel of this establishment by saying the bill was poorly drafted. I am bewildered that he is reflecting on the Parliamentary Counsel for drafting errors in the bill. There is every possibility that this measure will eventually be passed by the House. The Government is seeking some way around it or out of it. The contribution by the former Deputy Premier today will do nothing for the cause of the National Party in my region. It is in a time warp. The two other major parties in the Parliament in the 21 years in which I have been here - 21 years today - have moved progressively with community attitudes and reflect the views of people in the community generally. That is not the case with the National Party. I am disappointed in the Deputy Premier, a person who has given a fairly distinguished contribution to this Parliament, though I do not agree with his political philosophy.

The bill introduced by the Opposition has the total support of Lake Macquarie based State members. For a considerable time there has been a need for the State recreation area to be established. It is the only way to prevent further encroachment taking place. Heaven help us if this coalition is in power much longer. It will flog off anything. I am horrified when I think what it would be likely to do with parcels of land adjacent to that lake. This lake, because of the use that is made of it, has been aptly described as the metropolitan playground for many people during the peak holiday periods and on a day-to-day basis.

Sydney area. More pressures are being put on the lake each month and year in a variety of ways, especially with urban runoff. I compliment the honourable member for Lake Macquarie on bringing the matter before the Parliament. I will not delay the House any longer; I will give others an opportunity to make a contribution, and listen to the Government's reaction. If I am any judge, the Government will talk this matter out between now and 1 o'clock, so it can get around some hidden agenda. It is all about a time warp and the variety of activities that the Government likes to get up to in regard to land management in this State.

**Mr COCHRAN** (Monaro) [12.29]: I am sure that honourable members on this side of the House, who are deeply concerned about the future of land tenure in this State, would be deeply offended by the allegations the honourable member for Charlestown has made that Government members are filibustering. The honourable member for Murrumbidgee, the Minister for Land and Water Conservation and I all have a vested interest in the future management of land and water resources and recreation areas in this State. Why on earth would we not want to speak on this issue? After all, this is yet another land grab. It is a philosophical abuse of the system. Opposition members cannot help themselves, and that has been admitted. The honourable member for Charlestown admitted it. He said that the land was under great pressure. Has he stopped for a moment to think why the land is under pressure?

It is under pressure because so many national parks have been created in this State that there is nowhere else for people to go, and housing is concentrated in certain areas. For a decade or more I and other members on this side of the House have used the argument that the more national parks are created and the more areas are created where people are not entitled to engage in normal recreational pursuits, the more concentrated people will be in central areas. Of course there is a threat of damage to wildlife and to the environment, but members opposite do not understand that by creating State recreation areas they are providing a forerunner for the provision of further national parks, followed by further wilderness areas. Further areas will be created where the people of New South Wales, and Lake Macquarie in particular, will not be able to enjoy the recreational pursuits they now so eagerly embrace.

There is no doubt that this bill is a cynical attempt to create a de facto national park. It is against the wishes of the National Parks and Wildlife Service, which has not budgeted for the management of the area. That must be borne in mind. No budgeting has been allowed in this year's budget and it will not appear in next year's budget because the National Parks and Wildlife Service has enough trouble managing the land it has without adding any more areas to its portfolio. What surprises me more than anything else about this bill is that it was not introduced by the honourable member for Port Stephens. The honourable member has introduced and spoken to a litany of bills, all of which have been followed by a series of amendments and have subsequently been rejected by his own party, to the great embarrassment of the frontbench. I was surprised that the honourable member was not behind this bill, although he may well have been. I would not be a bit surprised if the Leader of the Opposition had something to do with it because he is into big land grabs. He wants to create more lockout areas to which the people of New South Wales and, in particular, Lake Macquarie, will have no access.

I listened with great interest to the contribution of the honourable member for Barwon, the former Deputy Premier. I take this opportunity to commend him. My colleagues and I noted that he was in extreme pain. He has enormous courage because he suffers great pain and pressure in his hips, yet he stood here, leaning on the pedestal to support himself. Over the years he has been committed to the protection of the environment. Many years ago he was involved with the Murray-Darling Basin Catchment Management Committee and was one of the early conservationists in the Darling-Moree region. I disagree with the criticism that the honourable member for Charlestown made about the honourable member for Barwon offering his words of wisdom on this issue.

I turn now to discuss the establishment of the management trust for this recreation area, or the mishmash of recreation areas involved. It is proposed that the trust comprise 10 members. It is bigger than Ben Hur! It is suggested that the members will be paid, for goodness' sake! Where on earth is the money to come from? The Hon. John Johnson will be travelling the streets of Lake Macquarie selling chook raffle tickets to get funds for the National Parks and Wildlife Service and for this trust. The proposed membership is interesting - talk about

a stacked committee! The membership of the trust is set out at clause 9(1) of the bill, the paragraphs of which are as follows:

(a) 2 councillors of the Lake Macquarie City Council;

I am sure honourable members know which party those councillors belong to:

(b) one councillor of the Wyong Council;

(c) the Manager of the Point Wolstoncroft Sport and Recreation Centre, Department of Sport, Recreation and Racing;

(d) the Chairman of the Lake Macquarie Total Catchment Management Committee;

(e) 1 representative from the United Residents' Group for the Environment of Lake Macquarie;

(f) 1 representative from the Wangi Peninsula Advisory Committee;

(g) 2 representatives from the Koombahtoo Land Council;

(h) 2 representatives from the Bahtahbah Land Council;

(i) 1 representative from the Regions Aboriginal Traditional Custodians.

Page 5680

That is a collection of pressure groups that would be entrusted with the management of this State recreation area if this bill is passed. One does not have to be Einstein to work out the political skulduggery that has gone into nominating these trust representatives. No doubt the honourable member for Lake Macquarie will be pleased if this measure is agreed to by the House because he will have pleased these minority groups. He seeks to create this trust to appease these minority groups in his area. One can only wonder how on earth this group of 10 people will be able to carry out its responsibilities under the charter of the trust to manage a recreation area that spans six different nominated areas, widely separated and spread over a large area.

If this bill is passed and the management trust is established, the result will be costly and difficult management practices for the proposed State recreation area. A single trust will be looking after what is effectively six different areas that make up the proposed State recreation area. That distribution of several separate parcels of land would be almost impossible to manage. My colleagues and I are concerned about the cost involved in establishing this State recreation area. Where would the honourable member for Lake Macquarie, the Leader of the Opposition or any other Opposition member prefer that the Government take funds from in order to manage this trust, that is, the \$200,000 for its establishment and the \$200,000 for recurrent expenditure. The bill does not mention the source of these funds. Perhaps the honourable member intends to rely on Johnno's chook raffles. The passing of this bill would place an imposition on the State Budget of \$200,000, and the money must come from somewhere.

Where would Opposition members prefer that the \$200,000 come from? Would they prefer that it came from the housing budget, so that perhaps only two houses might be built for two deserving couples in the Lake Macquarie area? Would they prefer that it come from the health budget? The honourable member for Lake Macquarie might consider that proposition, given the poor management of health resources by previous Labor governments. Perhaps the rural assistance scheme could provide the funds. I imagine that suggestion would suit the Australian Labor Party down to the ground.

If \$200,000 could be reallocated from the rural assistance scheme to the Lake Macquarie State recreation area, that would suit honourable members opposite because they have no real concerns about people in the bush. I suspect that is where the money would come from if the Labor Party had its way. If that is not the case and if

the Opposition is not willing to allocate funds from other portfolios, it should identify the part of the Budget from which the funding will come, otherwise one must assume that it will come from budgetary allocations for health, housing or the rural assistance scheme.

The bill proposes that State recreation area trustees be paid, and that sets a precedent in the State. That measure is important because the Minister for Land and Water Conservation is responsible for drafting budgets. If that amount is assessed at \$1,500 per annum to each trustee in every recreation area across the State, the Government will have to find \$14 million, not once, not twice, but every year from then on. There will be enough trouble raising \$200,000 from Johnno's chook raffle, let alone \$14 million.

I ask the honourable member for Lake Macquarie where he would like the funds to come from - from housing for Lake Macquarie, health for Lake Macquarie or from the rural assistance scheme. Perhaps that \$14 million, or part thereof, should come out of the allocation made to the electorates of the honourable member for Murrumbidgee, the honourable member for Oxley or the Minister. The money must come from somewhere. Once the precedent is set, it becomes the responsibility of the Government. This is one of the most irresponsible, poorly drafted, mishmash pieces of legislation that has ever been put before the House. The honourable member for Port Stephens should come out of his hollow log and listen to the debate in the Chamber because even he could come up with legislation better than this. [*Extension of time agreed to.*]

We then had the greatest offence of all, the mother of all offences. The honourable member for Charlestown suggested that in some way the honourable member for Barwon, the former Deputy Premier, had insulted the Parliamentary Counsel. I cannot understand that assertion because time and again not only the honourable member for Port Stephens but other members on the Opposition benches have put forward legislation that has resulted in many amendments. If Opposition members do not move amendments, the Independents do, and Opposition bills must be confusing to the Parliamentary Counsel. It is not the fault of the Parliamentary Counsel. The problem lies with the dill brains on the Opposition benches who do not understand what is required to brief the Parliamentary Counsel. Unless honourable members opposite accept that fact, they have no right to suggest that the honourable member for Barwon has made any offensive comment about the Parliamentary Counsel.

This legislation is a costly imposition on the people of New South Wales. It is totally unnecessary and is part of the great land grab engaged in by the Australian Labor Party. It is an unnecessary imposition on the National Parks and Wildlife Service, which has more on its plate now than it can handle. I question whether the people of Lake Macquarie and the surrounding area want a recreation area or whether they have been consulted in any way. Several minor activists are represented on the trust to appease certain concerns, and I bet those people have applied pressure to the honourable member for Lake Macquarie, and he has buckled at the knees. He has agreed to find a State recreation area, to give those people a job, to provide \$1,500 a year; Johnno will sell the chook raffle tickets and all the problems will be solved.

Page 5681

To his credit the honourable member for Lake Macquarie has carried out his obligation and has introduced the bill, though not many people understand it. It is important that I read into *Hansard* part of the second reading speech of the honourable member for Lake Macquarie so that members in the Chamber and those listening to the debate in their rooms will understand the type of people we are dealing with. In his second reading speech on 9th September the honourable member for Lake Macquarie stated:

It is a sad indictment of white man's 200 years of Australian existence that only two large natural bushland areas remain along the eastern shores of Lake Macquarie. They are: to the north, Green Point which is located between Valentine and Belmont; and, to the south, Crangan Bay, between Nords Wharf and Gwandalan. As I said earlier, unfortunately those areas are not included in the bill. As I said earlier, unfortunately those areas are not included in the bill. That is because they are privately owned.

This is the punch line:

However, I believe that at a future time they should be included in the Lake Macquarie State Recreation Area -

I wonder about the views of the landholders on this matter. I would like to say to the landholders, "The honourable member for Lake Macquarie considers that at some future time your land should be part of a State recreation area". It is incredible that the private landholders have not been consulted and that the honourable member for Lake Macquarie has made the presumption that the land will be resumed at a future time. I am not sure how the land will be resumed - perhaps the jackboot tactics the Labor Party used earlier in relation to the Kosciusko National Park. I refer to a letter from the honorary secretary of the Gwandalan Progress Association to the Hon. George Souris, who is doing a magnificent job. The letter states:

At the September meeting of the above Association it was revealed that a Private Members Bill was being presented to the Parliament with regard to a proposed Lake Macquarie Foreshore Park and presented by Mr J. Hunter M.P. I am amazed that such a Bill can be presented without the knowledge and co-operation of the people of Gwandalan and Summerland Point, the very people who stand to be the most inconvenienced by this Bill.

And we have been told there was community consultation! Somewhere along the line the honourable member for Lake Macquarie will have to answer to his constituents and to the Parliament. In his second reading speech he referred to consultation. On the one hand he is saying that at some future time private land will be resumed, and on the other he asserts consultation is continuing with those people nominated as trustees in the management of this proposed area, yet they know nothing about it. I find it incomprehensible that the honourable member can purport to represent those people yet the letter suggests they know nothing about the matter. The bill deserves to be rejected. It has been introduced without appropriate consultation. Questions need to be asked about where the Government and, in particular, the National Parks and Wildlife Service, will obtain the funding. I call on Opposition members to display some sanity on this issue and reject the bill.

**Mr MILLS** (Wallsend) [12.49]: It gives me pleasure to support the bill. Sixty per cent of the people I represent in this Parliament live in the city of Lake Macquarie; 100 per cent of the people I represent live in the Hunter region. They are all anxious that this bill should proceed. The State recreation area at Lake Macquarie will represent a significant boost to recreational land stocks in the Hunter region. It will preserve the last few remaining metres of undeveloped foreshore of Lake Macquarie. By creating a Lake Macquarie foreshores park we will realise a dream of conservationists in the Hunter region since the 1920s. It is exciting to be part of a process where a dream is coming closer to reality.

I pay tribute to the United Residents Group for the Environment, which has worked hard over recent years to prepare a community based proposal for the Lake Macquarie foreshore park. I also pay tribute to the Aboriginal people and other interested community groups for the co-operation, consultation and advice they have given to the honourable member for Lake Macquarie in developing the proposal for this bill. I compliment the honourable member for Lake Macquarie for introducing the bill. I certainly hope that in the near future we can add the land at Green Point and other appropriate small portions of land that need protection. I support the bill. My remarks have been brief because I do not wish to advance the filibuster that the Government is engaging in today.

**Mr CRUICKSHANK** (Murrumbidgee) [12.51]: I am pleased to have the opportunity to speak to this important matter because there is a lot more at stake than just six separate pieces of land on the foreshores of Lake Macquarie. I do not believe that Opposition members are aware of the acreage involved.

**Ms Allan:** The honourable member would not know what it is about.

**Mr CRUICKSHANK:** Tell me how much acreage the six separate pieces of land comprise?

**Mr Gaudry:** It is hectares. The honourable member should come into the twentieth century.

**Mr CRUICKSHANK:** Not one Opposition member can tell me how many hectares are involved in the six separate pieces of land. If we were talking about six separate pieces of land each of 20,000 or 30,000

hectares, the bill would have some substance and would perhaps contain an administration plan that could be funded by the National Parks and Wildlife Service comparable with other administration plans. In that instance, it would be similar, but it is not because the whole jolly lot represents 2,000 hectares, or 5,000 acres. I shall return to that issue later. This bill is one of the most irresponsible and poorly drafted pieces of legislation that the House has dealt with. It is a clear example of how poorly conceived ideas translate into bad legislation. The bill provides that certain lands identified in accompanying maps are to be reserved, and from the date that the reservation takes effect, the lands in question become Crown land. Those areas include Awaba Point, which is presently owned by the Land and Housing

Page 5682

Corporation; Wangi Point, which is reserved Crown land under the management of the Lake Macquarie Council; and Wangi Point South, which is vacant reserve Crown land subject to Aboriginal land claims and comprises land resumed for the Lake Macquarie power station.

During the time I spent with the Minerals and Energy Commission I noted the potential for the development of aquaculture. That potential should not be taken away from the sector of private enterprise that wishes to exploit the possibilities. The Opposition wants to give to the National Parks and Wildlife Service the Point Wolstoncroft reserve Crown land that is used for national fitness and physical education. Chain Valley Bay land, which is owned by Pacific Power, is vacant reserve Crown land under the management of Wyong Council. The land belonging to Morisset Hospital is subject to Aboriginal land claims. However, it is unclear from the maps accompanying the bill whether the hospital facilities have been excluded.

In addition to reserving certain lands and thereby revoking existing dedications and reservations, the bill will establish a management trust comprising 10 members. This matter was canvassed by the honourable member for Monaro when he questioned the philosophy behind the people promoting this land grab by Opposition members, who say they represent the majority of people in their electorates. Opposition members manufacture these capers to show their electorates they are doing something. Honourable members would be aware of the recent problems with the Letona cannery. Letona Co-operative Limited was in trouble and had been going broke for many years. Members of the Opposition and the Federal Government now wish they had never heard of Letona. The Opposition tried to show that it was doing something, but it is now in an irretrievable situation. The only assistance the Federal Government will give is a few words. It will not give any money. The Opposition missed the opportunity when it did not agree to the amendment to the bill that would have forced the Federal Government to take responsibility. The opportunity was there and it blew it!

The notice paper still contains matters to be discussed regarding Letona cannery. Opposition members wish they had never heard of Letona. They got involved because they wanted to be seen to be doing something. The Opposition has been skewered! The bill may have been helpful if it referred to the definitions relating to the creation of State recreation areas contained in the National Parks and Wildlife Act. Section 47A of that Act defines certain lands as prescribed lands. However, prescribed land may be included in notifications of State recreation areas. As the definition of prescribed land specifically precludes the notification of freehold land, some of the sites identified for inclusion in the State recreation area would be eliminated. The supercilious attempt to grab freehold land represents politics of envy, which is endemic to the other side of the House - the same politics of envy and irresponsibility we had under Neville Wran. I quite liked Neville Wran - I like him better now that he is out of this place. He had this penchant for hollow logs. This bill is irresponsible. It suffers from the robbing Peter to pay Paul syndrome.

**Mr Hunter:** Do you support the bill?

**Mr CRUICKSHANK:** What does the honourable member think I am doing? If I supported the bill, I would be on the other side of the House. I am on this side and this is where I am staying. The Labor Party is still financially irresponsible. It thinks it can put concepts together and rob Peter to pay Paul. The Opposition believes that all it has to do is to tell the Government to find the money, but it can never explain where the money will come from. This bill seeks to change the use of land owned by a number of government instrumentalities, which will have adverse consequences for the operation of those agencies. The Land and Housing Corporation at Awaba Point, Pacific Power's land at Wangi South and land used by the Department of

Health at Morisset will be removed from the control of those agencies without compensation. This retrograde step in the transfer of assets should not be supported. The cost of the land involved is significant. In total, excluding vacant Crown land or land reserved for public recreation, the land identified for inclusion in the proposed State recreation area is conservatively valued at more than \$6.05 million.

**Mr Hunter:** Do you want to sell it off?

**Mr CRUICKSHANK:** The honourable member for Lake Macquarie is one of the fellows who is interfering.

**Mr Hunter:** You want to develop the foreshores.

**Mr CRUICKSHANK:** What is this guy talking about? He does not have a clue what he is talking about. Members opposite have no idea of the value of the land they are fooling around with - and that is all they are doing.

**Mr ACTING-SPEAKER (Mr Tink):** Order! It being 1 p.m., pursuant to the sessional order, the debate is interrupted.

## **REGULATION REVIEW COMMITTEE**

### **Report: Radiation Control**

**Mr YEADON (Granville) [1.1]:** I move:

That the House take note of the report.

This report draws the attention of Parliament to the concerns of the Regulation Review Committee about clauses 9 and 15 of the Radiation Control Regulation 1993. The Minister has acted on that report and on 15th November, 1993, he instigated discussions between the committee members and officers of the Environment Protection Authority and three members of the Radiation Advisory Council. Those discussions fully examined the concerns of the committee. As a result the chairman of the Regulation Review

Page 5683

Committee received a written undertaking from the Minister to review the relevant issues that were in contention. The action taken by the Minister fully satisfies the committee at this stage.

Briefly, clause 9 of the Radiation Control Regulation, which related to close supervision of some employees in relation to employment practices, turned out to be a simple problem of definition. It was clear from the discussions with the Environment Protection Authority and the Radiation Advisory Council that everyone was talking about the same thing. It was simply that the definition in the regulation was erroneous. The committee has been given an undertaking that the definition will be corrected. In similar fashion clause 15, which relates to the use of personal monitoring devices for a range of employees in the radiation industry, showed that a regulatory impact statement had not been properly conducted. The RIS was deficient in many areas covered by the regulation. If it had been carried out properly at the outset, the problems the committee confronted would not have occurred.

This example demonstrates clearly the need for departments to undertake regulatory impact statements to ensure that all views are taken into account and that all options are examined properly, so that when the regulations are gazetted everything is in place and is appropriate. That will avoid problems. The Environment Protection Authority, the advisory council and the department have given an undertaking that they will do a supplementary RIS in relation to clause 15. No doubt that will take a few months. Depending on the outcome of that statement, an undertaking has been given that clause 15 of the regulation will be reassessed. One hopes that will result in more precise and appropriate regulation of the use of personal monitoring devices.

**Report noted.**

## **PUBLIC ACCOUNTS COMMITTEE**

**Report: Year Ended 30th June 1993**

**Report noted.**

## **COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

### **Evidence of Commissioner Temby, Q.C.**

**Mr KERR** (Cronulla) [1.4]: I move:

That the House take note of the report.

I note that you, Mr Acting-Speaker, will speak in this debate. I shall confine my comments to three aspects: the general nature of the collation, prosecutions and convictions, and general comments. In regard to the general nature of the collation, it is the fifth such document produced by the present committee. The former committee produced three such documents and deliberately decided to conduct regular public hearings with the Commissioner of the Independent Commission Against Corruption and to produce a permanent record of those hearings. The hearings have enabled a wealth of information about the Independent Commission Against Corruption, which would not otherwise be available, to be placed on the public record. The hearings are now being replicated by other parliamentary committees that have responsibility for overseeing statutory officeholders, such as the Ombudsman.

In relation to prosecutions and convictions, one of the issues that I pursued with the commissioner by way of questions upon notice for the hearing on 15th October was prosecutions and convictions. The ICAC has recently provided the committee with a table that gives a detailed breakdown of the outcome of prosecutions and disciplinary or dismissal action arising from ICAC reports. That table is reproduced on pages 16 to 28 of the collation of evidence. For the first time it is possible to see what has happened in relation to the recommendations the ICAC has made in public reports that consideration be given to the prosecution of individuals or the taking of disciplinary or dismissal action against individuals. This is yet another example of the work of the parliamentary Committee on the Independent Commission Against Corruption resulting in important information about the ICAC being placed on the public record.

On the subject of general comments it must be said that the public hearing with Mr Temby on 15th October was fairly robust. A number of contentious issues were discussed and the relevant written questions and answers and verbal evidence are contained in this collation of evidence. I shall leave it to other members of the committee to speak about the issues of particular concern to them. The hearing with Mr Temby and the production of this collation of evidence form an integral part of the work of the committee in pursuing its function to monitor and review the exercise by the ICAC of its functions.

**Mr TINK** (Eastwood) [1.7]: What other description is there for an invitation from the ICAC to a journalist to attend an off-the-record briefing on the basis that "you were never here", than that it is an invitation to conspire to deceive the public? So inadequate and incomplete are the Independent Commission Against Corruption's records of such briefings that only Mr Temby's briefing on the Neddy Smith-Operation Milloo matter on 9th October, 1992, is sufficiently documented to be analysed. Of primary concern is the fact that Mr Temby, as a quasi-judicial officer, gave this Milloo briefing only one month before presiding over public hearings on the same matter, and clearly had those hearings in mind during the briefing. In justifying this Mr Temby stated that his two goals were: first, to correct misunderstandings that might give rise to inaccurate



reporting; and second, to provide a briefing to interested journalists.

Given that the only television journalist present was Murray Hogarth of the "7.30 Report", it is difficult to conclude that he alone of his television colleagues required a special briefing to correct misunderstandings. Indeed, having spoken to his colleagues at Channel 7 and Channel 9, I know that

Page 5684

they were incensed at being left out of this briefing where, according to Mr Temby's own evidence, the material provided went well beyond what was made available to the media in the ICAC press release of the same day. Moreover, there was a perception that they had been dealt with partially by a quasi-judicial officer. I cannot accept Mr Temby's argument that the briefing "prevented stories airing which would have been imbued with a tone of breathless excitement", precisely because Deborah Cornwall's piece which ran the next day in the *Sydney Morning Herald* following her presence at the briefing showed a cartoon of a breathless civilian shouting "Help, police!" while being chased by a policeman.

Indeed, following the briefing, Deborah Cornwall's headline became "Corrupt Police Confess to ICAC", which is to be contrasted with the ICAC publicly available press release of the same day that spoke only of the ICAC "interviewing a large number of serving and former officers". I have difficulty also accepting Mr Temby's comment that he did not want to see public expectations heightened by means of printing misinformed speculation, when he could not even recall whether he was the source of the following statement in the same story by Deborah Cornwall: "A thin blue line of police solidarity seems to have collapsed. Only one or two (of the accused said police) have really held out on us". To top it all off, when the Milloo hearings commenced on 16th November, 1992, the journalists assembled in the ICAC hearing room were shown a 1951 Kirk Douglas movie called "The Big Carnival", which is a story of a down-on-his-luck newspaper reporter who turns into a major media event an accident in which a child stumbles down a mine shaft. Frankly, this is mickey mouse media management that is totally unbecoming of the ICAC.

I have concluded that, first, the Independent Commission Against Corruption should not conduct off-the-record briefings with the media; second, all ICAC dealings with the media should be totally transparent; third, it is regrettable that Mr Temby seems to be equivocating on these points, and I sincerely hope that his successor sets a better standard by stopping such briefings immediately on appointment; fourth, it is particularly unsatisfactory that Mr Temby justifies this lack of transparency by saying that the court's dealings with the media are not absolutely transparent. I say that the courts have even less reason to give off-the-record briefings to the media.

Whilst it would be silly of me to expect all the media to be given precisely the same information at the same time, the special information which Mr Temby admits was given to select journalists at the off-the-record briefing on 9th October, 1992, should not be repeated because it gives rise to questions of partiality. If the ICAC is to persist with off-the-record briefings, it should keep a record of them. Plainly, it is totally unsatisfactory that Mr Temby can not now say whether or not he was the source of crucial information appearing in Deborah Cornwall's article, which was written immediately following Mr Temby's briefing. Most importantly, nothing was said at the briefing which could not have been said on the record. My view is that the courts and quasi-judicial bodies such as the ICAC should speak to the press on the record; they should be transparent. To do otherwise, with the ICAC offering briefings on the basis that the press agree to pretend that it was never there, renders all concerned liable to be compromised by an agreement to deceive the public.

**Report noted.**

## **REGULATION REVIEW COMMITTEE**

### **Report: Future Directions**

**Mr YEADON** (Granville) [1.11]: I move:

That the House take note of the report.

I support report No. 23 of the Regulation Review Committee and the recommendations contained therein. The chairman, in his statement earlier this week, referred to the significant drop in regulatory activity in New South Wales over the past few years. The figures show a reduction of 31.3 per cent in the number of regulations that existed as at 1st September, 1993, compared with the regulations that previously existed as at 1st July, 1990. This indicates that the committee is successfully monitoring the regulation-making procedures that are contained in the Subordinate Legislation Act. Our focus is on the impact of individual regulations, as well as on broad issues of reform. We meet and consult with similar committees in other States, and will no doubt continue to do so in the future.

The committee has, through its monitoring process, become an effective means of raising public awareness in the regulation-making process. As recently as this week the committee was able to act on public concerns raised in relation to the Radiation Control Regulation 1993, to which I made some comments when dealing with report No. 22 of the committee. In correspondence to the committee dated 16th November, 1993, the Minister gave the committee an undertaking to instruct the Environment Protection Authority to prepare a regulatory impact statement in regard to the provisions of clause 15, which dealt with personal monitoring devices. He also instructed the committee that the Environment Protection Authority would have the definition of "close supervision" in clause 9 of that regulation amended to clarify its proper intention. These two undertakings met the committee's central objectives, as have been set out in its report No. 22 to Parliament, which was tabled last week. I mention this example to show that the review process actually works.

The committee also has a valuable role in developing the skills of its members in regulatory matters and in providing an opportunity for the whole committee to act on a bipartisan basis. We have a good record of having dealt with a very large number of complex issues on their merits. The committee has reached a point in its work where it is in a position to make some useful recommendations regarding future

Page 5685

regulatory review practices in New South Wales. That is the function of this report. Under the committee's recommendations, detailed cost benefit analysis of regulations will be required only where, in the opinion of the Minister, the preliminary assessment made under schedule 1 of the Subordinate Legislation Act indicates that this is justified in the public interest.

The schedule 1 assessment is the internal departmental assessment supplemented by public consultation. However, where the Minister considers that a formal impact statement is not required for the regulation, he will still be obliged to set out the reasons for it in a certificate when the regulation is referred to the Governor. The committee will have access to that certificate. The committee estimates that this will reduce the number of regulatory impact statements that are currently being prepared for regulations by at least 25 per cent. A substantial saving will emerge from that. The committee's report demonstrates that the standard of regulatory impact statements currently being prepared by government departments is still very poor. Few of them really effectively demonstrate the impact of a regulation.

The committee believes that a training scheme, including the preparation of a training manual and follow-up workshops, should be developed by the committee to ensure an improvement in the quality of these impact statements. Funds would need to be provided for this purpose. The committee's report sets out detailed costings for that training scheme. It also shows that the cost of that scheme would be completely offset by the benefits which would flow from it. The committee also recommends that an examination should be carried out by the Premier's Department of ways to make the New South Wales *Government Gazette* more user friendly, having regard to the practice adopted by the United States in relation to the *Federal Register*, which is equivalent to our gazette. That *Federal Register* is widely used by the public. In contrast, the New South Wales gazette, although the information contained in it is accurate, is not read by the general public. Indeed, it could be argued that it is a very alienating document. The secret lies in the use of plain English explanations for official documents, regulations and Acts. I commend the report and its recommendations.

**Mr RIXON** (Lismore) [1.16]: The recommendations in this report will streamline the review process of

regulations, make it more efficient and reduce the cost. This report highlights certain weaknesses in the regulation assessment practice of some government departments. The appendices to the report contain some useful information on the quality of the impact statements of government departments. A disconcerting number of these regulatory impact statements fail to reach any assessment of either the total benefits of a recommendation or the total cost of them. Consequently, in these cases, no one really knows whether the regulation is going to make the community any better off. It is rather similar to taking medicine without knowing the side-effects. Our report contains recommendations to correct the situation.

We have also sought to limit regulatory impact statements to the most significant regulation-making occasions. Some departments have justly complained that they have been obliged to conduct regulatory impact statements in cases where they have not been warranted. The report concedes that this has happened. We, too, are learning by that experience. We have sought the views of all departments and agencies on the review process and we have also canvassed community and industry groups. This is an ongoing process. We have had a lot of support for the regulatory review process under the Subordinate Legislation Act and the Legislation Review Act. The responses we get from departments and public groups show the great value they put on actually being consulted. This is a great strength of the current procedures for making regulations. Government departments must consult the public on their regulatory proposals.

One of the examples in this report deals with an amendment to the gas regulations. This is a classic example that shows the merits of the regulatory impact statements and the consultation process in making a department aware - in this case, very uncomfortably aware - of the consequences of its regulatory proposal. On 20th April, 1991, the Gas Regulation 1991 was gazetted. This regulation received a fast track exemption that allowed it to be published provided a regulation impact statement was carried out within four months. That impact assessment did not quantify the costs and benefits of the regulation.

The Albury Gas Company's submission indicated that the gas supply pressure specified in clause 15 of the regulation would necessitate adjustment of regulators. The committee was informed by the company that the prescribed gas pressure of 1,125 pascals would result in the adjustment of 18,000 regulators, at a cost to the company of \$1.53 million. As a result, the department amended the regulation to permit the Albury Gas Company to supply natural gas to premises at a pressure of 1,000 pascals instead of the 1,125 pascals required in other places, thus saving the general public over \$1.53 million. I hope the Government will act expeditiously on the committee's recommendations, which arise not just from an ad hoc review but from sustained and deliberate examination of many regulations. I commend the report.

**Report noted.**

## **BILLS RETURNED**

The following bills were returned from the Legislative Council without amendment:

Dairy Industry (Amendment) Bill

Superannuation Legislation (Further Amendment) Bill

*[Mr Acting-Speaker (Mr Tink) left the chair at 1.21 p.m. The House resumed at 2.15 p.m.]*

Page 5686

## **QUESTIONS WITHOUT NOTICE**

---

## **PREMIER'S CONFIDENCE IN POLICE COMMISSIONER LAUER**

**Mr CARR:** I direct my question without notice to the Premier. Has he been briefed by the Minister for Police on new allegations, raised yesterday by the Hon. E. P. Pickering, concerning the Commissioner of Police? Is the Premier satisfied with the Minister's response? Will the Premier again express full confidence in Commissioner Lauer?

**Mr FAHEY:** I have certainly had discussions with the Minister for Police on the debate that occurred in the other House yesterday and also on the motions passed by the Legislative Council. I have also written to the Minister for Police asking that all of the matters raised yesterday be thoroughly examined, and that appropriate and expeditious action be taken when that is appropriate. I have written also to the Hon. E. P. Pickering saying that if he has any evidence or relevant information, he should forward that information to the relevant authorities. If the Leader of the Opposition is referring to any matters concerning the Commissioner of Police and the Independent Commission Against Corruption, I can invite his attention, and that of all honourable members, to a statement released today from the Independent Commission Against Corruption. I shall quote from that statement:

The commission knows of no material which credibly suggests Mr Lauer is, or has been, 'on the take'. If the commission had any such knowledge, that matter would, of course, be pursued.

Any matters that are raised are dealt with by appropriate authorities. I am perfectly satisfied with that. I have confidence in Commissioner Lauer and will continue to have confidence in him until such time as there is solid evidence to suggest that neither I nor anyone else should have confidence in him.

### **POLICE PROMOTIONS SYSTEM**

**Mr COCHRAN:** I address my question without notice to the Minister for Police. What progress has been made by his department in implementing changes to the police promotions system, which were recommended in the 1991 report of the select committee?

**Mr GRIFFITHS:** Yesterday the Police Association of New South Wales released results of a survey in relation to the police promotions system. In subsequent media interviews, association officials made certain comments regarding the promotions system that warrant an immediate response from me. The Police Association claims that the 1991 Legislative Council Select Committee upon Means of Improving the Police Positional Promotion System has been ignored, especially as it relates to claims of nepotism and jobs for the boys. It is in that context that the promotions system is said, in its words, to have been corrupted. The association claims also that alterations introduced to the selection system in 1992 involve only cosmetic changes. In fact, those so-called cosmetic changes have quickly and efficiently killed off any perception that the promotions system is characterised by nepotism.

**Mr SPEAKER:** Order! I call the honourable member for Londonderry to order.

**Mr GRIFFITHS:** The cold hard facts are that local commanders have been excluded from selection panels. The success rate of local candidates at the crucial sergeant level, the first rung on the promotions system, has been reduced from 73 per cent to 45 per cent. The success rate of local candidates at the senior sergeant level has been reduced from 72 per cent to 56 per cent. Effectively, there is now an equal chance of an outside applicant winning promotion. That is precisely what the so-called cosmetic changes intended to achieve, and a major concern of the select committee has been successfully addressed. The police promotions system is manifestly not corrupted by nepotism. Other aspects of the select committee's report have also been addressed. This has been done in a wide-ranging proposal on workplace reform, career progression and conditions of employment in the Police Service.

However, there are potential costs of some of the proposals, such as contract employment and incremental payments, introduced to provide an improved career path for senior constables. Therefore, I have directed that

they form part of current enterprise bargaining negotiations between the Police Service and employee associations. Contrary to comments made by the association, there has been extensive consultation with the association on these very issues. They were included in a list of critical issues provided to the association at the commencement of the enterprise bargaining negotiations earlier this year. As recently as Monday of this week, the association was advised that the commissioner and I would be meeting with the Treasurer and the Minister for Industrial Relations and Employment today to discuss these vital issues.

The association was assured that it would be provided with detailed proposals, in writing, next Monday. That undertaking will be kept. In addition, the association had been invited to a meeting tomorrow to discuss further modifications of the existing selection scheme. It is a matter of some concern that senior officials of the association seem not to have been briefed by their colleagues. Because of that breakdown in communication, the association has seriously misrepresented the current status of progress with the promotions system and other major issues, both to its members and to the public. If there is a danger to the morale of our police, surely it is the embarrassing lack of cohesive leadership in its union. Morale in the New South Wales Police Service is, to my knowledge, extremely high.

**Mr SPEAKER:** Order! I call the honourable member for Blacktown to order.

Page 5687

**Mr GRIFFITHS:** The recent excellent work of officers in arduous, and sometimes dangerous, investigations has been well documented and publicised.

**Mr SPEAKER:** Order! I call the honourable member for Blacktown to order for the second time.

**Mr GRIFFITHS:** However, it is a matter of real concern that the artificial climate of crisis deliberately generated by some people will damage not only police morale but, importantly, public confidence. The Government has moved decisively to head off that possibility. If there is a true measure of public confidence and public morale, it will not be found in the ineptitude of the Police Association or the continued sniping by others. Last Sunday was the fourth annual police open day. Each year that event attracts 100,000 people to police stations across the State. Preliminary figures reveal that more than 100,000 people took the opportunity last Sunday to see their police in action. That statewide event was heavily supported by many community activities. Sausage sizzles, school colouring competitions and other activities of interest to children were included. That demonstrates to me, and should demonstrate to every other member of this House, that the pathetic smear campaign has failed miserably, as it should.

**Mr SPEAKER:** Order! I call the honourable member for Illawarra to order. I call the honourable member for Hurstville to order. I call the honourable member for Illawarra to order for the second time.

**Mr GRIFFITHS:** The honourable member for Blacktown says that the problem starts from the top. As I am talking about morale and about the outrageous allegations that have been made during the past 24 hours, I must admit I was alarmed and disappointed to hear of a series of further allegations made in another place last night by the Hon. E. P. Pickering. Some of those allegations have been widely reported, with banner headlines in one newspaper proclaiming, "Lauer on the take". This morning the people of New South Wales have woken up to the news suggesting that there is good reason to believe that their Commissioner of Police is corrupt. It is essential to put that claim quickly to rest. The allegation is based on a conversation between known criminals, and was recorded by the National Crime Authority some time ago as part of an operation called Sugar. I must be careful about the details because a trial is pending in the District Court involving people charged as a result of that operation. However, I can inform the House that the material that has given rise to the headlines, which is supposed to be so important that the Hon. E. P. Pickering raised it as a matter which reflects on the commissioner's integrity, has been totally discarded by the Independent Commission Against Corruption, as the Premier made clear earlier. I thank him for making that clear and for his support for the commissioner. Today the ICAC issued a press release, as the Premier clearly stated. That press release reads:

The National Crime Authority disseminates information to the Independent Commission Against Corruption from time to time. One dissemination involved conversations between criminals on various occasions, recorded after the issue of a lawful warrant.

In the course of rambling conversations, various police officers were mentioned in an unflattering manner. One of those officers was New South Wales Police Commissioner Tony Lauer. That conversation was formally assessed by commission officers and judged not worthy of further investigative or other action.

The commission knows of no material which credibly suggests Mr Lauer is, or has been, "on the take". If the commission had any such knowledge, the matter would, of course, be pursued.

Clearly the ICAC believes that this allegation is total rubbish. It is extreme rubbish, and it should never have been mentioned in this Parliament. As the Hon. E. P. Pickering has said, he will now move into political oblivion. I wish him well on his trip and I hope he is there soon.

### **ROADS AND TRAFFIC AUTHORITY VEHICLE ROADWORTHINESS REPORT**

**Mr LANGTON:** My question without notice is directed to the Minister for Transport and Minister for Roads. Was a report prepared in June this year by Price Waterhouse for the Roads and Traffic Authority on the roadworthiness of heavy vehicles and public passenger vehicles? Did the report find that 9 per cent of coaches, 10 per cent of taxis and 11 per cent of semitrailers were seriously defective? Why has the Minister suppressed this report?

**Mr BAIRD:** The report has not been suppressed.

### **NATURAL RESOURCES AUDIT COUNCIL**

**Mr BECK:** My question without notice is addressed to the Premier and Minister for Economic Development. What action is the Government taking to obtain accurate information about the State's natural resources? How will this assist land use decisions in the northern region of the State?

**Mr FAHEY:** The Natural Resources Audit Council was set up in September to conduct a systematic and comprehensive audit of the values of the State's public land. The council's audits are necessary to provide the Government with a reliable and credible database of the State's public land. The database will enable the Government to make properly informed and balanced decisions about land use with regard to new conservation areas, mining and forestry activities. Today I announced that I have directed the council to undertake its first regional audit in the upper northeast region of the State. I have chosen the northeast for the first audit because of the competing pressures on land use in that area. The region covers about 3 million hectares, more than 40 per cent of which is public land, including State forests, national parks and Crown land. The area covered by the audit comprises the catchments of the Clarence, Tweed, Brunswick and Richmond rivers and includes the section of the Bellinger River catchment from Coffs Harbour to Yamba.

The council will collate information on the value of public land, including its nature value, conservation value, mineral value, timber value, heritage value and

Page 5688

any other relevant value. The council will use data already available from State and Federal government agencies and will fill in the gaps where necessary to form a complete picture of natural resources in the region. Interest groups from conservationists to the mining industry, from recreational anglers to bush walkers, will be invited to participate in the audit. The knowledge held by local government and Federal government agencies is invaluable and will be sought. I have requested that the council complete this particular task - that is, the first regional report - within 18 months.

The council, which is an independent body, comprises the heads of land and environment agencies and

non-government members with specialist knowledge in resource conservation and use. The information the audit collects will help the Government to make balanced decisions about the future use and management of these lands. In effect, this represents a step forward, a getting on to the front foot in respect of what is there in the way of natural resources. That is important. We must have certainty; we must know what is there in order to be able to ensure environmentally sensitive and sustained development. We must have continuing development in the appropriate places with the appropriate resources to ensure investment in the State and that there are jobs.

I note that the Leader of the Opposition continues to demonstrate his hypocrisy and a lack of credibility on many matters relating to jobs. Last week the employment figures that were released showed that 40,000 new full-time jobs were created in this State during the past month. That was the seventh month in a row in which we saw job growth. But, of course, all we heard from the Leader of the Opposition was carping and criticism. Where was he this week when an announcement was made that Telecom would lose 10,000 staff? He was hiding either under his desk or in the bunker. Where was he when the Commonwealth Bank made a decision to reduce its work force by 8,000 or when Qantas made a decision to reduce its work force by 2,000? We heard nothing from the Leader of the Opposition. Silence! Where was the Leader of the Opposition when Australian Defence Industries decided to reduce its work force by 300?

**Mr SPEAKER:** Order! I call the honourable member for Kogarah to order.

**Mr FAHEY:** Time and again the Leader of the Opposition is an apologist for his mates in Canberra. He has demonstrated that again today by his negative attitude. He is not sincere about jobs, with the exception of one - one job only - and that is his own. Opposition members are lining up, shuffling about in the corridors and talking about when the honourable member for Liverpool will make a move for the job of the Leader of the Opposition. A few of the mates of the Leader of the Opposition are also worried about their jobs.

**Mr SPEAKER:** Order! I call the honourable member for Londonderry to order for the second time.

**Mr FAHEY:** The honourable member for Campbelltown has his eye on one of the positions on the front bench.

**Mr SPEAKER:** Order! I call the honourable member for Campbelltown to order. I call the honourable member for Monaro to order.

**Mr FAHEY:** The honourable member for Moorebank will take over the job of the honourable member for Blacktown in the near future.

**Mr SPEAKER:** Order! I call the honourable member for Broken Hill to order.

**Mr FAHEY:** The poor old shadow Attorney General was under severe threat from the honourable member for Auburn until the other day.

**Mr SPEAKER:** Order! I call the honourable member for Burrinjuck to order.

**Mr FAHEY:** Of course, the honourable member for Auburn's price has considerably lengthened, while the price of the man sitting next to him, the honourable member for Smithfield, has shortened. Next week it will all come to pass and be revealed to the community that the Government is doing its best to ensure that jobs are created. Last month's figures indicate that 40,000 new full-time jobs were created in this State -

**Mr SPEAKER:** Order! I call the honourable member for Ashfield to order.

**Mr FAHEY:** - but we heard not one word from the Leader of the Opposition, while the Commonwealth Government continues to cut jobs. The Leader of the Opposition simply remains silent to protect his mates in Canberra.

**Mr SPEAKER:** Order! I call the honourable member for Ashfield to order for the second time.

### **LUNA PARK PROPOSAL**

**Mr KNIGHT:** My question without notice is directed to the Minister for Land and Water Conservation. Has the Luna Park Trust terminated negotiations with the private consortium which was to invest in Luna Park? Is the trust now seeking to borrow funds and have the Government take a controlling interest in operating an amusement park? How much taxpayers' money is at risk?

**Mr SPEAKER:** Order! I call the honourable member for Canterbury to order. I call the honourable member for Wallsend to order.

**Mr SOURIS:** I think all honourable members will welcome the day when the honourable member for Campbelltown makes his debut on the front bench. The matter concerning the Luna Park Trust is under consideration at present.

**Mr SPEAKER:** Order! I call the honourable member for Hurstville to order for the second time.

**Mr SOURIS:** Following a competitive tender, a consortium was selected to introduce a proposal. That proposal has yet to be finally approved by the trust and then by me. When that time comes I will be only too pleased to make a public announcement.

Page 5689

**Mr SPEAKER:** Order! I call the honourable member for Riverstone to order. I call the honourable member for Campbelltown to order for the second time. I call the honourable member for Granville to order. I call the honourable member for Riverstone to order for the second time.

**Mr SOURIS:** I do not think the shadow spokesman for land and water conservation should say anything after his incredible debacle this morning.

**Mr SPEAKER:** Order! I call the Deputy Leader of the Opposition to order. I call the honourable member for Blacktown to order for the third time.

**Mr SOURIS:** He is having a chat with members of the left wing now. Looking at the way the permutations and commutations are going, I think I can predict now that the honourable member for Port Stephens is on the verge of making a switch to the left wing. He is having further consultations with the Deputy Leader of the Opposition. If I had any money to bet, I would place it on the honourable member for Campbelltown, who will soon be making his debut on the front bench. I do not know who will receive the debutantes, but it will not be me.

**Mr SPEAKER:** Order! I call the honourable member for Newcastle to order.

**Mr SOURIS:** The Luna Park proposal is nearing completion. I am expecting fairly soon to be given the contents of a proposal and a recommendation for my approval. One thing is for sure. As a result of this Government's activity and as a result of the establishment of the trust, one of the greatest heritage icons in our history will be restored.

**Mr SPEAKER:** Order! I call the honourable member for Liverpool to order. I call the honourable member for Campbelltown to order for the third time.

**Mr SOURIS:** This will provide Sydney with a wonderful tourist attraction in the lead up to the year



2000. I am confident that, in due course, the Government will be able to announce a resumption of activities at Luna Park, in the heritage style to which we have become accustomed over the years it has been in operation.

**Mr SPEAKER:** Order! I call the honourable member for Smithfield to order.

*Later,*

**Mr SOURIS:** I was asked a question earlier today but at that time I did not have the information readily available. I am now in a position to provide the House with the information that was sought. The Luna Park Reserve Trust has indeed terminated negotiations with a consortium of investors brought together by Schroders Australia with a view to investing in the development of the amusement zone of Luna Park. After extensive and often difficult discussions, the trust believed that the conditions being sought were not in the best interests of the long-term development and management of the Luna Park site - a responsibility with which it is charged under the Luna Park Site Act 1990. The trust is now investigating, in concert with its preferred operator, Wittingslow Amusement Group Pty Limited, a number of alternative financial opportunities to obtain the necessary finance to implement the plan of management for the park. The Act dedicated the site as an amusement area for the people of this State and requires the trust to restore its heritage features.

For its part, the Government has allocated \$25 million to implement the plan of management, which includes the improvement of public open space, the restoration of the heritage buildings, and the creation of enhanced foreshore access and protection of this valuable site. The Government is pleased to be able to indicate that the private sector sees the potential for involvement in this major project. Honourable members will recall the smiling face, the glittering towers and the air of excitement generated by the park. This vision is part of the heritage which the trust, through the plan of management, seeks to rekindle. At this time I am not able to provide details of the financial proposals currently being considered by the trust, as these have yet to be formally put before me for approval. I am, however, aware that a leading Australian bank has made a firm offer in writing of financial support to the trust. This demonstrates the commitment of the private sector to fund the commercial aspects of Luna Park.

The trust has advised me that this offer had been made on considerably more favourable terms than those offered previously by the consortium headed by Schroders. Before a final decision is made, this matter will be subject to discussions with New South Wales Treasury. I remind the House that the Luna Park site has been dedicated for public entertainment, public amusement and public recreation. Accordingly, the trust is giving effect to the Parliament's wish to take care, control and management of the site. The trust is expected to operate in a commercially sound manner and its dealings will be subject to the scrutiny of this Parliament. I assure the House that the Luna Park site will continue to be central to the entertainment and recreation desires of the people of New South Wales.

## **ETHNIC DISCRIMINATION**

**Mr HUMPHERSON:** My question without notice is directed to the Minister for Multicultural and Ethnic Affairs and Minister Assisting the Minister for Justice.

**Mr SPEAKER:** Order! I call the honourable member for Broken Hill to order for the second time. I call the honourable member for Riverstone to order for the third time. I call the honourable member for Ashfield to order for the third time. There is far too much interjection from the Opposition benches. These sorts of interjections make it very difficult for question time to proceed in an orderly fashion and make it difficult for members, those in the gallery and Hansard to hear what is being said. I ask all honourable members to co-operate and to desist from

Page 5690

making inane and silly remarks, which do nothing to uphold the dignity of the Chamber. I call the honourable member for Smithfield to order for the second time.

**Mr HUMPHERSON:** What action has the Ethnic Affairs Commission taken to improve co-operation among government departments and agencies to ensure that ethnic Australians do not face discrimination? How are ethnic workers, particularly semiskilled and unskilled workers to be assisted?

**Mr SPEAKER:** Order! I call the honourable member for Kogarah to order for the second time.

**Mr PHOTIOS:** I am delighted that the honourable member for Davidson has asked this question, particularly as students from St Augustine's College are present in the gallery to support him.

**Mr SPEAKER:** Order! I have already given honourable members what I consider to be a strong warning. I will no longer tolerate interjections. The Minister has the call.

**Mr PHOTIOS:** I thank students from St Augustine's College for their attendance in the gallery today. Australia's record of domestic racial harmony is the envy of the world, despite the fact that there are more than 140 different ethnic communities in New South Wales. Racial harassment, discrimination and violence is a reality for many people and can take place in the workplace, in our schools, or in the community. I announced today that the Ethnic Affairs Commission is investigating the availability of information referral and resources to assist victims of racial harassment. That is a necessary project.

The aim of the project is to map out current provisions and support services for victims of racial violence and harassment; to identify ways to better provide support by consulting government and community agencies; and to make recommendations for further action. We want to be able to look across government from one portfolio to another and tell victims of racial harassment what services are available to help them cope with and overcome the experience and ensure that it does not recur. That requires, of course, an across-the-portfolio and across-the-government ministry, a standalone portfolio of multicultural and ethnic affairs, in order to better co-ordinate those important responsibilities. We want to ensure the whole of government is working in the same direction and that services are not duplicated. That particularly means -

**Mr SPEAKER:** Order! I call the honourable member for Davidson to order.

**Mr PHOTIOS:** The honourable member for Davidson quite inappropriately interjects with reference to Sussex Street. I am aware, as all honourable members of this House should be aware, of the availability of a confidential document which indicates that the initial asking price for the sale of the Sussex Street offices of \$34 million has fallen to \$24 million.

**Dr Refshauge:** On a point of order. The question was particularly about multicultural affairs. I know that the Minister does not know anything about that, but at least the question was about that and not about real estate property prices. I would ask you to bring him back to the ambit of the question.

**Mr Humpherson:** On the point of order. My apologies for interjecting -

**Dr Refshauge:** Further to the point of order. As the honourable member for Davidson has flouted, and has now shown that he has flouted, your ruling about no further interjections, I ask you to throw him out of the House.

**Mr Photios:** On the point of order. With due deference to your past rulings in relation to these matters, if a member of this House - regardless of political affiliation - interjects, there is nothing in the standing orders to indicate that a member from one side of the House should be treated any differently from a member from the other side. In that regard, I believe it is appropriate that I briefly respond to the interjection.

**Mr SPEAKER:** Order! I have often reminded the House that it is a longstanding convention that a member with the call may respond briefly to an interjection - and the emphasis has always been on the word "briefly". Usually those interjections come from those who oppose the views of the member with the call. Whether it is a Minister in question time or a member with the call in any debate, an interjection from the other

side invites short response. I cannot allow more latitude in this particular case, and therefore I direct the Minister to return to the scope of the question.

**Mr PHOTIOS:** And conclude, therefore, that remark, if I may?

**Mr SPEAKER:** Order! The Minister will return to the scope of the question.

**Mr PHOTIOS:** The commission has discussed current projects in this area of government agencies with a number of community organisations. I pay tribute to my colleagues the Minister for Education, Training and Youth Affairs in another place, and the Minister for Police and Minister for Emergency Services for the work they have carried out in the portfolios under their direction to combat racism. The Department of School Education has demonstrated its commitment to this battle through the development and implementation of its anti-racism policy and grievance procedures, which have involved an expenditure of \$350,000 and are the first of their kind in the world. Its training and information materials are of particular importance in this fundamental area of combating racism and racial harassment.

The appointment and training of anti-racism contact officers within the Department of School Education is not just a first; it is fundamentally necessary to maintain the harmony we enjoy in this country. The immediate and positive response of the Minister for Police and Minister for Emergency

Page 5691

Services in assisting an Ombudsman's inquiry into police and ethnic relations - and the allocation of \$100,000 to that inquiry - is also to be applauded. All honourable members would recognise that that work, coupled with the racial vilification legislation - landmark legislation introduced by the Government - demonstrates the Government's absolute and fundamental commitment to maintaining better racial harmony in the community and limiting racial harassment.

The discussions of the Ethnic Affairs Commission identified a range of issues to be addressed to allow a more effective approach to support for victims. They have revealed the need for more parity about the sources of funding and the support for anti-racism projects, greater co-ordination between agencies and the community sector, and a clearer policy focus and definition of priorities to guide the main agencies involved in this area. Officers of the commission have organised a series of preliminary meetings to begin early next year with Government and community agencies in order to consider the actual and potential resources for existing and future initiatives, options for a co-ordinating structure, and key action areas to empower and support victims of racial harassment.

One initiative that may result is the development of an information referral and support package for victims of racial harassment that would offer practical advice on options under the law and how to access legal advice and assistance, counselling, and such services as mediation. This project is much in keeping with the charter of principles for a culturally diverse society, which seeks to maximise the contribution of people of all backgrounds to the State of New South Wales. This type of initiative, this positive work that reaches the whole of government, is possible only because of the existence of a separate Ministry for Multicultural and Ethnic Affairs. The ministry gives ethnic communities not only open access to the Minister and the Premier, but to the entire Cabinet and the entire Government. It is not the type of initiative that would be possible under a Carr government, because the Leader of the Opposition is as far away from government as he is from full-time commitment to the ethnic community. He wants to take the word out to the ethnic community, not on a part-time or half-time basis but almost on a half-baked basis. He has made two promises on ethnic affairs. The honourable member for Auburn, who is much celebrated in another way, in an almost deplorable and despicable fashion, wants to open an Ethnic Affairs Commission in Auburn.

The second big promise of the Opposition is to abolish the Ministry for Multicultural and Ethnic Affairs and return to part-time preoccupation with the important one-million strong migrant community. The Leader of the Opposition tests my patience and I will not return to the Sussex Street apartment issue, despite the fact that the documents are available as a public record - and what a white elephant it is! The Leader of the Opposition has no time for ethnic communities. The only time he makes himself available is to stand in for a photo

opportunity. He has demonstrated fairly clearly where he stands as the shadow minister for ethnic affairs with his colleague the shadow minister assisting the shadow minister for ethnic affairs, and the parliamentary secretary in another place assisting the assistant shadow minister to the shadow Minister for ethnic affairs. It is a rather convoluted chain of command. They are not there to be seen. I hope that, despite that, they will support the important work that is currently being undertaken with regard to supporting better procedures and facilities for better racial harmony in the community.

**Mr SPEAKER:** Order! I call the honourable member for Londonderry to order for the third time.

### **SEXUAL ASSAULT INVESTIGATIONS**

**Mrs GRUSOVIN:** My question without notice is addressed to the Minister for Police and Minister for Emergency Services. Did an officer from the Parramatta child mistreatment unit inform the family of a 10-year-old child that her allegations of sexual assault, supported by medical evidence, would not be investigated? Were they told that this was because the unit was overwhelmed with cases and that this was but another Mr Bubbles case?

**Mr GRIFFITHS:** If that statement is correct, I would be absolutely outraged. I will investigate the matter immediately and report back to the House.

### **SOFTWOOD TIMBER INDUSTRY**

**Mr SCHULTZ:** I address my question without notice to the Minister for Land and Water Conservation. Is it a fact that the softwood timber industry provides a major source of income for New South Wales? What action is the Government taking to improve the value of our softwood timber plantations and increase the number of jobs in the industry?

**Mr SOURIS:** I thank the honourable member for Burrinjuck for his question and for the tremendous interest shown by him, his colleagues in the region and other colleagues in forestry areas in the activities of State Forests and the timber industry.

**Mr SPEAKER:** Order! I call the honourable member for Bligh to order.

**Mr SOURIS:** Pine forestry contributes significantly to the economy of this State. Forty-seven per cent of the State's timber comes from softwood pine plantations that were established back in the 1920s. There are now about 200,000 hectares of managed pine plantations, mainly in the Bathurst and Tumut districts - which accounts for the interest shown by the honourable member for Burrinjuck, the honourable member for Monaro and others, including a colleague of mine in another place who is particularly interested in the Bathurst and Oberon areas.

Page 5692

Today I am pleased to announce a \$920,000 investment in pine plantations by the Forestry Commission of New South Wales, now known as State Forests - a sizeable increase in investment. Recently the board of State Forests, which was appointed by me a few months ago, undertook an examination of pine plantations and approved of the decision which was finally recommended to me to undertake silviculture improvement to 15,000 hectares of acquired farmland pine plantations in the Tumut, Tumbarumba, Bathurst and Oberon areas. At present pine plantations employ 400 people directly in the industry and 800 people indirectly in allied occupations. The \$920,000 investment will provide an additional 80 jobs, directly and indirectly, in the four areas I have described. Essentially, this investment is designed to help prune and thin plantations to promote greater and healthier growth to acquire a more harvestable resource. It is estimated that this investment will increase the yield to 16 per cent rate of return on investment in pine plantation areas.

Recently the activities of State Forests in pine plantations have generated flow-on investment from allied industries, including the recent expansion by CSR in the electorate of Burrinjuck, which has resulted in an additional 30 jobs directly, and another 30 indirectly, in factory production. Money will also be spent on a genetic improvement program designed to add value. Today's announcement about softwood follows the announcement in the Budget of a \$2 million program for hardwood plantations, including the share farms proposal.

The Government has demonstrated its commitment to a plantation strategy in softwoods and hardwoods. That is in stark contrast to the sorts of policies peddled by the Leader of the Opposition - the temporary leader of the Labor Opposition - in recent times. When the Leader of the Opposition visited a mill in the Gloucester-Dungog area he repeated the statements he made at the now famous ALP conference that was held in Dubbo recently, where the North Coast water deal was organised. I shall not refer to the North Coast water deal now. During another moment at that conference, the Labor leader for the time being -

**Mr Beck:** Which one?

**Mr SOURIS:** I do not know which one. We shall wait until the debutante ball to find out. One of them will be the belle.

**Mr SPEAKER:** Order! I call the honourable member for Murwillumbah to order.

**Mr SOURIS:** The Labor leader announced that it would be part of Labor's policy for rural New South Wales to provide resource security for the timber industry which would create an immediate 5,000 jobs. What an incredible remark to make! Every piece of pro-forestry legislation that has been introduced by the Government has been voted against by all members of the Opposition, including those in whose electorates many families are dependent on timber industry operations. They vote against pro-forestry legislation at every possible opportunity.

**Mr SPEAKER:** Order! I call the honourable member for Hurstville to order for the third time. I call the honourable member for Murrumbidgee to order.

**Mr SOURIS:** The temporary Labor leader's announcement of resource security is the height of hypocrisy. In fact, only a couple of nights before he made that announcement in Dubbo on the Saturday, his Labor colleagues in the upper House had attempted to pass a private member's bill in respect of the southeast forests which, if successful, would have delivered a fatal blow to the timber industry in the southeast. That is the sort of bill that one can immediately label an ALP bill.

**Mr SPEAKER:** Order! There is far too much interjection in the Chamber. I now have a list of members who are on a number of calls to order. I deem all members who have already been called to order to be on three calls to order. Any of those members who attract my attention from now on will leave the Chamber forthwith.

**Mr SOURIS:** The Opposition's activities in the upper House were barely 48 hours old - in fact, quite a bit short of that - at the time the Labor leader visited Dubbo and lied to workers in the timber industry and rural New South Wales. He said that the Labor Party was willing to give resource security to the timber industry. If the Opposition ever agreed to give the timber industry resource security - which it never will - it would result in value adding, an increase in jobs in the industry, and economic benefits for all of Australia. If the Opposition were fair dinkum about value adding, jobs and growth in the economy, it would support resource security. The Opposition has made an incredible statement that plantations would produce an immediate 5,000 jobs. That might occur in about 80 years. The Government knows how the Opposition acts. We know its voting pattern. So do its constituents.

## INQUIRY INTO THE SEIZURE, SECURITY AND DISPOSAL OF ILLICIT DRUGS

**Mr HATTON:** I direct my question without notice to the Premier. Will former Justice Roden be able to access all relevant documents from agencies such as the Independent Commission Against Corruption, the Ombudsman, the Attorney General and police in order to cross-examine police? If, in the opinion of Mr Roden, the powers afforded him are inadequate, will the Minister assure this House that his powers will be extended accordingly? Will Mr Roden be able to report publicly?

**Mr FAHEY:** Yesterday the Minister for Police indicated that the Government had requested former Justice Roden to examine the processes of seizure, security and disposal of drugs. The terms that have been given to Mr Roden are extensive to ensure that at the conclusion of the inquiry recommendations are presented for the consideration of the Government that ultimately will ensure that drugs seized by the police

Page 5693

are not released except for disposal purposes. Many accusations have been made about the seizure of drugs and the subsequent return of those drugs to the street. Whether those accusations are correct is a matter for thorough examination of each individual incident. The Minister for Police has ensured that all such accusations have been examined by the proper authorities. The Government wishes Mr Roden to examine the matter properly and widely to obtain all the information that is necessary to make recommendations that will bring about the confidence that has been referred to so often in our police force, particularly with regard to such heinous substances as drugs.

The second part of the question of the honourable member for South Coast asked whether the Government will provide Mr Roden with additional power if he believes his powers are inadequate. I want a result that gives the public confidence and I assure every member of this House that drugs seized will not be returned to the street. In due course I will make sure that adequate power is given where power may be lacking. I am sure I will get the support of all members of this House should it be necessary to do that. I will release Mr Roden's report after Cabinet has given it due consideration. When I release it I will indicate what Cabinet has done about the recommendations Mr Roden gives to the Minister for Police and the Attorney General. Those recommendations will be brought forward to Cabinet by both those Ministers for decisions to be made. The Government wants to get a result that does not lead to further allegations. We must get it right. I believe Mr Roden will do that. He will be given the powers to ensure that nothing stops him getting to the bottom of what is needed to change the system. There seems to be a perception at the moment that it may be wrong.

## RURAL ENVIRONMENTAL PRIORITIES

**Dr KERNOHAN:** My question without notice is directed to the Minister for the Environment. Since the release of the New South Wales state of the environment report, what action has been taken to ensure that environmental priorities in rural areas are addressed? How will the Environment Protection Authority be involved?

**Mr HARTCHER:** I thank the honourable member for Camden for her interest in environmental matters, which - as I regularly tell this House, without effect it appears - is not shared by members opposite. The honourable member for Camden asked about rural areas of New South Wales. It is not without reason that the Australian Labor Party holds but three seats that could be classified, however loosely, as being in rural New South Wales. When one thinks about those three seats and the way the individual members are treated by some of their left-wing city-based colleagues who hold shadow portfolios in the environmental field, one can well understand why the ALP will never hold any extra seats and will have trouble holding its present seats. The way the honourable member for Bathurst is treated by the honourable member for Blacktown on issues in his electorate is well known throughout the Labor Party and throughout the environmental movement.

The honourable member for Broken Hill has given excellent support in recent days to this Government's determination to ensure that if the Federal Government is going to take the excise tax on leaded petrol the money will go towards rehabilitating contaminated sites. Though that is not Labor Party policy, the

Government notes the honourable member's excellent support and thanks him for it. But it is clear that country members of the Labor Party trying to do anything for the environment in their area are either attacked or have to go outside the traditional bounds of Labor Party policy. The Labor Party has had no interest in rural New South Wales. We on this side of House take a completely different approach. We believe that environmental issues in rural New South Wales -

*[Interruption]*

The honourable member for Port Stephens interjects from his black hole. The only black hole that really exists in New South Wales is the Australian Labor Party, which the honourable member typifies. The big black hole in Sussex Street will soon become a site of no economic significance whatever. Why? Because the Leader of the Opposition has said that he does not believe in building any more office buildings in Sydney at the very time the Australian Labor Party is trying to flog the site in Sussex Street for redevelopment. He is saying that he would never allow any redevelopment in Sydney because there is too much spare office space already and the ALP is trying to flog its only block of land. The price has fallen by \$12 million, thanks to Bob Carr. What a man! No wonder the business community loves to see him when he comes into their rooms with excellent advice. No wonder the timber industry is so thrilled to hear about the 5,000 new jobs he intends to create in the timber industry. They know what a proven economic performer he is. He opens his mouth and you are \$12 million down, thanks to Bob Carr.

But we should not dwell on that. We will look at the total non-policy of the ALP on the environment in rural New South Wales at a later date. The Environment Protection Authority is preparing regional environment improvement plans for the 11 regions it operates in New South Wales. These plans follow the preparation of the first New South Wales state of the environment report, which I released earlier this year. The authority will build on that report in a regional framework. Like the state of the environment report, these plans will include a description of the physical characteristics of each region. For example, they will identify the catchment areas of significant rivers and water bodies and the various land uses that have an impact on those local environments. The programs already in place to address any problems will be assessed and the need for new strategies determined. It is patently obvious that the environmental issues affecting the Murray  
Page 5694

region, such as water quality and soil degradation, will not be the same as those in inner Sydney, such as lead contamination and air quality. These regional environment improvement plans will be vital in determining the EPA's environmental priorities in coming years.

**Mr SPEAKER:** Order! I call the honourable member for Moorebank to order. I call the honourable member for Moorebank to order for the second time.

**Mr HARTCHER:** For example, data now being gathered on the Hawkesbury-Nepean river system is to be included in the outer Sydney plan, which will enable us to identify all the sources of pollution and to assess the impact of our licensing program on point-source pollutants and develop new strategies to address the outstanding issues such as stormwater. It is only through identifying the key environmental issues that we can ensure our resources are properly directed. Those resources are constantly growing. The EPA's budget is now more than \$60 million - five times more than the pathetic \$12 million it stood at when the Leader of the Opposition held the office of Minister for Planning and Environment.

The eleven plans being prepared by the EPA include three separate reports to cover the Northern, Central and Southern Tablelands, two to cover the North Coast and the South Coast of the State and others for the southwest, Hunter and Murray regions. Three additional plans have been prepared to cover the Sydney region. The draft plans will be publicly released next year after they have been assessed by critical review committees. From that point they will be regularly reviewed and updated as issues are addressed.

The Opposition's shadow environment spokesperson apparently believes that setting environmental priorities and addressing them is not important. She has previously told this House that preparing such reports is a waste of money, although she has no problem trying to use such reports when they suit her own political

purpose. She has clearly failed to understand that the EPA is the State's environmental regulator, that we need to understand the environmental problems we face in order to address them, that the money we spend to protect the environment is provided by the people of this State and that we have a responsibility to ensure that it is well spent. This Government is determined to protect the environment in Sydney and throughout the State. The Government does not want any more black holes in Sydney, any more than the ALP does, and it welcomes Bob Carr's pledge on behalf of the Labor Party that Sussex Street will not be redeveloped. After all, that is what he must have meant when he said there would not be any new development on that site.

**Mr SPEAKER:** Order! I call the Minister for Multicultural and Ethnic Affairs to order for the second time.

**Mr HARTCHER:** The Government also acknowledges that the Australian Labor Party intended to sell to sell home units in the redevelopment for \$1.7 million each. This was a new twist on disadvantaged houses for the poor; this was public housing at \$1.7 million per unit. The Labor Party's own personal commitment and response to the need to develop inner city housing for the disadvantaged in our community was to build a big block of home units and to flog them for \$1.7 million per unit.

## **POLICE PROTECTION OF PAEDOPHILES**

**Mr GRIFFITHS:** I take this opportunity to provide a supplementary answer to a question without notice asked by the honourable member for Heffron last Tuesday, 16th November. The honourable member asked a question of me concerning the police task force known as Operation Speedo. In answering that question I said that allegations concerning the officer named by the honourable member for Heffron were first raised during the investigative phase of Operation Speedo in April 1989, four months after the Seabeach defendants had been discharged by the court. It has come to my attention that I made an inadvertent error in the detail concerning dates in that portion of the answer. In fact, I meant to say that allegations concerning the officer named by the honourable member for Heffron were first raised during the investigative phase of Operation Speedo in April 1989, four months after the Seabeach defendants had been charged. I offer my apologies to the House for an unintended error.

---

## **PETITIONS**

### **Capital Punishment**

Petition praying that the House will enact legislation to reintroduce capital punishment in extreme cases of murder where there is absolutely no doubt that the offender committed the crime, received from **Mr Windsor**.

### **Brighton Memorial Playing Fields**

Petition praying that Brighton Memorial Playing Fields not be sold or rezoned, received from **Mr Thompson**.

### **F6 Freeway Emergency Telephones**

Petition praying that the House will consider the installation of emergency telephones on the F6 Freeway from Yallah to the north of Wollongong, received from **Mr Rumble**.

### **Mount Victoria Interurban Train Termination**

Petition praying that the House prevent the termination of interurban trains at Mount Victoria, received



from **Mr Clough**.

#### **Serious Traffic Offence Penalties**

Petitions praying that laws relating to road accident fatality or injury be re-evaluated, received from **Mr Mills and Mr Newman**.

Page 5695

#### **East Toukley Traffic Lights**

Petition praying that traffic lights be installed at the corner of Evans and Main roads, East Toukley, adjacent to Toukley Public School, received from **Mr Crittenden**.

#### **Gosford Railway Station**

Petition praying that the Government give priority to the construction of escalators and the provision of a non-slip surface, toilets and a parenting room at Gosford Railway Station, received from **Mr McBride**.

#### **Public Housing Tenant Water Charge Liability**

Petition praying that the House reject the proposed amendment to the Residential Tenancies Act to charge public housing tenants for water consumption, received from **Mr Rumble**.

#### **Long Jetty Hospital**

Petition praying that Long Jetty Hospital be upgraded, received from **Mr McBride**.

#### **Shellharbour Public Hospital Children's Ward**

Petition praying that the children's ward of Shellharbour Public Hospital be reopened, received from **Mr Rumble**.

#### **Berkeley Police Station**

Petition praying that Berkeley Police Station be manned on a 24-hour basis and foot patrols be introduced, received from **Mr Rumble**.

#### **Warilla Police Station**

Petition praying that more police be allocated to Warilla Police Station, received from **Mr Rumble**.

#### **Police Service Rotational Transfer Policy**

Petitions praying that the House reject any policy by the New South Wales Police Service to introduce rotational transfer, received from **Mr Face and Mr Mills**.

#### **Home and Community Care Program**

Petition praying that the Home and Community Care program be allocated growth funding in the 1993-94 period consistent with increasing community need, received from **Dr Refshauge**.

#### **Illawarra Access Project for the Deaf**

Petition praying that the House protect and uphold the rights of the deaf community in the Illawarra region by ensuring the continuation of the Access Project for the Deaf, received from **Mr Markham**.

#### **Caroline Bay Multi Arts Centre**

Petition praying that the House order the establishment of a commission of inquiry under the environmental protection Act to consider the environmental and fiscal effects of the Multi Arts Centre proposed for Caroline Bay, East Gosford, order a half-term election for the ten aldermen of Gosford City Council on 18th September, 1993, and order the council to cease expenditure on the centre until the results of the election become known, received from **Mr McBride**.

#### **Central Coast Petrol Pricing**

Petition praying that petrol pricing on the Central Coast be reviewed, received from **Mr McBride**.

### **FORMER DETECTIVE INSPECTOR ELLIS**

#### **Ministerial Statement**

**Mr GRIFFITHS** (Georges River - Minister for Police, and Minister for Emergency Services) [3.15]: I advise the House of recent events relating to Mr William Ellis who, until his retirement in January 1992, was a long-serving member of the New South Wales Police Service. Honourable members may well recall that Mr Ellis was demoted from the rank of inspector to senior sergeant in March 1990 as a result of an internal police investigation. The circumstances surrounding his demotion were later subject to scrutiny by the Joint Select Committee upon Police Administration. It is appropriate that I make this statement today in order to apprise the House and place on the record what subsequently transpired. Honourable members will be aware that pages 321 to 324 of the first report of the Joint Select Committee upon Police Administration canvassed the detail of how Mr Ellis came to be reduced in rank. I do not intend to repeat those details. Suffice it to say that as a result of its inquiry the joint select committee made two recommendations.

The first was that a mechanism be put in place that would provide commissioned officers facing demotion with the opportunity to make submissions to the Minister. The second was that an independent authority undertake a review of all circumstances of the Ellis matter in order to ascertain whether there had been any bias operating against him and to make recommendations as to whether any redress was warranted. The first matter was addressed by the Police Service (Complaints, Discipline and Appeals) Bill 1993, which inserted section 175(3) into the principal Act. It may interest honourable members to know that since the commencement of that Act at least one officer has been given the opportunity to make a submission on penalty. The primary purpose of my statement today is to report to this House on the action taken and the final position reached in respect of the second of the joint committee's recommendations. On 3rd June Mr Roger Gyles, Q.C., accepted a brief in the following terms:

The Minister for Police wishes an examination to be made of all available material relating to disciplinary action taken against former Senior Sergeant W. A. Ellis relating to his misconduct in 1989, and any other matters that may be relevant to, associated with, or arise out of that action, with a view to reporting to the Minister by 30th July, 1993.

1. Whether there was any bias, intended or not, shown against former Senior Sergeant Ellis in relation to disciplinary action taken against him; and
2. If so what, if any, redress is warranted?

On 30th August, an extension in time having been agreed to previously, Mr Gyles made his report final report to

me. I seek the leave of the House to table that report.

**Leave granted.**

This report makes two significant findings. The first is that there was no bias evident in the action that was taken against Mr Ellis. The second is that the decision to transfer Mr Ellis from the internal affairs command was flawed at law, therefore invalid, and liable to be set aside. As Mr Ellis's demotion to the rank of senior sergeant was a consequence of that decision, his reduction in rank was likewise flawed. The report, therefore, recommends that Mr Ellis be returned to the position he would have held had the transfer and demotion not occurred. I have accepted both those findings and the recommendations made by Mr Gyles, Q.C. I am also able to report to this House that I have instigated discussions with Mr Ellis through his solicitors. With the consent of Mr Ellis, I intend to advise this House of an agreement that has been reached between us. However, before doing so, I shall make a brief comment on Mr Gyles's finding that the disciplinary action taken was invalid.

Responsibility for determining disciplinary action against police officers had been delegated from the Commissioner of Police to the Assistant Commissioner, Professional Responsibility. From documents contemporaneous with the events Mr Gyles was able to ascertain that, in reaching his decision to recommend to the Police Board that Mr Ellis be transferred out of internal affairs and demoted to the rank of senior sergeant, the assistant commissioner took into account certain unfavourable comments that were made by the Police Tribunal in relation to Mr Ellis. However, those remarks were made by the tribunal in the context of dismissing one of four charges that had been laid against Mr Ellis. For that reason alone Mr Gyles advised that those adverse comments should have been ignored and should not have been taken into consideration in determining the action to be taken against Mr Ellis.

As those comments were taken into account, Mr Gyles advised that the recommendation made was tainted, as was all action that was based on the recommendation. Mr Gyles thus concluded that the transfer and demotion of Mr Ellis was unlawful and that the situation should be redressed. As I have already advised, agreement has been reached with Mr Ellis as to the remedial action the Government should take. The most significant step I propose to take is the rescission of Mr Ellis's demotion. He will be reinstated to the rank of detective inspector as if the demotion had never occurred. Honourable members will appreciate that reinstatement of Mr Ellis to the rank of detective inspector has a number of consequences.

I advise the House that the Government has agreed to pay Mr Ellis the difference between the salary he received as a detective senior sergeant and that to which he would have been entitled as a detective inspector. Mr Ellis's leave and other entitlements likewise will be adjusted. The House may not be aware that Mr Ellis was medically discharged from the Police Service in January 1992. I hasten to emphasise that this was an honourable discharge. It occurred only because Mr Ellis's health no longer permitted him to effectively continue to serve as a police officer. Mr Ellis's superannuation entitlements have been affected by his reduction in rank to senior sergeant. These entitlements will be retrospectively adjusted to what they would have been had he been medically discharged at the rank of detective inspector. Furthermore, a new certificate of discharge will be issued to reflect the fact that Mr Ellis left the Police Service with the rank of detective inspector. Interest will be paid on all those adjusted entitlements.

Other matters of an administrative nature, but nevertheless of importance to Mr Ellis, have also been agreed. It is only fit and proper that all the records indicating that Mr Ellis was demoted will be noted appropriately to show that this demotion was subsequently voided and that he retained the rank of detective inspector from the date of his promotion in 1988 to the date of his discharge in 1992. It has also come to my attention that following his promotion Mr Ellis never received his official commission from the Governor. Attempts to locate the original document have been unsuccessful. Therefore, arrangements are to be made for a duplicate commission to be issued to Mr Ellis. Finally, it has been agreed that Mr Ellis will be reimbursed for legal expenses reasonably incurred in connection with the inquiry conducted by Mr Gyles, Q.C. I wish retired Detective Inspector Ellis well and give him and this House my personal assurance that all the matters that have been agreed on in settlement of this matter will be acted upon as a matter of priority.

**Mr ANDERSON** (Liverpool) [3.23]: The State Opposition congratulates the Minister for this welcome statement today that brings to a proper conclusion the quest for justice on behalf of former Detective Inspector W. A. "Bill" Ellis. The Minister deserves credit for his acceptance of, and action in response to, a recommendation of the Joint Select Committee upon Police Administration regarding the Ellis matter. Commissioner Lauer also deserves mention. It is perhaps a measure of the person he is that he has joined with the Minister in finalising this matter at the least opportune time for the Police Service and more particularly for him.

The Gyles report sets out the history of this matter but it could never record or describe the anguish suffered for almost four years by a man who had given some 28 years of loyal and efficient service as a police officer. Not only was Bill Ellis's service described as efficient, but Bill Ellis was described in all appraisal reports as a person of integrity. The anguish of Bill Ellis was shared by his family, members of whom are with him today in the public gallery but, in particular, by his loyal and devoted wife Shirley. Both Bill and Shirley Ellis have paid an enormous price in terms of the irreparable damage to their health caused by this matter and by their three

Page 5697

years and eight months of fighting to correct an injustice. That quest commenced in March 1990 and was waged almost single-handedly by Shirley Ellis. At that time both the ABC's "7.30 Report" and Alan Jones on 2UE brought the matter to public attention. But it was Shirley Ellis who continued to hound people with letters, even though they often drew no response.

The Opposition has persistently pursued this matter for three years and eight months. A perusal of the *Hansard* for both Chambers, the questions and answers paper and the transcripts of the recent joint select committee shows that those efforts were decisive in bringing about the finalisation of this matter. In May the Parliament adopted an Opposition amendment - referred to as the Ellis amendment - which altered the system to provide for such a situation to be dealt with more appropriately in the future. All Bill Ellis wanted was to be able to show that he was not a crook - an inference many drew because of the incredibly harsh penalty imposed. Shirley Ellis knows Bill better than any other living soul. Her faith in and love for her husband drove her on, despite the constant setbacks, bureaucratic indifference and ill health. This resolution of the matter today is testimony to her determination and devotion. The Opposition welcomes this long-awaited day but believes that, rather than being a resolution of the matter within the forms of the Parliament, it was, as Virgil said, "Omnia vincit amor" - love conquers all.

## **POLICE PROTECTION OF PAEDOPHILES**

### **Matter for Urgent Consideration**

**Mrs GRUSOVIN** (Heffron) [3.26]: I move the notified motion, as amended by leave:

- (1) That this House calls upon the Government to immediately establish a Judicial Inquiry into the paedophilia networks in this State.
- (2) That the inquiry shall also report inter alia on all the circumstances surrounding:
  - (a) the Seabeach case;
  - (b) police paedophile protection rackets;
  - (c) the effectiveness or otherwise of all relevant New South Wales Government Departments in dealing with matters concerning paedophile activity.
- (3) That the judicial inquiry have due regard to matters before the courts.

These matters are serious. If the community is to have any confidence in the investigation and prosecution of matters relating to paedophiles who prey on those vulnerable young children and adolescents in our community who are far too often the victims of these vile perpetrators, it is important that this House agrees to this motion so that there is a full inquiry into the matters I have outlined. The best way to describe my feelings is to say that I am relieved that the Minister for Police took the opportunity a few moments ago, by way of a supplementary response, to inform the House that he misled it by his answer to the question put by me earlier this week. That matter concerned me greatly. The former Minister for Police, Mr Pickering, resigned following the provision of information that was not correct.

I was concerned that the present Minister had been provided with a brief that contained a gross inaccuracy. I am pleased that the Minister is now aware that the statement was incorrect. It is vital for this House to understand that the statements made by the confessed paedophile Colin Fisk about the existence of a police paedophile protection racket, with Detective Senior Sergeant Ron Fluit at its head, were made some months before the Seabeach case went to committal and not, as the Minister said in this House, four months after the Seabeach defendants were discharged. It is important to understand that people had to know before that case went to committal that it was seriously, fatally flawed.

The truth is that Fisk made his allegations against Fluit and other corrupt police officers more than two months before the Mr Bubbles case went to committal. An undercover police officer, who was legally wired during an undercover operation regarding drugs, was told about this by paedophiles at the guys and dolls pub at Broadway. It is ironic that other conversations with the same paedophiles took place in a hotel within my electorate.

Such serious allegations required that the police suspend Fluit. The Government should have demanded an immediate inquiry. This was the largest child sexual abuse case in the history of this nation and in charge of the investigation was a man against whom serious allegations had been made. Nothing happened. It is not hard to understand why, when we look in fine detail at the events. The police and the Government were faced with acute embarrassment when, two months before the case went to court, that man was accused of protecting paedophiles over nearly 20 years. That is when the cover-up began. I believe it is still going on today. Who knew about these bombshell allegations and how high did the cover-up go? There is no doubt that the head of the police investigation, Detective Chief Inspector Ken Watson, and the then head of the internal police security unit, Chief Superintendent Schloeffel, knew. The man in overall charge then of the professional integrity branch of the police department, now the commissioner, clearly must have known.

The then police Minister must have received daily briefings on the matter following the drug bust in which Fisk and a police officer were arrested, because it was such an important case. In addition the Director of Public Prosecutions, who backed a lenient sentence for Fisk on the drug charges and later recommended indemnity on other paedophile charges because of the information Fisk provided, also knew about the allegations. If the then police Minister and the then Attorney General, John Dowd, did not know about the serious paedophile protection racket allegations before the biggest case of its kind in the nation's history, they should have, and they should have taken action. The Ministers must have known

Page 5698

about the allegations whilst the Mr Bubbles controversy raged in this House and the other place throughout 1990 and 1991. But they said nothing.

Let us set the record straight on Operation Speedo. The Speedo task force was not initiated until November 1990 and did not formally begin operations until January 1991, more than 18 months after the allegations by Fisk were first made. The previous IPSU operation was basically an intelligence gathering operation with very limited resources. It concentrated on one allegation and one allegation only. That is subject to the current charges before the court and about which I will say no more. The wider and far more important allegations by Fisk about the existence of a police paedophile protection ring, which included Detective Senior Sergeant Fluit, was not investigated until 1991. There is no doubt that the task force would not have been established if I had not raised the issue in September 1990 in this House and compelled the then Minister to refer it to the Independent Commission Against Corruption. The Minister for Police and Minister for

Emergency Services boasted in this House earlier this week that 116 charges were laid as a result of Operation Speedo. I dare the Minister to detail the success rate of those charges. Who, and exactly how many people, have gone to gaol as a result of the Speedo task force investigation?

Apart from the three police officers already charged before the task force was even established, not one of the other 13 police has been either prosecuted in the courts or gone to goal. Perhaps even more disgraceful, especially in view of the fact that the task force had 11 confiscated videos of vile paedophiles in action, is that of the 41 paedophiles identified only one went to gaol. Of the 116 charges, 19 related to matters under Victorian legislation; nine counts against a paedophile were no billed; 13 against another paedophile were no billed; five counts against a paedophile resulted in that offender being sentenced to 150 hours of community service; and 23 charges, which had been admitted, against the one paedophile resulted in a conviction. This shows the great result from that operation!

The Minister gave the misleading impression in this House that Detective Sergeant Fluit had been cleared by the investigation. Quite the contrary: on the allegation that Fluit and another detective extorted \$8,000 from paedophile Peter Cartwright in Redfern in 1985 so that Cartwright could avoid indecent assault charges, the task force found the complaint sustained. This finding was undoubtedly one of the main reasons why the task force came to the general conclusion that corrupt practices did exist between serving police officers and paedophiles. The task force recommended that Fluit and the other detective be charged with conspiracy to corruptly discharge their public duties, but the Director of Public Prosecutions did not proceed.

Was Fluit not charged because the one crucial witness, the paedophile Peter Cartwright - well known as the principal in the Smoko scam, who allegedly paid the bribe - has still not been found? I would like to know how serious were the attempts made to find that witness. Did task force Speedo investigate an allegation that Philip Bell in 1975 bribed then Detective Max Schweinsberg, who was allegedly left in charge of the paedophile protection racket whilst Fluit was overseas on holiday? A payment of \$10,000 was made to have the charges related to indecent assault of two boys dropped. Did Schweinsberg allegedly pay off two detectives from Chatswood to convince the victims and their families to have the charges dropped? Where are those detectives today? Are they still in the force? [*Time expired.*]

**Mr GRIFFITHS** (Georges River - Minister for Police, and Minister for Emergency Services) [3.36]: The Government opposes the motion. As I have consistently stated, I find any form of child abuse abhorrent. Without question, it is the lowest form of human depravity. Yesterday I said that the Government will never move away from its obligation to protect the young and innocent in our society. The honourable member for Heffron likes to portray herself as the only member of this House who is concerned about victims. I assure her that we all are. I understand her frustration, and perhaps her deep-seated guilt on such issues. It was, after all, during the time that she was a Minister of the Crown that the police paedophile protection rackets were said to have flourished. What did the Opposition do about them during the shameful Wran and Unsworth years? The answer is, absolutely nothing. I do not know why. What is proposed now? A judicial inquiry! What would that achieve? Nothing other than another taxpayer-funded lawyers' feast. No doubt this would lead to the demand from the Bar Association for a host of new Queen's Counsel.

Let us treat this matter seriously and ask what this motion would really do to the victims of child abuse in this State. First, it would jeopardise the forthcoming trial of three police officers accused of paedophile protection. The honourable member for Heffron asks about the 116 charges, and referred to Philip Bell. I will say right here that I am disgusted that police can lay 116 charges and the Director of Public Prosecutions did not proceed with them. Are our laws defective? What is causing this? Let me assure honourable members that police are sick and tired of laying charges that are not proceeded with. Let us not underestimate the vital importance of the trials. If convicted, the matters would stand as a symbol of the Government's determination to stamp out police corruption and child abuse. A judicial inquiry must cover the very same ground that will be central to the Crown's case in those prosecutions. If anything were deliberately designed to frustrate the course of justice in this State, surely it is this motion.

How effective can such an inquiry be? Every member of the House will acknowledge that the judicial

inquiry process is manifestly inadequate as a means of investigating matters which have not been concluded before the criminal courts. Such an inquiry would be a lawyers' feast. The real question is not whether we need an inquiry to traipse across the

Page 5699

evidence; what we need is proper Government action and investigation, and effective oversight. The Government has already demonstrated its determination to have both those things. In the Operation Speedo case it was this Government which insisted that the police investigation be oversighted by the Independent Commission Against Corruption. I am informed that the commissioner, Mr Ian Temby, Q.C., confirms that Operation Speedo was conducted properly and there was no attempt made by investigating officers to cover up police involvement.

**Mr Whelan:** Do you have the statement from ICAC in writing?

**Mr GRIFFITHS:** Is the honourable member saying that Mr Temby got it wrong? The charges now before the court are testament to that conclusion. I remind the House that a number of other persons have already been brought to justice and others were fully investigated. The honourable member for Ashfield asked whether I have the statement about ICAC in writing. I will be delighted to provide it. No doubt, the police investigators would like to have seen many others indicted. Unfortunately, that did not happen because of the notorious difficulties in obtaining sufficient admissible evidence. It was also complicated in these matters by the understandable reluctance of witnesses to subject themselves to the further trauma of court proceedings. In the end, this motion takes us absolutely nowhere. In fact, there is a very real danger that we will be considerably worse off if it is carried. I am the first to concede the need to improve the response of not just the criminal justice agencies in this most sensitive and difficult area, but also of the social support system so essential to victims and their families.

Some time ago I directed the preparation of a strategy for improving police response to complaints of child abuse because I felt, when I became Minister, that that area was not being addressed adequately. The strategy is close to finalisation and may include a far more proactive use of apprehended violence orders for children under the age of 18 years. There is also a proposal to appoint a State co-ordinator of child protection to develop and co-ordinate child protection programs within the Police Service. The new draft strategy will concentrate heavily on effective co-ordination with the other agency having primary responsibility for child abuse in New South Wales. I speak, of course, of the Department of Community Services.

Previously, there has been criticism of the way in which the Police Service and the Department of Community Services respond together to complaints of child abuse. A proposal is currently being finalised for a trial of multidisciplinary response teams comprising police and officers of the Department of Community Services. This concept brings together both law enforcement and child welfare interests in a better co-ordinated and more effective way. It is intended that these teams would work out of special premises suitably designed to make young children and their families feel secure and comfortable. Special training packages will be developed to ensure that this co-operative approach results in a better service to clients and a better outcome for these children. The details are still being refined in the Police Service, and within the next couple of weeks I expect to be discussing this program for the 12 months' trial with my colleague the Minister for Community Services.

I wish to emphasise that the problems of child abuse, and particularly of paedophilia, are being treated as a very high priority by the Government. The fact is that investigations in this area are inherently difficult and success will only be achieved with much hard work and trial and error. The distress and heartache felt by all those people affected by this dreadful problem will not be eased in the least by attempting to use their suffering to gain cheap headlines. If the honourable member for Heffron has any evidence to suggest that police officers have acted corruptly to cover up the activities of paedophiles, she should pass it on to the Independent Commission Against Corruption. The matter is before the ICAC. As all honourable members know, the ICAC has all the powers that a royal commission would have and is available at any time should any honourable member feel that a police investigation has been deliberately nobbled.

I have complete faith in the ICAC system. I suggest that the matter be referred there, not that a judicial inquiry be conducted at great expense to taxpayers, and not to put young children through more pain and suffering. We should consider these kids and solve the problems in a bipartisan way. The Government rejects this call for a judicial inquiry because it genuinely believes it is unnecessary and will achieve nothing. That in no way underpins the Government's real concern and compassion for the children who are suffering, and who continue to suffer, until this heinous problem is solved.

**Mr ANDERSON** (Liverpool) [3.45]: I am stunned at the contribution by the Minister for Police. He knows that the Joint Select Committee upon Police Administration heard considerable evidence in camera that established paedophile rings are operating throughout New South Wales. They stretch across all strata of society. There has been no effective response to this vile crime committed against children. There is no point the Minister asking what the Labor Party did about it. The racket referred to in Operation Speedo commenced at least in 1972. It is not a question of apportioning blame for what did or did not happen. The fact is that this crime exists, and nothing the Minister has said today and nothing Government members have said since 1990, when the Opposition first called for a judicial inquiry, changes the fact that paedophiles are still preying upon children in the community. It is not a problem for the police; it is not problem for the Department of Community Services; it is a problem for this Parliament to find out why it is still going on.

Where are these people who are being charged? What 116 charges? What people are before the court? One group will appear for trial in April, and as the  
Page 5700

motion deals with that matter it is not jeopardised. I ask someone to tell me why paedophiles shown on video doing the vilest things to nine-year-old children have been granted immunity by the Government. I want to know, not after it has happened, how they will be treated and how they will be interviewed. I want to know when the Minister is going to stop the continuation of this crime. If proposals had been brought forward for that purpose, the Opposition would have supported them. The public do not understand the problem; I do not believe the majority of members of Parliament understand the problem. But members of the Joint Select Committee upon Police Administration well know what the problem is, and the Labor members of that committee have played by the rules when others have not. The Opposition has not raised the issue in that context, however, I inform the House that Operation Speedo is but part of it.

I will tell the House about Operation Hawkesbury. Charge after charge was laid against police, some of which were appropriate and some of which caused the destruction of careers. The Minister should tell the House what happened to Meni Caroutas, Sergeant Fowler and Pentland. Yet, the Minister relies on those issues to show us how well he is going. He is not going well at all. He should read the *Hansard* over the past three years and nine months. I want to know why, in a major inquiry such as Seabeach, the typist of the detective sergeant was a probationary constable who could only type with two fingers. I want to know why three of the young police involved in that inquiry are no longer members of the Police Service - and not because they committed any misconduct.

I want some answers on that matter. But, more particularly, Seabeach is but a symptom, whatever one's view of it may be. These paedophile rings are the real problem. All the evidence in New South Wales and Australia and overseas shows that such offenders are people of great financial resource. Generally speaking, they are people of considerable intelligence and contact. I ask the Minister to confirm or deny what the police intelligence reports show about paedophilia in New South Wales. Why should we not have a judicial inquiry? How many more matters is the Government going to send to the ICAC. It is already overloaded with Operation Milloo and addressing the culture problem. The ICAC has to consider other matters referred to it by the Parliament, and matters that have resulted from its own action.

It is necessary that this matter be brought before the public. It can be done without jeopardising the legal rights of any person. I want someone to start thinking about the rights of children. For three days the Minister has been telling us about this vile crime and how everyone seeks to do something to protect children. And the Minister wonders why the parents of children who become victims of paedophiles deal with the situation themselves, and why, over recent years, young victims of paedophiles have killed themselves. That is why a



judicial inquiry is necessary. The Minister and his colleagues, in the light of evidence produced over the past three and a half years - and, more particularly, this week - should say that they are not opposed to a full, open and public judicial inquiry to once and for all establish what has been going on and what is needed to prevent these vile people from continuing to prey upon the children of this State. If Government members are not prepared to do that, they have all gone down in my estimation.

**Mr LONGLEY** (Pittwater - Minister for Community Services, Minister for Aboriginal Affairs, and Minister for the Ageing) [3.50]: This matter for urgent consideration is very serious. It is vital that the House and members of the public are made aware that the Government is totally committed to protecting the well-being and welfare of all children in our community. The Department of Community Services has, as one of its objectives, the protection of children from abuse, neglect and exploitation. The department shares the responsibility of providing child protection services with the Department of Health, the Department of School Education, the Attorney General's Department and the Police Service.

In my portfolio child protection resources were increased in the last Budget by \$2 million to ensure that resources are available to meet our obligations to protect children within our community. The child protection allocation will enable the creation of an additional 44 child protection staff positions throughout New South Wales, on top of the 33 per cent increase that has occurred during the term of this Government. The extra \$2 million brings the overall increase to more than 36 per cent. As part of normal casework practice the department regularly reviews cases to see whether issues have arisen concerning legislation and departmental policies and procedures. This process assists the development of better strategies for promoting the welfare and interests of children in the community at large. Casework practice is subject to review at a number of levels in the Department of Community Services.

That approach is essential and demonstrates the Government's ongoing commitment to child protection, as indicated both in its budgetary commitments and also in a thoroughgoing and systematic form of review of all child protection matters. These matters are of the highest level of priority for any person or government. The question of child care protection cannot be overstated. The Opposition, in revisiting the Seabeach case, is once again displaying a negative obsession with the past. The Opposition knows full well that a number of activities have been initiated since the Seabeach case both within the Department of Community Services and on an interdepartmental level to ensure that officers are clear about their responsibilities and procedures when taking action in future cases of that nature.

The Opposition is aware of activities initiated since the Mr Bubbles case. Those initiatives include the following: the New South Wales Child Protection  
Page 5701

Council has produced interagency guidelines providing a framework of co-operative and consistent interdepartmental responses into allegations of child abuse; an interdepartmental working group convened by the Attorney General's Department formulated guidelines for the investigation and management of child sexual assault cases to assist in effective criminal prosecution of cases and to minimise the trauma experienced by victims; a section titled "Guidelines for the Management of Allegations of Child Abuse" in children's services has been included in the department's child protection manual. That section details action to be taken by departmental officers where there are allegations of abuse in child care centres.

It is also significant that the New South Wales Child Protection Council, in a letter to the former Minister for Family and Community Services, Mr Webster, said, among other things, that the council does not support the call for a royal commission into the case, believing it would not be in the best interests of the children involved. That shows there are serious concerns about attempting to revisit that issue. If in the course of the department's continuing work with troubled adolescents certain information about criminal activities of adults, including paedophilia, is given to departmental staff, this information is immediately shared with police at the local level because police are responsible for the investigation of criminal activities. [*Time expired.*]

**Mr WHELAN** (Ashfield) [3.55]: I am stunned, shocked, shamed and disappointed that two Ministers of the Crown should be so apologetic about this issue but unwilling to grasp the nettle to resolve it. This question

can only be resolved by exposition in the proper forum under judicial authority. The motion seeks to enable the House to establish a judicial inquiry into paedophile networks in this State. Are those Ministers saying that there are no such networks in existence and that there has been no networking throughout New South Wales? The Minister for Community Services, Minister for Aboriginal Affairs and Minister for the Ageing in his contribution referred to the Mr Bubbles case. The Minister should explain his views to the 17 parents and children who were present when 54 charges were laid. Those charges were laid on the basis of hard medical evidence of sexual interference and similar fact evidence in all 54 charges, yet a government instrumentality declared the evidence contaminated.

Those 17 children were denied their day in court by the bureaucracy. Yet the Minister says it is a passing fantasy and a one-off occasion. The Minister knows in his own heart it is not. That is why the Opposition, and especially the honourable member for Heffron, has been pursuing this matter with all possible vigour and coping all the ridicule and contempt the Government can throw at her. That ridicule, contempt and criticism was ranged against her behaviour and her alleged obsession with that matter. The honourable member's obsession, however, is with fact and honesty. I am surprised that the Minister should take such a defensive attitude towards this problem. The buck stops here in this Parliament. Clearly, it will not be the responsibility of the Government because it has washed its hands and divested itself of responsibility on this issue.

Therefore, it is up to the Opposition to call for a judicial inquiry. The Government can get the files; the Opposition cannot. Because the Ministers will not act, the Opposition is calling upon the Parliament to agree that a judge be appointed to acquire all the information about why all those child sexual assault matters were thrown out of court or did not reach court and have been declared to be contaminated. However, those matters, as in the Mr Bubbles case, were substantially proved by similar fact evidence and by hard factual medical evidence by individual medical practitioners about physical interference by paedophiles with these young children.

In September 1990, the former Attorney General told the honourable member for Heffron that if she asked a question in this House she would jeopardise a court case that was at that time the subject of investigation. That court case had been the subject of investigation under the aegis of this Government and that Attorney General for the previous 18 months. Eighteen months passed before the Government could do anything. But nothing happened. The case was aborted for specious reasons. I want the Minister to assure me that he is not opposing the motion, as he said the Government will, because his former counterpart and predecessor said he wants to do something about police paedophile protection rackets throughout New South Wales. I want the Minister's assurance that this is not a personal grudge by him, and that this matter is more serious than for him to have a tête-à-tête with the Hon. E. P. Pickering. One other important question must be answered. Did police informer Colin Fisk tell the police that he witnessed a fist fight between Fluit and Schweinsberg in a Glebe pub after Schweinsberg refused to give Fluit "his share" when he returned from holidays? [*Time expired.*]

**Mrs GRUSOVIN** (Heffron) [4.0], in reply: This is a most serious matter. I am pleased that after so many years the House is considering the full investigation into these matters that have been raised today. This investigation by police of police that the Minister has told us was quite satisfactory has been a disgrace. I am disgusted at the results. Most of the alleged principals in this racket have been quietly allowed to resign from the police force and, I might say, many on a higher than normal pension rate. It is ironic that in some cases stress is the reason for medical retirement on substantially higher pension benefits, stress relating to matters in which a number of these people have many questions to answer.

The Minister spoke about the Independent Commission Against Corruption. The ICAC was ostensibly overseeing this investigation. The ICAC can take little credit in this exercise and its role must be looked at, because police investigated police. While questions were being asked in this Parliament the Attorney General and the then Minister for Police,

Page 5702

Ted Pickering, told us that they knew nothing about any of these matters and all was fine. The Minister for Community Services used fine words and talked about negative obsessions when I asked a question today about a child sexual abuse case that was so poorly handled by police and people connected with the Department of

Community Services that it shows we live today with the legacy of Mr Bubbles.

For that reason I have continued this campaign over the years. Once again we have a case where there is apparent contamination of the evidence provided by a 10-year-old child. The apparent contamination occurred when a solicitor appointed by the Department of Community Services told the child that she was eligible for victim's compensation. A week later similar comments were made by a psychologist at Westmead hospital telling her that she would be eligible for victim's compensation and mummy might be able to take her for a trip to Disneyland. It did not matter that there was medical evidence of anal and vaginal penetration. Because people who still are not properly trained are working in the community causing problems for victims, this child with supportive medical evidence is told by the child mistreatment unit that there is nowhere to go. This is just a repeat of the Mr Bubbles case of contaminated evidence.

I would like to have more information about the question of contaminated evidence also in the Seabeach case. It is interesting to note that when the mother first notified the Department of Community Services in May, the department did not notify the police. Where are all the guidelines the Government has been talking about for years? The mother was told the daughter would have to wait eight weeks before a medical examination could be performed, but that was brought forward after the child experienced severe abdominal pain. The police failed to search the premises of the perpetrator. The child mistreatment unit at Parramatta took no action against the alleged perpetrator when he declined their request to be interviewed about the allegations, and there was no follow-up DOCS assessment of the child's emotional state over the past six months.

We are debating serious matters and they must be put on the table. This Government got itself into a deep hole by attempting to cover up what it considered to be an embarrassment and dug itself into a deeper and deeper cesspit. The Minister for Community Services, more than anyone else in this House today, would be well aware of the intimate details of the Seabeach case and the distress it has caused to the lives of the families involved. Those victims are still victims and many will be for the remainder of their lives. Assaulting our most vulnerable members of the community is a serious crime. As members of Parliament we have a responsibility to guard those vulnerable young people. I shall do everything in my power to guard them for the rest of my time in public life. It is time the matter was made public and the community was able to have confidence again in the way in which these matters are investigated and prosecuted. The Opposition wants to view the complete lack of response and failure of various government departments that years later are still not doing their job. *[Time expired.]*

**Motion agreed to.**

## **BUSINESS OF THE HOUSE**

### **Printing of Reports**

**Motion, by leave, by Mr West agreed to:**

That the following papers be printed:

Final Report by the 3 x 3 Committee, dated 8 November 1993  
Report of the Mine Subsidence Board for the year ended 30 June 1993  
Report of the Department of Public Works for the year ended 30 June 1993  
Report of the Anti-Discrimination Board for the year ended 30th June 1993  
Report of the Archives Authority for the year ended 30 June 1993  
Report of the Art Gallery of New South Wales for the year ended 30 June 1993  
Report of the Department of Consumer Affairs for the year ended 30 June 1993  
Report of the Dairy Corporation for the year ended 30 June 1993  
Report of the Dams Safety Committee for the year ended 30 June 1993  
Report of the Darling Harbour Authority for the year ended 30 June 1993

Report of the Department of Agriculture for the year ended 30 June 1993  
Report of the Department of Housing for the year ended 30 June 1993  
Report of the Department of Mineral Resources for the year ended 30 June 1993  
Report of the Department of State Development for the year ended 30 June 1993  
Report of The Earth Exchange Geological and Mining Museum Trust for the year ended 30 June 1993  
Report of the Ethnic Affairs Commission for the year ended 30 June 1993  
Report of the Film and Television Office for the year ended 30 June 1993  
Report of the Greyhound Racing Control Board for the year ended 30 June 1993  
Report of the Harness Racing Authority for the year ended 30 June 1993  
Report of the Historic Houses Trust for the year ended 30 June 1993  
Report of the Institute of Psychiatry for the year ended 30 June 1993  
Report of the Library Council for the year ended 30 June 1993  
Report of the Lord Howe Island Board for the year ended 30 June 1993  
Report of the Ministry for the Arts for the year ended 30 June 1993  
Report of the Museum of Applied Arts and Sciences for the year ended 30 June 1993  
Report of the Office of Energy for the year ended 30 June 1993  
Report of the Office of the Director of Public Prosecutions for the year ended 30 June 1993  
Report of the Peel Cunningham County Council for the year ended 30 June 1993  
Report of the Rental Bond Board for the year ended 30 June 1993  
Report of the Royal Botanic Gardens Sydney for the year ended 30 June 1993  
Report of the State Sports Centre for the year ended 30 June 1993

Page 5703

Report of the Sydney Opera House Trust for the year ended 30 June 1993  
Report of the Upper Parramatta River Catchment Trust for the year ended 30 June 1993  
Report of the Victims Compensation Tribunal for the year ended 30 June 1993  
Report of the Zoological Parks Board for the year ended 30 June 1993  
Statement of Corporate Intent of the Hunter Water Corporation, dated September 1993  
Report of the Protective Commissioner for the year ended 30 June 1993  
Report to the Attorney General by the Association of Property Conveyancers Limited for 1992-93  
Report to Parliament under section 14 of the Timber Industry (Interim Protection) Act 1992 for the period 1 July to 30 September, 1993  
Report of the Science and Technology Council for the year ended 30 June 1993

#### **JOINT SELECT COMMITTEE UPON THE SYDNEY WATER BOARD**

##### **Motion, by leave, by Mr West agreed to:**

That the reporting date for the Joint Select Committee upon the Sydney Water Board be extended until 17th December.

**Message sent to the Legislative Council advising it of the resolution and inviting it to agree to a similar resolution.**

#### **SELECT COMMITTEE UPON THE SYDNEY MARKET AUTHORITY**

##### **Motion, by leave, by Mr West agreed to:**

That the reporting date for the Select Committee upon the Sydney Market Authority be extended until 14th April, 1994.

#### **BUSINESS OF THE HOUSE**

### **Notice of Motion: Supreme Court Practice Note**

**Mr SPEAKER:** Order! Prior to calling upon Notice of Motion No. 1 under Standing Order 113A I wish to draw to the attention of the House that the member for Ashfield seeks to disallow a practice note of the Supreme Court. Having considered the matter, I have concluded that it does not fall within the ambit of the term "statutory rule" as set out in section 39 of the Interpretation Act 1987 as it was not made by the Governor or required to be approved or confirmed by the Governor.

Although they may address matters which could be the subject of rules of court, practice notes are not rules. They are issued by the Chief Justice in exercise of the court's inherent power to give directions on matters of practice and procedure, a power not displaced by sections 122 to 124 of the Supreme Court Act, which empower the Rules Committee to make those rules which become statutory rules. Practice notes do not have the force of law although they are no doubt persuasive with practitioners in the court. The view has been expressed to me that the scope of some recent practice notes, including the one the subject of this motion, has traversed matters of practice and procedure which should more properly be in the form of rules and, therefore, subject to the scrutiny of the Parliament.

I do not seek to comment on this assertion other than to say that this Parliament has no power to change the law by resolution. The law relating to rules of court is governed by sections 122 to 124 of the Supreme Court Act. If the Parliament wishes to place within scrutiny matters that are not currently in the Act, it is within its province to do so by amendment to that Act. Accordingly, I therefore have to rule the motion out of order.

### **LOCAL GOVERNMENT ACT: DISALLOWANCE OF REGULATION**

**Dr MACDONALD (Manly) [4.8]:** I move:

That this House disallows the Local Government (Water, Sewerage and Drainage) Regulation 1993 made under the Local Government Act 1993 as set forth in the notice appearing in *Government Gazette* No. 73 of 1st July 1993, at page 3524 and tabled in this House on 7th September 1993.

This regulation took effect on 1st July; indeed, it took effect before it was published for public comment. The Regulation Review Committee has yet to consider that public comment or any regulation impact statement. The closing date for public submissions was 18th October. I point out that it also pre-empts probable government reforms to the water industry and takes no account of impending recommendations of the Joint Select Committee upon the Sydney Water Board. It also pre-empts the likely recommendations from the Cabinet subcommittee. For the information of the House, the Cabinet subcommittee on the water industry is expected to pave the way for reforms in the near future. These reforms will address the mechanisms for setting standards for water generally and should address much of the subject-matter of this regulation.

That is one of the key points I made. In a sense this regulation is ahead of likely changes that will be the subject of deliberation by the Cabinet subcommittee. The Parliament and the Government would be better placed to make this regulation after, rather than before, the Government has developed reforms in these areas. If the regulation is made now and it is not disallowed it will almost certainly have to be amended substantially next year, if not repealed completely, should rationalisation of regulations apply to water generally. That is the basis on which I am seeking that it be disallowed. I suggest that there be a reformulation of that regulation following the committee's review and consideration of public comment and the recommendations of the Joint Select Committee upon the Sydney Water Board, of which I am chairperson.

The object of that local government regulation, for honourable members who wonder what it applies to, is to protect public health, protect safety and amenity by providing and maintaining standards and specifications for water, sewerage and drainage works. It is intended to explain the relationship and responsibilities between the customers, operators of services, manufacturers of equipment, contractors who install and maintain equipment, and the Government.

The regulation provides common standards and specifications for various plumbing and drainage works, where the water supply and sewerage service is provided by a council under the Act. That is confirmed in the Regulatory Impact Statement 1993, at page 2. Local council approval and direction powers relating to water, sewerage and drainage are in the Local Government Act and in two other regulations, the Approvals Regulation and the Finance Regulation.

Those powers are unaffected by the regulation or by the proposed disallowance of the regulation. Issues about standards arise in two general ways: when councils approve or carry out water, sewerage or drainage works; and when work fails to comply with standards and council issue orders. The regulation substantially continues the same standards that applied before the repeal of the Local Government Act in the middle of this year. It is worth noting that the standards are largely contained in other documents. For those concerned that the disallowance will leave a vacuum, that is not the case. The standards are largely contained in other documents which were in force before the regulations were made, principally the National Plumbing and Drainage Code, published by the Standards Association of Australia, as in force from time to time, and the Plumbing and Drainage Code of Practice, as published in the *Government Gazette* of 17th July, 1992, at page 5098.

That is the objective of the regulation, and I am arguing equally that if it is disallowed there will not be a vacuum; there is now and there will be an opportunity to refer to other standards. I ask the Minister to agree to the disallowance, as the existing standards that I mentioned will prevail. I ask the Minister to allow us to move with the times and take into account a number of changes. The regulation as gazetted represents a lost opportunity to remedy the errors of the past; a lost opportunity to instigate meaningful change. Nothing has changed in this area of regulation for 20 years, yet we have enormous environmental problems and a dwindling limited water supply.

This regulation perpetuates the institutional barriers to effective water management. There is no integration, no mention of any integration of stormwater flows, and no reference to customer demand, water conservation, or catchment management. None of the current concepts that are dealt with in the community generally - particularly by the Water Board inquiry and the Cabinet subcommittee - are mentioned in this regulation. However, all these issues are very much at the cutting edge of this debate about the regulation of water services. These issues will be dealt with by the Joint Select Committee upon the Sydney Water Board. It is my argument that the benefit of those deliberations should be shared with local councils. The Water Board inquiry is, obviously, into the Sydney Water Board and not into other water service providers, such as local councils, but they should share in those deliberations.

The only concession to modern thinking in these regulations is the amendment in the regulatory impact statement relating to dual flush cisterns. Those cisterns will be compulsory and I concede that that is an excellent regulation, which will bring this State into line with all other Australian States except Tasmania. Other concepts that are equally as good but have not been mentioned are dual reticulation, greywater or water recycling systems, rainwater harvesting, the use of porous paving to reduce flow into the stormwater system, and the concept of wetlands, lagoons, and interception treatment. Those concepts are not new, and they should be dealt with in a regulation that allows for local government to move into the latter part of the second millennium so that these many major problems can be addressed.

The regulation is silent on these matters, and I suggest there be a flexibility and a requirement for local councils to address them. It should not be a matter of enforcing them, but as part of their approval process councils should consider them. This is all about trying to introduce revolutionary change into the way local councils do things, consistent with the Local Government Act; to pioneer the concepts I have mentioned. Such thoughts are not inconsistent with remarks made by the Government. I draw to the attention of the Minister comments by the Premier in his second reading speech on the Sydney Organising Committee for the Olympics Bill on 27th October. The Premier indicated his support for efficient water appliances. On page 50 of the *Hansard* galleries for that day he said:

The Sydney Olympics will be a role model for how ecologically sustainable development can be implemented through the construction of facilities, the design of the athletes' village, and the management of the Games.

It is important to point out that that should be more than rhetoric. The Premier has supported this concept of ecologically sustainable development, and that should apply equally to how local governments provide their services. The "Environmental Guidelines for the Summer Olympic Games", a document referred to by the Minister, makes clear reference to water conservation. I draw the attention of the House to page 16 of this document, where it states:

The challenge is to protect coastal and inland river systems and at the same time meet economic, social and community demands.

Clearly it is very much on the agenda to do that and I argue that local government should do that as well. [*Time expired.*]

**Mr WEST** (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [4.18]: The Local Government (Water Sewerage and Drainage) Regulation is an integral part of the water, sewerage and drainage powers available to local councils. The objective of this regulation, which the honourable member for Manly is now seeking to disallow, is to protect public health, safety and amenity by providing and maintaining important standards and specifications for water, sewerage and

Page 5705

drainage works. The regulation explains the relationship and responsibilities of customers, operators of services, manufacturers of equipment, contractors who install and maintain equipment, and the Government. It also provides common standards and specifications for various plumbing and drainage works where the water supply or sewerage service is provided by a council under the Act.

The regulation was gazetted and commenced on 1st July, as was said by the honourable member for Manly, even though the regulatory impact statement provided for by the Subordinate Legislation Act had not been prepared at that time. This was necessary to have in place appropriate controls following the repeal of the Local Government Act 1919 and ordinances relating to water and sewerage. The Subordinate Legislation Act permits the commencement of regulations prior to the regulatory impact process, provided that process is carried out within four months of commencement. So everything has to be done in the proper way. The regulatory impact statement was published on 17th September and submissions invited by October, that is, one week longer than required under section 5(2) of the Act.

Proposed changes to the regulation were included in the statement and further changes have been proposed as a result of submissions that have been received. Those changes were included in an assessment report that was forwarded to the Regulation Review Committee on 1st November. The regulations are therefore currently before the Regulation Review Committee and this motion clearly is pre-emptive of that process. The new regulation rationalises the three previous ordinances - 45, 45A and 46 - under the old Act. It is more streamlined than the previous ordinances and does not duplicate provisions in the legislation. Importantly, this regulation does not pre-empt any government reforms that might be proposed. It is not a static instrument; amendments can be made as a result of general government reforms to the water industry, in respect of which the honourable member has obvious concerns.

To repeal the regulation now, without having a general framework of reform to put in its place, would be effectively to throw the baby out with the bath water. I wonder whether the honourable member for Manly can explain to the House how councils can be expected to operate with no regulation to ensure public health and safety, if this motion is accepted. He cannot explain that. It is true that the regulation does not change institutional arrangements concerning water management. It would be inappropriate for that to be done by subordinate legislation. Institutional change will follow from the work of the Cabinet subcommittee and appropriate water reform legislation. To provide for that process via a regulation made under the Local Government Act would hardly be appropriate. This motion has nothing to do with that process and will do nothing more than cause confusion for local government.

I admit that some of the issues referred to by the honourable member are being addressed. For example, it is proposed that dual flush systems be compulsory, as they are in all other States except Tasmania. This was proposed in response to submissions received as part of the regulatory impact statement process. Environmental accountabilities are clearly included in the body of the Act. Whoever is advising the honourable member for Manly is unaware that the Environment Protection Authority has already issued to councils guidelines on state of the environment reporting required of them. The requirement to connect to a Water Board sewer is not a new provision. Councils have always been able to require households to connect. It is primarily a health related provision, that is, to order connection to protect public health and amenity. It presents no specific financial advantage to councils, as was suggested.

The honourable member for Manly had not made a submission on the regulatory impact statement document or on the regulation following its gazettal on 1st July - a period of more than four months. At all times the Department of Local Government and Co-operatives has been receptive to proposed changes to the regulation that it has received from the community. That is reflected in its report that is now before the Regulation Review Committee. Clearly, further changes have been proposed as a result of public submissions received, and the Regulation Review Committee was so advised on 1st November. Those changes include, first, the requirement that class 1 and class 2 buildings have dual flush systems; and, second, the referral of proposals by Environmental Management Pty Limited concerning on site waste disposal systems to the Department of Health and the Public Works Department. The departments' submission to the Regulation Review Committee said that the proposal had merit but required interagency consultation before amendment.

The disallowance proposed by the honourable member for Manly will have enormous adverse consequences for the environment, and more particularly for the health and safety of the community and individual occupiers of premises. Yet he has not made any submissions on the regulation. It would have been appropriate for him to have done so in order to put forward the concerns that he has raised in speaking to this motion. His proposal to take the framework out and not replace it with something else is irresponsible and does not have much relevance to the health and safety functions of the regulation. The specific matters raised are being addressed.

I invite the honourable member to make a more detailed proposal available to me and my officers. I assure him and those he represents that we will properly assess their submissions on the regulation and any future amendments to it. In particular, his representations on the broader range of legislation - not subordinate legislation - that the Government might consider and introduce into the Parliament as a result of the review of the Water Board and the Cabinet subcommittee on water will be taken into

Page 5706

account. As the honourable member for Manly said, he is the chairman of the Joint Select Committee upon the Sydney Water Board. Having regard to all of those matters, the Government rejects the honourable member's motion for disallowance and will vote accordingly.

**Mr KNOWLES** (Moorebank) [4.26]: I shall make only a few brief remarks in this debate. At the outset I inform the House, on behalf of the Labor Party, that the Opposition will not support the motion to disallow the Local Government (Water Sewerage and Drainage) Regulation. Whilst I understand the motives of the honourable member for Manly in moving for disallowance - and in many ways I support the views he has espoused - I cannot agree with the method he has adopted. In moving for disallowance the honourable member is acting in his capacity as chairman of the Joint Select Committee upon the Sydney Water Board. As is well known, the committee has yet to report to the Parliament. The Minister for Energy and Minister for Local Government and Co-operatives, with the leave of the House, has extended the time for the committee to report until 17th December.

At this stage it is inappropriate to pre-empt the findings of that committee by disallowing this regulation. I am also a member of that committee and, as is the member for Manly, I am concerned that the regulation should not pre-empt the findings of the committee and, more to the point, that the regulations relating to the administration of water, sewerage and drainage are relevant to today's needs and community's expectations and are not simply a reflection of the status quo or some archaic standard. That having been said, I am not prepared



to support the disallowance of the regulation simply on the basis that it may pre-empt the findings of the joint select committee.

As the Minister said, in substance the regulation is a replica of the previous regulations under the former Local Government Act. In that sense the making of the regulation simply maintains the status quo, and that probably is an appropriate position to take while the Water Board inquiry continues. The regulations are largely technical in nature. Though that does not mean they should not be subject to scrutiny, to disallow them in haste could lead to unforeseen and unintended consequences. The disallowance of the regulation would leave a gap in the existing regulatory framework. I have consulted with a number of lawyers and others in the parliamentary system, including members of the regulation review secretariat, and have confirmed that to be the case. It could mean that public health and safety standards will be placed at risk, and that would be unacceptable.

My final concern about the motion for disallowance is that the regulations are at present before the Regulation Review Committee, where they will be scrutinised. I am a member of that committee also and have been advised this morning by the secretariat that the Minister for Local Government has yet to forward the regulatory impact statement, though the other paperwork has been forwarded to the secretariat or the committee for consideration. I ask the Minister to take up that matter. In that sense the disallowance is premature.

It is worth noting, for the benefit of the honourable member for Manly, that disallowance is only one of the options available both to the Regulation Review Committee and to the Parliament when considering the impact of any regulation. It is only one of a number of options that the Regulation Review Committee regularly pursues. Other options include such diverse procedures as negotiating with the Minister, negotiating with the bureaucrats, at times negotiating with the Premier when the Minister will not listen, and reporting to the Parliament. There is also the rather tedious scrutiny of the assessment of the hundreds of regulations that come before us.

It is fair to say that, historically, the system has worked, and continues to work reasonably well. I draw the attention of the honourable member for Manly to recent examples which would be of interest to him. There have been substantial changes to regulations as a consequence of actions other than disallowance. Very recently the Chairman of the Regulation Review Committee gave notice to disallow the Radiation Control Act, administered by the Minister for the Environment. On Monday a meeting took place and concessions were given, in writing, by the Minister for the Environment, and the disallowance motion was withdrawn.

More importantly, as a result of the work of the Joint Select Committee upon the Sydney Water Board and questions raised by the chairman and me in that committee, the Regulation Review Committee inquired into, and ultimately reported to the Parliament about, issues associated with the establishment of the Hawkesbury-Nepean Catchment Management Trust. That was an important issue for me, as well as for water quality management and water standards - such that the Regulation Review Committee felt that it was necessary to report to Parliament. As a result of that report the Minister responsible for making that regulation has agreed to revisit it and to reassess the trust boundary areas.

I think that is entirely appropriate action for the Minister to have taken. The fact that he was dragged screaming and kicking to the table to do it - originally acting contrary to departmental advice - becomes rather superfluous. The point is that the Regulation Review Committee has options other than disallowance available to it. I urge the honourable member for Manly to have regard to those alternatives. I share the legitimate concerns expressed by the honourable member today, and they are shared by other members on this side of the House. However, the downside to disallowance could lead to these unforeseen consequences, which is certainly something we would not entertain.

The ultimate sanction, leaving the Regulation Review Committee aside for a moment, is the option open to any member in this place: to introduce a

Page 5707

private member's bill. A variety of options are available. My final concern is that, should disallowance

proceed, the honourable member for Manly has no proposal to introduce alternative measures to ensure public health and safety during the hiatus. I recall with regard to previous disallowance motions that I have been associated with - Chaelundi, for example - that those of us supporting that disallowance did so only when we had alternative measures to put to the House. In that case it was the Endangered Fauna (Interim Protection) Act enacted to fill the gap created when disallowance was agreed to.

It is somewhat unfortunate that the coincidence of the disallowance date and the rising of this Parliament has precluded the honourable member for Manly from postponing consideration of the disallowance motion to a date after the Water Board inquiry has concluded, which of course will not be available to him when the House rises at the end of this session. In that sense, the honourable member for Manly has been caught between a rock and a hard place. I guess he is putting on record his concerns, and I understand and support that action. However, moving full disallowance is not appropriate.

As I said at the outset, the Labor Party will not support the disallowance motion. I urge the honourable member for Manly to have regard to what I said about the other options available to both this Parliament and the Regulation Review Committee. As a member of the Regulation Review Committee, I give him my undertaking - for what it is worth - that when the regulation comes before us I will pursue the issues he has raised. If necessary, we will adopt one of the alternative mechanisms to see that the issues he has raised are fully attended to.

**Dr MACDONALD (Manly)** [4.34], in reply: I would like to reply to a couple of points. I reject the allegation of both the Minister for Energy and Minister for Local Government and Co-operatives and the honourable member for Moorebank that there would be a hiatus. I believe that their fears are unfounded, as I have explained already. During the deliberations of the Joint Select Committee upon the Sydney Water Board we have learned, and are learning, an enormous amount about how not to deal with water and wastewater. It is important that those lessons be shared between this House and local government. Sydney was the original population centre, and over the past 100 years we have made many mistakes.

I would like the Parliament to send a message - either through this type of debate or through the report of the Joint Select Committee upon the Sydney Water Board - to local government authorities that they have to do things differently. Frankly, we have got it wrong. I hope I understood the Minister correctly, and that he has given an undertaking that he will have regard to the findings of the Cabinet subcommittee and the recommendations of the joint select committee. I hope he looks at the regulations and, if necessary, reformulates them. I would like that undertaking from him; it would satisfy my concerns.

Under this regulation local councils will continue to have a monopoly over the use of flowing water. I argue, and this is something the joint select committee report has come out very strongly on, that the councils - in this case the Sydney Water Board - should give up their powers which create barriers to customers to the extent that they should be able to opt out. This concept is not covered in the regulations. I would like to see that change. The Department of Health should be the only regulator of how we manage water and wastewater; that management should not be regulated through either the Local Government Act or any other Act. That reflects the fact that our preoccupation with water and disposal of wastewater was always a public health issue. Therefore, it should be regulated by the Department of Health and nobody else.

I refer to financial incentives for those who conserve and recycle. Some councils are already involved in this; for example, Lismore and Wagga Wagga. Those councils have implemented incentives for water efficient devices. The current regulation perpetuates the pipe disposal paradigm, and that concerns me greatly. We are making terrible mistakes in this city. My plea to the Minister for Energy and Minister for Local Government and Co-operatives is that when the opportunity comes - when the Cabinet subcommittee and the Joint Select Committee upon the Sydney Water Board make their findings - he reformulates those regulations to get away from perpetuating the mistakes of the past. I ask the Minister to do that.

I feel passionately that we must share the experiences of the mistakes we are making; and this city clearly has to bear the mistakes of the past. We should share our experiences with other councils. I refer particularly

to new areas of development up and down the coast. We should say to the councils, "Do things differently; do not do things how the Sydney Water Board has done it". We should have regulations that clearly reflect that. I realise that this disallowance motion will not be supported. I ask the Minister that the regulation be referred to the Regulation Review Committee immediately - with the regulation impact statement, the public comments, the report from the Sydney Water Board when it comes out, and the recommendations of the Cabinet subcommittee - and that it be reformulated.

**Motion negated.**

## **PARLIAMENTARY COMMITTEES ENABLING BILL**

**Bill introduced and read a first time.**

### **Second Reading**

**Mr WEST** (Orange - Minister for Energy, and Minister for Local Government and Co-operatives [4.39]: I move:

That this bill be now read a second time.

It is the Government's intention, after the conclusion of the present sittings, that Parliament be prorogued and that a new session of Parliament be opened by

Page 5708

His Excellency the Governor on 1st March, 1994. The object of the bill is to ensure that the parliamentary committees continue to function following prorogation. Eleven committees are included in the bill, and that will alleviate the need for their reappointment after prorogation of the current session of Parliament. The committees referred to are: the House Committee and Library Committee of each House, Printing Committee of the Legislative Assembly, Standing Orders and Procedure Committee of the Legislative Assembly, Standing Orders Committee of the Legislative Council, Joint Select Committee upon the Sydney Water Board, Select Committee upon the Sydney Market Authority, Select Committee upon the Operations of HomeFund and FANMAC, and the Legislation Committee upon the Endangered and Other Threatened Species Bill.

A clause has also been included in the bill that will enable any further legislation committees, which are formed by the Legislative Assembly prior to the conclusion of the current session, to function during prorogation. Provision has also been made to allow for any legislation committee of the Legislative Assembly that extends its date of reporting beyond the end of the session to continue to function during prorogation. I commend the bill.

**Debate adjourned by Mr Nagle.**

## **ANTI-DISCRIMINATION (AGE DISCRIMINATION) AMENDMENT BILL**

**Bill received and read a first time.**

### **Second Reading**

**Mr LONGLEY** (Pittwater - Minister for Community Services, Minister for Aboriginal Affairs, and Minister for the Ageing) [4.42]: I move:

That this bill be now read a second time.

The Anti-Discrimination (Age Discrimination) Amendment Bill is the culmination of one of the most

comprehensive and wide-ranging legislative consultation processes ever undertaken in this State. As honourable members would be aware, this Government released its first discussion paper entitled "Age Discrimination - Options for New South Wales" in May 1992. That discussion paper, prepared by the Attorney General's Department, formed part of the Government's program to reduce age discrimination in our community. New South Wales was the first State in Australia to legislate on compulsory retirement, amending the Anti-Discrimination Act in 1990 to prohibit compulsory retirement from 1991 for the public sector, 1992 for local government, and 1993 for the rest of employees in New South Wales.

Upper age limits have also been removed from statutory appointments and government advisory committees. Employment programs for mature workers, youth and women have been targeted to encourage them to take advantage of work, training and retraining opportunities. The discussion paper examined the case for age discrimination legislation, legislative developments in other jurisdictions and options for New South Wales, and sought public comment upon the form and content of such legislation. It was distributed widely for comment and 59 submissions were received from a variety of respondents, including employer and industry groups, organisations representing or providing services to the aged, representatives of the insurance and superannuation industries, government agencies, and individuals.

Following the receipt and detailed consideration of submissions, in April the Government released a white paper containing certain proposals for reform of the law in relation to age discrimination, seeking further public comment. The bill is the result of the consultation process that I have outlined, and has been fashioned to take into account views expressed by relevant industry, community and government organisations, as well as those groups the legislation has been drafted to protect - young people and older people, in particular. Before turning to the detail of the legislation, it would be beneficial at this stage if I were to outline some of the difficulties facing mature persons and youth, which have led to the development of the bill.

Age discrimination is common in the workplace. Peer group pressure, business practices and workplace expectations have a profound effect on the older worker. Many workers are considered old in their forties or, more commonly, in their fifties. These factors have contributed to a large number of workers leaving full-time employment in their mid-fifties. It is likely that the implications of such factors are significant in the context of Australia's ageing population. It is often argued that economic forces alone will ensure a change in trends in this area and, even without age discrimination legislation, employers will actively recruit older workers to return to the work force. However, it seems clear that older workers are less likely to be trained in new technologies and are more likely to be retrenched.

While employment is probably the most significant area of discrimination against older people, studies indicate that they also face problems of discrimination in other areas, notably in obtaining accommodation, education, insurance, access to credit and provision of health services. Old age, itself an artificial category, has been called an age of no consent. Decisions affecting older people are taken by others on their behalf in the belief, often mistaken, that older people are incapable of understanding their best interests. Faced with this attitude, older people often experience a real sense of powerlessness. They are frustrated at no longer being seen as useful members of society with a contribution to make to its welfare.

Similarly, young people often suffer from stereotypical assumptions based on age and can suffer discrimination in relation to access to credit and accommodation as a result. In addition, age-based criteria are regularly applied in the field of unemployment to the detriment of young people. The national inquiry of the Human Rights and Equal

Page 5709

Opportunity Commission into homeless children found that young people often experience discrimination in the provision of rental accommodation. Landlords and real estate agents often view them as financial risks owing to perceptions that they have relatively low incomes and insecure employment opportunities.

In New South Wales the report of the Anti-Discrimination Board entitled "Discrimination and Age" referred to the special legal status of children and restrictions on their legal rights flowing from it. In the field of employment, young people may face unfair discrimination where age is used as a proxy for competency and

skills in the setting of junior wages. The younger employee may also be disadvantaged by certain business practices, such as the redundancy policy of last on first off. Young persons also face difficulty in obtaining credit and access to loans. The Government's extensive consultations have indicated that there is widespread support in the community for the legislative protection of the young and older people from discrimination based on age.

The Anti-Discrimination (Age Discrimination) Amendment Bill seeks to remedy the problem by creating a ground of complaint to the Anti-Discrimination Board in respect of age discrimination, and seeks to utilise the extensive educative and conciliation roles of the board in bringing about attitudinal change by encouraging the community to recognise the contributions that older people and the young make to our society. The proposed reforms contained in the bill substantially reflect the proposals that appeared in the white paper, although some additional exemptions have been added as a result of suggestions contained in further submissions that have been received.

I turn to the detail of the bill. Proposed section 49ZYA specifies the circumstances which may constitute unlawful discrimination on the ground of age. Divisions 2 and 3 of the bill deal with the areas of public life in which age discrimination is to be unlawful. To ensure maximum coverage of the legislation, it is proposed to include age as a ground of discrimination under the Act in the areas of employment, education, provision of goods and services, accommodation, registered clubs, and access to places and vehicles. This approach accords with the coverage available in relation to the grounds of discrimination on the basis of race and sex that is currently provided by the Act.

Honourable members should note that the proposed grounds of complaint will provide protection for persons of all ages. It would be illogical to introduce age discrimination legislation that discriminates in the ages to which it purports to provide protection. The proposed section also provides protection to persons who experience discrimination on the basis of their relationship or association with a person on the ground of that other person's age. The provisions would, for example, protect parents from discrimination in the provision of accommodation on the basis that they have children below a certain age.

I do not propose to deal in detail with the areas of public life in which the ground of age discrimination will apply because, as I have already mentioned, they accord with areas covered by other existing grounds under the Act. However, I wish to briefly draw the attention of honourable members to a number of provisions that limit the coverage of the bill in these areas. Clause 49ZYL relates to junior wage rates. The introduction of competency-based training wages for young people to replace the present age-based systems involving junior wage rates were discussed at length in the white paper. Significant concerns have been expressed by employer groups that the removal of age-based wage systems in the wholesale-retail sector at this time could have a significant impact on teenage employment.

The wholesale-retail sector accounts for 51.4 per cent of youth employment. This sector relies heavily on the use of junior rates of pay as a way of remunerating young people for their skills and there is very little development of competency standards in the industry at this stage. Employers also expressed concerns that the switch to training wages would involve considerable time and expense in the restructure of wage rates. Given the circumstances of the wholesale-retail sector, the Government considers that it would not be appropriate to immediately make systems involving junior wage rates unlawful under age discrimination legislation. Accordingly, clause 49ZYL will not come into operation for at least two years, and it is the Government's intention to only proclaim this provision once the development of competency-based, rather than age-based, wage and training systems in the retail-wholesale sector is further advanced.

The Government does not wish to impose age discrimination provisions on existing wage systems until industry is in a position to comply with these requirements. Clause 49ZYJ of the bill provides a specific exception to age discrimination in employment by providing that it is not unlawful to employ persons of a specified age or age group for a position where a particular age or age group is required for authenticity in a dramatic performance or other entertainment, or where the purpose of a particular job is to provide personal services relating to the welfare and education of persons of a particular age.

Clause 49ZYJ is based upon equivalent exceptions already included in the Anti-Discrimination Act under the grounds of race and sex. Clause 49ZYJ also enables the Governor to make regulations providing that being of a particular age or age group may constitute a genuine occupational qualification for particular jobs, or classes of jobs. Clause 49ZYK provides an exception in relation to voluntary retirement or severance schemes based on length of service. Although the Government is of the view that voluntary retirement and other similar schemes based solely upon an employee's age are discriminatory on the ground of age, it is acknowledged that some voluntary redundancy schemes validly enable employees to take advantage of redundancy packages

Page 5710

which recognise length of service. Accordingly, as voluntary schemes based on length of service could otherwise be regarded as being indirectly discriminatory on the ground of age, the bill provides that entry criteria based on length of service, rather than age, are sufficiently objective to allow such schemes to operate without infringing the provisions of age discrimination legislation. This approach accords with the principle that long service leave arrangements should not be subject to the provisions of the Act.

Clause 49ZYL of the bill contains an exception which will enable schools and other educational institutions to refuse admission to persons who are below the compulsory school age for entry. It would be obviously unfair if a child below the minimum school age, for example, would have a ground of complaint to the Anti-Discrimination Board if he or she was refused admission. Clause 49ZYL also contains exceptions in relation to private and prescribed educational authorities, which already exist in other grounds of complaint under the Act, and an exception which enables schools, for example, to provide benefits such as concessions to students on the basis of age.

Clause 49ZYN of the bill, which deals with age discrimination in the provision of goods and services, includes specific exemptions which will enable benefits, such as age-based travel and other concessions, to be provided to persons by reason of their age. This exception acknowledges that concessions such as the Seniors Card seek to redress disadvantages that certain age groups experience. Similarly, holiday tours aimed at particular age groups, such as Contiki Tours, which are aimed at the 18 to 35 years of age group, are exempted. A similar approach is taken in the Western Australian Equal Opportunity Act 1984, which provides that benefits, concessions and holiday tours provided or offered to persons of a particular age are not unlawful.

Clause 49ZYN also makes it clear that the Government's proposals to make age discrimination unlawful do not interfere with the capacity of testators to make the disposal of goods or services dependent on the beneficiary attaining a certain age. The exception reflects the philosophy that anti-discrimination legislation should not interfere with the right of testators to make gifts contingent upon age. Clauses 49ZYO and 49ZYP of the bill, which deal with age discrimination in the provision of accommodation and access to registered clubs respectively, include standard exemptions which appear in equivalent provisions under the other grounds of unlawful discrimination already covered in the Act; that is, race, sex, marital status, physical and intellectual impairment and homosexuality. I should note for the information of honourable members that the provisions of clause 49ZYP will not affect current requirements concerning the minimum age for entry into registered clubs.

The bill also contains a number of general exceptions to the age discrimination provisions, which are contained in division 4. Clause 49ZYQ of the bill provides a specific exemption to ensure that legal age requirements and protections, such as legal concepts of the age of majority, are not affected by the legislation. As honourable members would be aware, various laws and regulations exist in New South Wales which are designed to protect specific age groups or to set competency standards, for example, driver's licence requirements, voting age, drinking or smoking age, educational requirements concerning age, provisions for the separate treatment of young people in the criminal justice and corrections systems, and the age of sexual consent. The Government has no intention that such requirements should be affected by the bill. So far as statutory provisions are concerned, section 54 of the Act currently provides a specific exemption for acts done in accordance with statutory requirements or requirements of regulations, by-laws, et cetera, made under statutes.

Clause 49ZYR of the bill contains a broad general exemption that enables programs and services which are aimed at meeting the special needs of particular age groups to operate without legislative interference. The

provision constitutes a recognition on the part of the Government that certain age groups have a right to be provided with special facilities, services or opportunities to meet their particular needs. For example, the clause will enable institutions such as nursing homes or retirement villages to provide specialist aged care and accommodation without infringing the age discrimination provisions. Clauses 49ZYS, 49ZYT and 49Zyv all provide similar exemptions in the areas of superannuation, insurance and assessment of credit applications respectively. The Government is of the view that organisations which provide superannuation, insurance or credit services should not be able to discriminate against applicants solely on the basis of age.

However, the Government also recognises that a person's age may be a relevant objective factor in determining the level of risk involved in providing superannuation, insurance or credit services. For example, a person applying for life insurance who is 25 and in good health would obviously involve a lesser risk for an insurer than a person of 70 with a history of heart disease. Similarly, the age of a loan applicant is one of a number of factors often taken into account by a credit provider in assessing the person's credit worthiness, along with other considerations such as employment and credit history. The Government is concerned that a person's age alone should not be used as a criterion in the provision of superannuation, insurance or credit services. Accordingly, clauses 49ZYS, 49ZYT and 49ZYU provide that discrimination on the ground of age in superannuation, insurance and credit provision respectively is unlawful, unless there is an actuarial, statistical or other reasonable basis for the discrimination.

In practical terms, these provisions mean that a person's age can only be used as a relevant factor where there is an objective basis to suggest that the person's age puts him or her in a higher or lower risk

Page 5711

category than other persons. The approach adopted by the bill in this regard has been reached in consultation with peak bodies in the areas of superannuation, insurance and credit provision, and is based upon equivalent provisions elsewhere in the Anti-Discrimination Act and relevant Commonwealth discrimination legislation. Clause 49ZYV of the bill has been included to ensure that certain discretionary procedures of the Roads and Traffic Authority aimed at achieving road safety are not affected by the legislation. For example, drivers' licence requirements for persons above 80 years of age are often dependent upon such persons undergoing regular testing to assess their continued ability to drive safely.

Clause 49ZYW of the bill exempts the exclusion of persons from competitive sport on the basis of age. The existing provisions of the Anti-Discrimination Act exempt sport from the various grounds of discrimination, and it is considered that an exemption from the age discrimination provisions is fully justified to ensure fair competition, and to recognise differences in physical development at different ages. The exemption will not apply to non-competitive participation, administration and coaching of any sport. Finally, clause 49ZYY of the bill makes it clear that the proposed age discrimination provisions do not affect the operation of part 4E of the Act, which currently makes compulsory retirement unlawful.

In conclusion, I note that the Anti-Discrimination (Age Discrimination) Amendment Bill constitutes the most comprehensive attempt by any government in this country to address the problem of age discrimination. The legislation has been prepared following extensive and ongoing consultation with all interested groups, and its provisions constitute a sensible approach to the needs of all sectors of the community. The Government acknowledges that legislation alone is not sufficient to eliminate discriminatory behaviour and believes that the educative processes of the Anti-Discrimination Board are a key factor in any reform such as the present proposal, which seeks to affect prevalent community attitudes. However, while an extensive educative campaign is planned by the Government in relation to age discrimination, it is considered that legislation is necessary to provide a means of redress where individual rights are infringed by age discrimination. The extension of the existing complaint procedures under the Anti-Discrimination Act 1977 to discrimination on the basis of age provides an opportunity for individual cases to be resolved by the conciliation processes of the Anti-Discrimination Board before any involvement in the adversarial system becomes necessary. Furthermore, the introduction of specific age discrimination legislation provides the community with a message that carries far more weight than the employment of educational processes alone.

This legislation is truly landmark legislation. It is imperative for all honourable members to fully support

it. I have discussed at some length the question of age discrimination in employment. It is important for us to deal fully with employment-based age discrimination issues. The Minister for Industrial Relations and Employment and Minister for the Status of Women and I are working on proposals which will look closely at discrimination of mature age people in the workplace. We will adopt a proactive role in trying to overcome some of the difficulties faced by mature age people in the employment market. I wish to talk briefly about community attitudes. If age discrimination is to be reduced or ended for people of today, as well as people of tomorrow, it is not enough for laws to be changed. Attitudes must change as well. Nevertheless, this is an important first step towards ensuring a more level playing field, especially for mature age people in the labour market.

With the Government's emphasis on performance assessment, the legislation serves as an indication of the Government's commitment to the principle of equal opportunities in employment for all people. I am pleased to be able to say that attempts have already been made to change community attitudes. The Government's "Age Adds Value" public awareness campaign, which was first launched in 1991, focused on the positive contribution of older people not only in the work force but in the community generally. This most significant area of age discrimination and the advancement of older people was referred to in the Premier's recent announcement when he talked about the Government's positive ageing campaign and a separate ministry for the ageing. The Premier's recent statement comprehensively outlined this Government's commitment to older people in our society.

It is imperative for us to support older people and to overcome negative, stereotype views to ensure older people are able to contribute fully in our community. If we overcome these negative stereotype views society will gain from the wisdom and experience of older people in our community. A positive attitude in our community is vital. A number of critical areas are in this legislation and a number of important issues are being dealt with by the Office on Ageing. I pay special tribute to Gillion McFee, Director of the Office on Ageing, who is in the public gallery today, for her hard work over a sustained period. Gillion can truly be described as a champion for older people. She has advanced the issues and causes of older people in our community. I, as Minister, the Office on Ageing and the Government are committed to ensuring that issues regarding older people are advanced and that society rediscovers the true value of older people in our community. I commend the bill.

**Debate adjourned on motion by Mr Amery.**

## **HEALTH CARE COMPLAINTS BILL**

### **Third Reading**

**Mr PHILLIPS** (Miranda - Minister for Health) [5.4]: I move:

That this bill be now read a third time.

Page 5712

**Mr WEST** (Orange - Minister for Energy, and Minister for Local Government and Co-operatives) [5.4]: I move:

That the question be amended by leaving out all words after the word "That" with a view to inserting instead the words "the bill be recommitted for the reconsideration of clauses 4, 70 and a new clause 91".

**Mr PHILLIPS** (Miranda - Minister for Health) [5.5]: The reasons for the Government wishing to recommit clauses 4 and 70 are quite clear. They are consequent upon changes in numbering that occurred last night and other administrative changes associated with the bill. The original clause 89 - which is now new clause 91 - was deleted by amendment in this House. Unfortunately, a few honourable members did not



understand the requirement to be in the House. The Government believes the true will of the House will be served by recommitting that clause. I seek the support of the House.

**Dr REFSHAUGE** (Marrickville - Deputy Leader of the Opposition) [5.6]: The Opposition has no objection to the reconsideration of clauses 4 and 70. That procedure is normal to tidy up the bill. Because amendments have been moved the clauses are not consistent. That procedure is not unreasonable. But the Government, by proposing a new clause 91, is having two bites at the cherry.

**Mr West:** Yes, that is right.

**Dr REFSHAUGE:** Just because Government members are not responsible enough to turn up in the Chamber -

**Mr West:** You had one short too; admit it.

**Dr REFSHAUGE:** One of the Minister's Cabinet colleagues did not turn up. What sort of Government is this if it cannot even get its members here to vote? Government Ministers have shown no leadership; one of their own Cabinet colleagues dudded them. Have Government members attempted to ensure that he is around? I saw him scampering off a little while ago in an attempt to find some pep-up pills. The poor guy is only young. For goodness sake, the Government cannot even get its own members and its Cabinet to turn up. The old pig farmer, the honourable member for Murrumbidgee, is in the Chamber. He has realised the wisdom of joining the strength. If the Government is not able to get its own people to turn up we will not permit it to have two bites at the cherry.

Even Fred Nile turns up in his pyjamas to vote. Fred Nile, in his nice blue and white pyjamas and dressing gown, realises he has a responsibility to his constituents. Misguided as he is, he knows that he has a responsibility to turn up. That is what he is paid to do. But a Cabinet colleague of Ministers opposite, who is paid a massive salary, rats on them. Members opposite know who I mean; he will hobble into the Chamber. I do not know how long he will last on the frontbench after his abysmal performance today. The Minister to whom I am referring is the one who has no kneecaps; he is the one who has to walk in plaster. The Opposition will not allow the Government to get away with this. Members opposite just want to go home, have a long weekend, visit relatives back home, or return to their wives, husbands and families, so if they do not happen to have the numbers on a particular issue they say, "We will bring the matter back when everyone is present". Government members are paid to be here. If the Minister agrees to donating his salary to a charity that I name for all the time his colleague was not present in this Chamber, I might reconsider my opposition to the motion.

**Mr West:** It is not a bad offer.

**Dr REFSHAUGE:** I thought that would appeal to the National Party. I thought it would appeal also to the Minister. The Minister's Cabinet colleague should be brought into this Chamber to explain why his absence requires us to take up more of the time of the House to enable the Government to have a second bite at the cherry. Another member from the Government side of the House missed it also. I know he has problems and I know what he thinks about the leader of his party. I totally agree with him - his leader lacks leadership and direction; he is a failed solicitor. There is no doubt that the honourable member is absolutely accurate in the description of his leader. That may be the reason he did not turn up. Before we actually vote on a new clause, why does the Minister not bring those people in here to explain themselves and tell the House what restitution they intend to offer - whether it be their salary for a week, a reasonable explanation for being caught laughing at the video of John Fahey last night, or a statement that they disagree with the clause. The Minister should get them in here.

I ask the Leader of the House not to talk to us but to get those members who ratted on the Minister. The lack of Cabinet solidarity was obvious. The Opposition has known for many months that it was there, but it was so obvious last night. I feel sorry for the Minister for Health. He tries so hard. I was surprised that when one of his closest colleagues dudded him he did not have a meltdown. It must really hurt the Minister. He

should get those members in here to explain themselves and tell us why we should agree to the Government having a second bite of the cherry. If he does that the Opposition will reconsider its position.

**Dr MACDONALD** (Manly) [5.11]: This matter was last debated at 1 o'clock this morning. The Minister for Health was tired; the honourable member for Bligh was tired. I believe the Minister got very threatening and the honourable member for Bligh went at the knees because of it. I do not want to address those matters that have been addressed by the Deputy Leader of the Opposition because that is history. I ask the honourable member for Bligh to either vote against the amendment or abstain from voting if she is not sure of the position, in which case this amendment would be negatived. I do not think the amendment should be allowed. The matter was well canvassed last night. Clearly, there are real problems with the role of the commissioner, in terms of

Page 5713

recommending systemic change. Without traversing the matters debated last night, my message to the honourable member for Bligh is that she should either vote against the amendment or she should abstain.

**Question - That the amendment be agreed to - put.**

**The House divided.**

**Ayes, 44**

Mr Armstrong	Mr Morris
Mr Baird	Mr W. T. J. Murray
Mr Beck	Mr O'Doherty
Mr Blackmore	Mr D. L. Page
Mr Causley	Mr Petch
Mr Chappell	Mr Phillips
Mrs Chikarovski	Mr Photios
Mr Cochran	Mr Richardson
Mrs Cohen	Mr Schipp
Mr Collins	Mr Schultz
Mr Cruickshank	Mr Small
Mr Downy	Mr Smiles
Mr Fraser	Mr Smith
Mr Glachan	Mr Souris
Mr Griffiths	Mr Turner
Mr Hartcher	Mr West
Mr Humpherson	Mr Windsor
Dr Kernohan	Mr Yabsley
Mr Kinross	Mr Zammit
Mr Longley	
Ms Machin	<i>Tellers,</i>
Mr Merton	Mr Jeffery
Ms Moore	Mr Kerr

**Noes, 44**

Ms Allan	Mr McManus
Mr Amery	Mr Markham
Mr Anderson	Mr Martin
Mr A. S. Aquilina	Mr Mills
Mr J. J. Aquilina	Mr Moss
Mr Bowman	Mr J. H. Murray
Mr Clough	Mr Nagle

Mr Crittenden	Mr Neilly
Mr Doyle	Mr Newman
Mr Face	Ms Nori
Mr Gaudry	Mr E. T. Page
Mr Gibson	Mr Price
Mrs Grusovin	Dr Refshauge
Mr Hatton	Mr Rogan
Mr Hunter	Mr Scully
Mr Iemma	Mr Sullivan
Mr Irwin	Mr Thompson
Mr Knight	Mr Whelan
Mr Knowles	Mr Yeadon
Mr Langton	
Mrs Lo Po'	<i>Tellers,</i>
Mr McBride	Mr Beckroge
Dr Macdonald	Mr Davoren

### Pairs

Mr Fahey	Mr Carr
Mr Hazzard	Mr Harrison
Mr Peacocke	Mr Rumble
Mr Rozzoli	Mr Shedden
Mr Tink	Mr Ziolkowski

**Mr Whelan:** On a point of order. I understand that the numbers may be equal. Mr Speaker Rozzoli's rule is that, when he is in the Chair on such an occasion, he exercises a casting vote in favour of the Government. He relies on the precedent. In this instance Mr Speaker Rozzoli is not here. Is it your intention to adopt the same procedure?

**Mr ACTING-SPEAKER (Mr Rixon):** Order! I thank the honourable member for Ashfield for his assistance. The answer is yes. There being 44 ayes and 44 noes, I give my casting vote with the ayes and declare the question to be resolved in the affirmative.

**Amendment agreed to.**

**Motion as amended agreed to.**

**Mr ACTING-SPEAKER:** Order! It being after 5.15 p.m., pursuant to sessional orders business is interrupted.

### PRIVATE MEMBERS' STATEMENTS

#### CHILDREN'S HOSPITAL MEMORIAL PARK

**Mr TINK** (Eastwood) [5.23]: I wish to raise a matter relating to the Royal Alexandra Hospital for Children at Camperdown. I have received a letter from Dr Michael Stevens, senior staff specialist and head of the oncology unit at the hospital, concerning a proposal for a memorial park to commemorate the children's hospital on the site of that hospital. Dr Stevens' letter states:

The Royal Alexandra Hospital for Children is scheduled to move in late 1995 from its existing site at Camperdown to the new Children's Hospital now under construction at Westmead.

You are well aware of the many dedicated staff who have provided an exceptional level of care to children at the existing site as well as the many children and families who have had a connection with the hospital during that time.

When the government eventually sells the site after our move, it is our hope that one of the conditions for the developer of the site be that a small public area be reserved as a memorial park, say, near the corner of Booth Street and Pyrmont Bridge Road, near Wade House. We envisage a small park with a few trees, and a commemorative brass plaque set into the site saying something to the effect that this was the site of the Royal Alexandra Hospital for Children, Camperdown, from 1906 to 1995 . . .

As all honourable members are aware, the hospital is due to move to Westmead in 1995. What a great move that will be for the provision of new services for children, who now predominantly live in western Sydney. It is interesting to note historically that the children's hospital was established in The Glebe in 1880 and moved to Camperdown in 1906. In 1906, when that move was being contemplated, the board of the day agreed to the move because it thought it was important for the hospital to be located in an area where the majority of young people lived, which, in 1906, was the area of Annandale, Leichhardt and Newtown.

Page 5714

The same philosophy is being followed today with the proposed move to Westmead. The hospital will again move to an area where the majority of today's children live and where children for the next 50 to 100 years will be. It is a credit to all hospital staff that they have embraced the move in the way their predecessors did at the turn of this century. It is important to recognise some of the work that has been carried out at the children's hospital. For example, on its current site, Dr Margaret Harper was the first person to describe cystic fibrosis; Sir Norman Gregg was the first to recognise the serious consequences of rubella in pregnant women; and Sir Lorimer Dodds, the first professor of paediatrics in Australia, was based at the children's hospital. Some extraordinary people have carried on practice in advanced medicine on that site.

The hospital has been the scene of human drama for literally thousands of children and their parents. There have been some great stories - high drama, tragedy, sadness, triumphs, pluses and minuses associated with the hospital. I am speaking on this matter because for many years my father, Dr Arnold Tink, practised as a pediatric oncologist at the children's hospital and I have come to know something of the work that has been undertaken there, particularly in oncology, which is an extremely demanding field. The hospital has been responsible for some firsts, as it were, for Australia, such as the setting up of the first Ronald McDonald House - a concept that has now been replicated around the country - which provides care and accommodation near the hospital campus for the parents of children who are terminally ill. That is a very important facility and development. Such important work by so many people should be appropriately remembered by something simple. I am pleased, having discussed the matter with the Minister, that he is interested in the idea and is present today to say something about it. I commend Dr Stevens' proposal to the House. It also has the support of Dr John Yu, the chief executive of the hospital.

**Mr PHILLIPS** (Miranda - Minister for Health) [5.28]: I thank the honourable member for Eastwood for drawing this matter to the attention of the House. As he indicated, the children's hospital at Camperdown has a wonderful history with regard to the provision of quality service to the children of this State, other States and other countries. It is world renowned, and it is fitting that it should relocate to a new \$300 million facility in the major population centre, the greater west of Sydney. I have had the pleasure of visiting that facility to check on the progress of construction. The project is ahead of time, within budget and will be completed in 1995. It will be a wonderful facility.

Some interesting statistics are available that highlight the way health care is changing and the way in which the hospital focuses on customers. The ward area will be only 20 per cent of the total hospital area. The high-tech and necessary support facilities for a hospital today result in bed areas occupying only 20 per cent of the hospital. It is by far the smallest area in the hospital. Most honourable members would identify with

older hospitals, the ward areas of which are the biggest areas of the hospitals. That situation is dramatically changing. The hospital, which is customer focused, has a friendly, family, village-like atmosphere. I thank the honourable member for Eastwood for drawing the attention of the House to the proposal for a memorial park at Camperdown. I will give the matter serious consideration. [*Time expired.*]

#### **GROW YEARS BJORN C40 COT**

**Mr DAVOREN** (Lakemba) [5.30]: I raise a matter that was referred to me by a friend of one of my daughters who lives in Queensland. Some time ago a children's cot known as the Grow Years Bjorn C40 cot was approved by *Choice* magazine. However, it seems that after several years' use, as so often happens, the plastic that surrounds the top of the cot becomes brittle. Honourable members can imagine the deleterious consequences of a child chewing that brittle plastic. My daughter's friend referred the matter to the Queensland Department of Consumer Affairs. Dave Strachan, a consumer affairs officer, conducted tests on the cot and declared that, potentially, it could cause death. *Choice*, after being given samples of the offending plastic teething rails, stated that it would publish a warning as soon as possible, together with photographs of the slivers of plastic. The magazine thanked my informant for drawing the matter to its attention.

The matter was also referred to the New South Wales Department of Consumer Affairs, but to date no action has been taken. The manufacturer of the cot has altered the composition of the plastic, which should not now become brittle with use and age. However, the manufacturer has refused to recall the cots with the faulty material, which I guess would involve a degree of cost. The New South Wales Department of Consumer Affairs should investigate the matter and direct the manufacturer to recall the cots and replace the old plastic. Because the cot received the imprimatur of *Choice* many people mistakenly believed that the product had been tested thoroughly. This is a problem. *Choice* could not foresee that, after a couple of years, the plastic would become brittle and, as the Queensland consumer affairs officer concluded, potentially fatal. I request the Minister for Consumer Affairs to investigate the matter and, if the findings of the Queensland department are proved correct, institute some means of forcing the manufacturer to recall the article. No one would want young children to die as a result of defective material. I do not blame the manufacturer, but it is up to our consumer affairs people to take the necessary steps to rectify the matter.

Page 5715

#### **PACIFIC HIGHWAY FEDERAL FUNDING**

**Mr FRASER** (Coffs Harbour) [5.35]: I bring to the attention of the House the lies being told by the Federal Government about the deplorable state of the North Coast Pacific Highway. On 8th November the Parliamentary Secretary to the Federal Minister for Transport and Communications, the Hon. Neil O'Keefe, visited the North Coast and said that, in recognition of the importance of the Pacific Highway to the North Coast, the Labor Party was going to recommend that it be given national highway status. This was met with much joy from the North Coast members of the National Party, my colleagues representing the electorates of Oxley, Port Macquarie, Clarence, Ballina and Murwillumbah. However, less than 10 days later the Federal Minister stated that the Government would not recommend giving the road national highway status. The commitment, during Safety Awareness Week, given by the parliamentary secretary to the Long Distance Road Transport Association that the highway would be upgraded was yet another Labor lie.

North Coast residents hear the same nonsense from members opposite when they visit the North Coast. For example, one week Hit and Run Refshauge said, "In our next term of office" - which will probably be in the year 2,020 - "we will not build a new hospital for the people of Coffs Harbour. We will leave the old one there". Yet a week later the Leader of the Opposition - he only gets page 3, he does not get page 1 like his hit-and-run mate - said, "We are going to build a new hospital". They cannot get their stories right. The people on the North Coast are sick and tired of the lies being told by Federal and State Labor politicians. The \$160 million black-spot program for the Pacific Highway was withdrawn without a whimper from Opposition members or from the two local Federal Labor members, the member for Page and the member for Richmond.

They do not give a damn about whether the Federal Government contributes funds for upgrading this notoriously bad highway. Since the State Government came to office about \$300 million has been allocated to the highway. Last year the funding estimate for the highway was \$136 million, but only \$135.6 million was spent because of delays in Commonwealth approvals and lower tender prices.

**Mr J. H. Murray:** So it was Commonwealth money.

**Mr FRASER:** They helped with a few bob. In 1990 this Government funded the lion's share. Of the \$300 million, \$180 million came from the State. A miserly \$120 million came from the Federal Government. The Federal Government has had 10 years to acknowledge the importance of the highway but it has done absolutely nothing. Honourable members have seen and read of the major road accidents that take place on that stretch of the highway. Had sufficient Federal funding been granted for roadworks in that region, many of those accidents would have been prevented and the urgency for hospital extensions or construction of a new hospital at Coffs Harbour would have been reduced. The Labor Party is conducting the greatest lie campaign I have ever known of any political party. Opposition members are quick to say that the Government does not spend. The reality is that we underspend because of the economic circumstances that have been brought about by the Federal Labor Government. The Government gets cheaper tender prices.

This is nothing but an indication of lies from the Federal Government, and the people of the North Coast are fed up. They want a Federal Labor government they can rely on. They want to know that if the Federal parliamentary secretary and the Federal Minister say the road is to be upgraded, there is money to match the promises. They have had enough. The Federal Government is playing politics with the lives of those who live on the North Coast, just as its colleagues do in this State, and have done time and again. The people are sick of it. [*Time expired.*]

**Mr PHILLIPS** (Miranda - Minister for Health) [5.40]: I thank the honourable member for Coffs Harbour for his strong representations on behalf of his constituents. There is no question that he has developed a reputation as a fighter for improved facilities, whether for health, roads or any other areas. He will go in to bat in order to get a fairer deal for his constituents. That area of the State has experienced major growth. It is difficult for governments to provide facilities to match such growth, especially for this Government, which had to start from so far behind the eight ball, following 12 years of neglect by the previous Labor Government.

I assure the honourable member that so far as my portfolio of health is concerned, this Government is committed to ensuring that the North Coast gets a fair share of funding and its new hospital as soon as possible. The Government is committed to solving those problems, as is demonstrated by the fact that it solves problems rather than merely whinge about the recession. Everyone knows the terror of the highway on the North Coast and the unfortunate road toll that has been experienced for some years. It will take many years before the highway is brought to a standard appropriate for the size of the population and for the traffic load it carries. This Government is doing its bit and will continue to do so. I am sure that with the constant and firm representations from the honourable member for Coffs Harbour, the Government of the day will be kept on its toes.

## **ADVANCED AUSTRALIAN AIR TRAFFIC SYSTEM**

**Mr THOMPSON** (Rockdale) [5.42]: I wish to raise a matter relating to Sydney (Kingsford-Smith) Airport, which is on the northern border of the electorate of Rockdale. I want to refer in particular to measures that are intended to be introduced by the Civil Aviation Authority which could well compromise the safety of aircraft taking off and landing at Sydney airport. The CAA proposes to radically change the way aircraft are guided and

Page 5716

supervised by air traffic controllers at Sydney airport. I find it incomprehensible that the CAA intends that all air traffic control functions outside a 45 nautical mile radius of Sydney will be controlled by facilities in Melbourne and Brisbane. This system is known as the advanced Australian air traffic system. It is based on

new technology and with its introduction the CAA will change the way air traffic control functions are grouped and located.

My information is that such a radical consolidation of functions away from Australia's busiest airport and most congested airspace is wrong and will lead to a degradation of service and safety in Sydney. The air traffic controllers are the professional people whose responsibility it will be to work with this new system. Many of them are deeply concerned about it as individuals and also as members of the Civil Air Operations Officers Association of Australia. That association, in response to my request for more information on the proposals, advised me by letter on 16th November in the following terms:

The Australian Air Traffic Services (ATS) System has evolved in response to Australian demands and conditions, just as overseas ATS systems have evolved to suit overseas demands and conditions. The American system for example, handles many times more aircraft than our system and operates at or near capacity for long periods. It has therefore evolved into a relatively inflexible, regimented system to cope. The Australian system though is generally less congested, and subjected to shorter periods of capacity operations. As a result it retains a far greater degree of flexibility and is more able to handle ad hoc and unusual traffic.

While we certainly have a lot to learn from overseas experience and precedent, this does not mean we throw out the entire Australian ATS system and import a complete new overseas system. We should instead be building on our present system and importing only those overseas practices that can be proven to be superior to our own.

A potent reminder of what happens when we import unsuitable overseas procedures to Australian conditions was of course seen recently with the failed attempt at introducing overseas airspace rules. The same CAA management that refused to listen to criticism of those airspace changes is now refusing to listen to our criticism of their proposed new ATS model.

So far as the overall safety issue is concerned, the proposed procedures will restrict the ability of Sydney air traffic controllers to effectively oversee in an efficient and flexible manner the arrival and departure of planes at Sydney airport. The most complex and congested areas of an air traffic control system are those handling arriving aircraft on descent, and departing aircraft on climb to cruise. In the case of arriving aircraft, this is when jet aircraft are merging with slower turboprop aircraft that are in turn merged with slower piston aircraft in order to achieve an orderly landing sequence. In the case of departing traffic, the reverse happens.

The Civil Aviation Authority proposal calls for the control of these aircraft to be handled by controllers either in Brisbane or Melbourne. Not only will the controllers be far removed from those aircraft, they will also be far removed from the terminal controllers who own the adjacent air space. As a result, interunit communication lines, radio communication lines and radar feeds will all have to travel great distances to tie the various components together. This introduces many links into the chain, which can be broken. Should this chain be broken, the affected aircraft would be left in limbo and in only a short time separation breakdowns could occur. The controllers responsible for Sydney aircraft should surely be based in Sydney. The radar being used for separation is at the airport. The radio antennas used to talk to the planes are on the roof of the control building and the controllers of adjacent air space are all in the one room.

The likelihood of vital links being broken during these more critical stages of a flight would be much less than if they were physically located as far away as Brisbane and Melbourne. Apart from the problems that would arise if communications and radar links between Sydney and a parent centre were interrupted, under the CAA's proposal there would be serious problems for air safety if one of the major centres were severely incapacitated. Effective disaster recovery capabilities are especially important in the Sydney basin as it has the highest air traffic levels in Australia. I intend to continue to press the Civil Aviation Authority to think again, to listen to the air traffic controllers - voices of reason and experience - and to maintain local Sydney control of Sydney air traffic. The proposed 45 nautical mile limit is ridiculous and potentially dangerous.

### **THIRD PARTY MOTOR VEHICLE INSURANCE AND Ms JENNIE KEARNES**

**Mr RICHARDSON** (The Hills) [5.47]: I bring to the attention of the House the sad case of Jennie

Kearnes, a constituent of mine who was seriously injured in a motor vehicle accident on 3rd January last year. Jennie was only 18 years old at the time. She had just enrolled at the University of Canberra when the accident occurred. The car in which she was a passenger spun off Sir Bertram Stevens Drive in the Royal National Park when a front tyre blew. The car struck a rock wall before bouncing back on to the road. Jennie suffered multiple fractures to both legs. She was taken to Sutherland Hospital and then transferred to Baulkham Hills Private Hospital where she was operated on by orthopaedic surgeon Dr Peter Grey. The bones knitted and Jennie managed to complete that year at university, but continuing pain caused her to drop out at the beginning of this year. She will return in 1994 and wants to help pay for her studies through part-time work, but her injuries make this impossible.

Honourable members might be excused for believing that, as an innocent victim, Jennie was automatically compensated for her injuries by the New South Wales compulsory third party insurance scheme. But she was not, even though the car was properly registered and insured. Why not? Because the police could find no negligence involved in the accident, not on the part of the young driver, on the part of the tyre manufacturer, or on the part of the mechanic who had serviced the car. Because there  
Page 5717

was no negligence involved, no one could be held to blame for the accident. Under our common law system of compulsory third party insurance, no payout was owing.

A letter to Jennie's parents from the Director-General of the Attorney General's Department described this as a situation well known to the people of New South Wales. It is so well known that my colleague the honourable member for Barwon, a former Deputy Premier and Minister for Roads, was unaware of it when I raised it with him. I guarantee that more than 90 per cent of the public would be in a similar state of ignorance. This is one case where ignorance is not bliss. The car's third party insurer was the National Roads and Motorists Association and, to its great credit, following representations from my predecessor Mr Tony Packard, the NRMA agreed in July this year to make an ex gratia payment of \$15,000 to Jennie. This was enough to cover her medical bills and leave her with about \$1,000. That is not much to compensate her for ongoing pain and suffering. Had she been properly covered by third party insurance, as she might have expected, she would have received tens of thousands of dollars extra. Amazingly, had the driver invented another driver at fault, or an imaginary car coming down the road and colliding with his vehicle, the principle of the nominal defendant could have been invoked and a full payment would have been made.

There are other instances in which an accident might occur and no fault can be attributed. One, postulated by Mr McCurrich, the General Manager of the Motor Accidents Authority of New South Wales, is where the driver suffers a heart attack behind the wheel and crashes into someone else's car. I understand that this has happened on several occasions. One example was brought to my attention only recently. Victoria and the Northern Territory have no fault third party insurance as advocated by the Law Society of New South Wales. I make it clear to the House that I am not suggesting that we should adopt that system, which in Victoria will even make a payment, astonishingly - albeit of a reduced nature - to an injured driver convicted of a major offence such as drink driving or culpable driving. That is patently absurd.

Third party premiums in Victoria average \$281 compared with an average of \$194 in New South Wales. This speaks for itself. What is needed is an amendment to the current Act that will provide coverage for innocent people such as Jennie Kearnes, perhaps by extending the concept of the nominal defendant. The additional cost of doing this should not be great. The Motor Accidents Authority and the National Roads and Motorists Association are currently surveying third party insurers to find out how many cases like Jennie's occur in a year. I invite the Motor Accidents Authority to review the situation with a view to the Government introducing a no-blame provision to the Act in 1994.

**Mr PHILLIPS** (Miranda - Minister for Health) [5.51]: I thank the honourable member for The Hills for bringing the sad case of Jennie Kearnes to the attention of the House and pointing out a significant problem that needs to be examined and addressed. I am advised by the Minister that the motor accident scheme is a fault-based compensation scheme which provides modified common law benefits to people who are injured through the partial or complete negligence of another owner or driver of a motor vehicle. At present



compensation is not available under the motor accident scheme where no one is at fault. The Motor Accidents Authority is currently undertaking work on the issue of no-blame accidents in conjunction with a compulsory third party insurer.

At present there is no reliable information on the extent of injuries sustained in motor accidents through no fault of an owner or driver. The Motor Accidents Authority is undertaking research in this area to facilitate informed debate on the question of suitable cover for such accidents. It should be remembered that third party compensation is funded through the compulsory third party insurance premiums which New South Wales motorists pay when purchasing their green slips. Assessment of the cost implications of extending third party cover is necessary before a recommendation can be made on the issue. I am sure that the case brought forward by Michael Richardson, the honourable member for The Hills, will add to the examination of the issue as we address not only the financial concerns in the issue but also the impact on individuals of such incidents.

### **PARKING PERMITS FOR THE DISABLED**

**Mr J. H. MURRAY** (Drummoyne) [5.53]: I draw to the House's attention the current procedures for the issuing of disabled parking permits by the Roads and Traffic Authority which came into operation in October 1992. At the time I fully supported the improved scheme, which helped increase mobility for disabled road users and their service organisations. Recently I was approached by the Drummoyne Access Committee for the Disabled, which advised me that as a consequence of the more flexible guidelines the number of permits granted has far outstripped the available designated spaces, creating a crisis for the genuinely disabled. I understand that the issuing and renewal of disabled parking permits by the Roads and Traffic Authority appears to be at the discretion of counter staff. This procedure has resulted in inconsistencies and the Drummoyne committee believes that a medical certificate should be an essential requirement before a permit is issued or renewed.

Further, I believe a set of criteria should be issued to all medical practitioners outlining conditions under which a person with a permanent disability is entitled to a permit. The procedure would standardise the issuing of permits and help reduce the number of questionable permits currently in circulation. The number of permits issued has grown so rapidly that disabled persons often have to use undesignated areas to gain access to parking. The Drummoyne Access Committee has recommended to me that the RTA should make available statistics that would assist local government in planning for the number of authorised

Page 5718

spaces required in their areas. At the moment there is no liaison between local government, which in the main provides off-street car parking for designated handicapped persons, and the RTA, which issues the permits. If a medical certificate were required for the renewal of parking permits, applicants would have to obtain a medical certificate each three years, which would verify they have a current disability.

Under the present arrangements permits are issued if a driver has a physical impairment afflicting any part of the body, such as an arm. As honourable members would realise, in most cases a person with an injured arm would not require a disabled parking space, which usually is located adjacent to exit or ramp facilities. An injured arm may affect a person's driving ability but would not necessitate his parking as close as possible to a facility. Within the Drummoyne municipality there are four car parks with one disabled parking space in each. I recently attempted to ascertain from the Five Dock motor registry the quantum of disabled parking permits issued but, unfortunately, this information was not available from the RTA computers. It is obvious that there is a need for local government to be informed of the requirements for disabled parking, and this can be provided only if it is apprised of the number of permits issued within the area.

I ask the Minister to look closely at this matter for the President of the Drummoyne Access Committee, Mrs Wendy Nolan, and other committee members who have provided a most valuable service for the disabled within the Drummoyne electorate for a number of years. Their advice has been accurate and most positive. The committee has had a number of meetings. Committee members have been affected by the inability to use disabled parking spaces. Though I agree that there should be flexibility in relation to the provision of the permits, one way of overcoming the present difficulty would be to enter an applicant's postcode into the

departmental computer so that local government would be aware of the number of disabled parking permits allocated to people within the area and provide appropriate parking spaces.

**Mr PHILLIPS** (Miranda - Minister for Health) [5.58]: The Government is committed to improving facilities and the quality of life for people with a disability. The mobility provided by convenient parking is a part of that process. We would be concerned if an inadequate number of parking spaces is jeopardising the mobility of people with genuine disabilities. I am more than happy to bring this matter to the attention of the Minister so that it can be investigated.

### **SLOUCH HAT MANUFACTURE**

**Dr KERNOHAN** (Camden) [5.59]: Some of my constituents are very angry about events in the electorate. Recently the Federal member for Macarthur, Chris Haviland, sent a letter to all of my constituents, individually addressed, as is his right, but starting with the words "Premier John Fahey's decision" and with half the letter devoted to berating the activities -

**Mr Fraser:** Another Labor lie.

**Dr KERNOHAN:** Telling Labor lies about State Government matters. Halfway through, in broad type, the letter promoted the Labor candidate who was defeated at the last election, and offered Mr Haviland's thoughts on jobs in my area. My constituents are most unhappy that their Federal member is not looking after Federal matters in the electorate. Federal money is being used to canvass and electioneer on State matters. Knowing the gentleman involved, I am not surprised. However, what annoyed me was the hypocrisy with jobs in my area. Camden is the heart of the Federal seat of Macarthur and what happens to Camden happens to Macarthur. Many jobs have been lost in my electorate because of Federal activities, but I wish to refer to one case in particular. Bardsley Hats of Picton is a small, long established firm which had 30 staff a year ago but which today employs only eight. In the village of Picton 22 jobs have been lost. How were they lost? By the stroke of a Federal bureaucrat's pen.

Bardsley Hats made slouch hats - that icon of Australia - for our defence forces. Until recently three Australian manufacturers, including Akubra and Bardsley Hats of New South Wales, shared the contracts for manufacturing slouch hats for our defence forces. That was fine until the tender specifications were changed by the Department of Defence to allow the import of blanks from overseas. Now one of Australia's great symbols is being imported from overseas. The contract has gone to a Queensland firm. That company is importing blanks from Czechoslovakia. The firm in Queensland now only trims and adds headbands, fittings and so on to the hats.

Price was the only consideration in this. I wonder just what our servicemen and servicewomen are thinking. What are they fighting for? What are they serving for? Job protection in Czechoslovakia? What is happening to our jobs? I sincerely believe that our servicemen and servicewomen would prefer to wear with pride, as they do, a quality Australian hat manufactured in Australia by Australian craftsmen, and mainly from Australian fur. I believe each one of those men and women would happily pay the small increase of \$4 or \$5 - less than a packet of cigarettes - to be able to wear with pride the symbol of their uniform, a slouch hat which is made in Australia. The Federal member of Macarthur should stop sitting in his office writing letters on State matters. He should go to Canberra and lobby his Federal colleagues to suggest that they now give our servicemen and servicewomen Australian slouch hats to wear.

**Mr PHILLIPS** (Miranda - Minister for Health) [6.3]: I thank the honourable member for Camden for bringing this example of bureaucratic stupidity to the attention of the House. This is a problem that often occurs in politics where levels of government attack each other on the basis of members not doing their jobs properly. As the member for Camden is highlighting, the Federal Labor member for

Page 5719  
Macarthur, in slighting her, is not looking at the performance of his own Government. He should spend more

time doing that. I have been to Akubra and I received a hat on one of my visits. It was a great treasure to protect my head of thinning hair. Obviously the question of Bardsley Hats at Picton is fundamental to providing the public with an icon - quality slouch hats for the Australian defence forces.

It is with great sadness and disappointment I hear that for a saving of a few dollars we allow blanks to be imported from overseas instead of working with Australian industry to constantly bring prices down and keep production of that icon in Australia. I would be disappointed to go to an Australian store with an overseas visitor, buy them a slouch hat and find "Made in Czechoslovakia" on it; or to find "Made in Australia" on it, without the label actually declaring that the vast proportion of the hat came from overseas? I thank the honourable member for Camden for bringing this matter to the attention of the House.

## **FERN BAY URBAN DEVELOPMENT**

**Mr GAUDRY** (Newcastle) [6.5]: I raise again concerns at the proposed rezoning of sensitive coastal land at Fern Bay for urban development. I ask the Minister for Health to refer the Minister for the Environment, the Minister for Planning, the Minister for Land and Water Conservation and the Minister for Local Government and Co-operatives to *Hansard* of 1st April, page 953, and the concerns raised by residents at that time about the potential rezoning. Those concerns have not abated. The Fern Bay proposal sought the rezoning of 480 hectares of land currently held as rural A and environmental protection C in three parcels by the Department of Housing, site 4600 by Howship Holdings, a private developer, and the Department of Land and Water Conservation in Crown water reserve 61307.

Local residents raised objections to both the total rezoning and to other aspects, including dune stabilisation, sewage treatment, traffic impact and ordinance clearance. The site was formerly a gunnery site for artillery. Who will bear the cost of this clean-up, as well as the \$9 million for dune stabilisation that was proposed in the local environmental plan for the rezoning? Local residents were extremely concerned also at the impact of this proposal on the environment. The proposal focused public attention on the complex land management and conservation issues of the Stockton Bight and re-emphasised the value of that area in scientific, conservation, recreation and tourism terms. It is a valuable area environmentally and a valuable area commercially for the State Government. By July the Department of Housing had decided to withdraw from the joint venture project. It determined that the land was not appropriate for public housing and publicly stated in the *Newcastle Herald* of 13th July:

We decided that the most sensible thing would be to sell it to someone who wants to get involved in development of that style of land.

I do not agree that the sale of this land is the best result. It should have been referred back to the then Department of Conservation and Land Management and should have formed part of the assessment process of the Stockton Bight study that is being carried out at the moment to determine what is best. I am concerned also about aspects of the sale of Department of Housing land. It is an asset and has environmental value. Officers within the department have advised me that they were placed under extreme pressure to release the land following the decision not to proceed with the joint venture. They have told me that this pressure included telephone calls from the former Premier, Nick Greiner, and other politicians.

Also, I am advised that pressure was exerted to have the land sold outside the normal tendering processes by a process of direct negotiation. However, the Department of Housing has put it up for sale through the tendering process, and tenders close on 9th December at 5 p.m. I was concerned about how that fitted in with the proposed determination of the development proposal. In fact, on inquiring at Port Stephens Council I was not overly surprised to find that the matter is to be determined next week, 14th December, five days after tenders close. The sale is to be conditional upon approval of the rezoning application. There has been too much haste in selling this land. It is quite valuable for several reasons.

The property is landlocked except for a tiny area on the southern side which is not accessible for

development, so the Department of Housing could not sell it. The only potential for its sale at the moment would be to Howship Holdings. My concern is whether the land is valued at the proper market price, taking into account potential for sale in the future of the Commonwealth Rifle Range land. I do not agree with that sale, but it is something that has been put up. If it is sold, it would add enormous value to that piece of State Government land that is at present up for sale by tender on 9th December. I am very concerned, as all members should be, about, first, what I consider to be a peremptory sale of land which has many other valuable uses and, second, that the land could be vastly undervalued. [*Time expired.*]

## LEASEHOLD LAND CONVERSION

**Mr W. T. J. MURRAY** (Barwon) [6.10]: The action of the honourable member for Port Stephens in putting before this House a private member's bill to totally restrict conversion of land is insensible, stupid and irresponsible. I am deeply aware of the plight that his action has caused to landholders. The first of many such cases that have come to my attention is that of Jessie and George Holder, 75 and 78 years of age respectively. The Holders spent most of their lives on a property at West Moree. Though unable to sell and unable to transfer their land, they were forced by age and ill-health to put the property on the market. After 12 inspections, only one bid was made. However, as a result of this moratorium the Holders are unable to transfer other than to a person who has no property at all. The result for the Holders was a net loss of \$68,000. The Holders, aged and retired, have been knocked out by the Labor Opposition.

Page 5720

Mr and Mrs C. K. Evans, who have worked on the land all their lives, wish to sell, move out and retire. Purchase contracts have been put together. However, as a result of the move by the honourable member for Port Stephens the conversion process that would enable their land to be sold cannot take place. Unless the land can be converted by 4th February, 1994, the sale will fall through. If that happens, one more family who have lived and worked all their lives on the land will no longer be able to dispose of their property. It is restricted land, it is a restricted sale, and as a result that couple will have to go back on to the property and battle on.

Another case is that of Mr A. Schuman at Inverell. Mr Schuman has a 1911-27 conditional lease with a statutory right of conversion, and that will be held up as a consequence of the proposed legislation. Mr Schuman has probably the best part of five or six weeks to live. He wants to tidy up his family's affairs. His application has been before the department for ages. However, because of the backdating provision in the legislation, his application cannot be proceeded with. Mr Schuman and his family will not be able to get these family affairs in order. It is quite likely that by the time the bill comes before the House again next March Mr Schuman will have died of cancer. The Labor Party must be pleased by its achievements. It is outrageous that these people, who have submitted their conversion projects for process by the department, should be treated in this manner. The Labor Opposition - which in its opinion is opposed to retrospective legislation for ever and a day - wants to apply retrospectivity to land conversion, thus destroying the lives of many people and the fruits of their hard work.

In 1991, applications for land by the Montgomerys were dealt with by due process of law. Approval was given by the Minister for conversion, but the title process was not completed. Once again, a family undertaking a process of land consolidation was knocked back on seeking conversion. The measure introduced by the honourable member is particularly bad for the finances of the Government. Such conversions attract substantial income for the State from those who want to buy the subject land. New title is being created for existing land. An application by Mr and Mrs Humphries and Caithness Farms for a new pump site for irrigation purposes - a project that will create significant additional export income and new employment - cannot be processed as a result of this stupid and insensible move. In other instances, exchange of land necessary for consolidation of properties cannot occur. If the Labor Party had any conscience at all or any consideration for people in rural New South Wales who want to go about their business as they have done for years, it would withdraw the bill immediately and allow the system to proceed.

**Mr SOURIS** (Upper Hunter - Minister for Land and Water Conservation) [6.15]: The circumstances described by the honourable member for Barwon are the result of one thing and one thing only - the private member's bill introduced for the Labor Party by the honourable member for Port Stephens. The bill contains a provision for retrospectivity to 28th October. If the measure is passed, all Crown transactions from that date will be deemed null and void. The proposed legislation, apart from exposing the State to compensation payments, will undo all Crown transactions that occur beyond 28th October, irrespective of any rights people affected may have had. In many cases their freehold rights go back 100 years or more and were part of the original grant or lease. A right to convert - not a right to apply - was contained within the conditions of the perpetual lease granted at that time. The key words are "right to convert" and "perpetual lease".

A perpetual lease has always been deemed to be the same in law and in value as freehold title itself. Unfortunately, the existence of the bill and its retrospectivity provision has caused me to apply a freeze on all Crown transactions in the Department of Conservation and Land Management. That freeze has affected the cases described by the honourable member for Barwon - and there are many more. I have received notification of several cases. I am sure that future private members' sessions will be taken up by other members giving examples of constituents who will similarly be faced by the heartless hardship caused by the Labor Party bill - a bill designed to strip people of the freehold rights that attach to the perpetual leases they have signed.

The bill is obviously designed to resocialise land tenure in New South Wales. I am not the only one saying that. The Opposition should read today's editorial in the *Land* or listen to other commentators. These landholders are seeking only to exercise their freehold rights. A freeze without warning - a consequence of the bill landing in this House without warning - is the result of the capriciousness contained in the proposed legislation. Today the honourable member for Port Stephens failed to withdraw his bill. Though he knew of the hardship being caused, he failed to bring on the bill for debate and determination.

The honourable member for Port Stephens has allowed the matter to be deferred. He now hopes that with prorogation of Parliament he will be off the hook. He did not have the courage, after all the advice given to him, to withdraw the bill. Prorogation of Parliament will have nothing to do with the existence of the bill. All bills affected thereby will be introduced in globo, as has occurred previously in this House. Therefore, the fact that the bill has not been withdrawn prevents me lifting the freeze on all Crown transactions that has created hardship and diminution in rights and values.

## **WOY WOY PENINSULA LAW AND ORDER**

**Mr DOYLE** (Peats) [6.17]: I wish to raise a matter of major concern to many residents of the Woy Woy peninsula - the increasing level of vandalism, hooliganism and other incidents of so-called street crime, and the inadequacy of police numbers and resources at Woy Woy police station to effectively

Page 5721

deal with the problem. Representations I have received on these matters in recent weeks alone have been too numerous. A brawl at Umina surf club last Sunday between a visiting Sydney football team and more than 150 youths who had gathered at the beach for a party - a commonplace gathering at local beaches - resulted in charges of assault, unlawful entry, malicious damage and various other street offences. Woy Woy police were required to call for reinforcements from the Gosford police station to deal with the situation.

I am advised by the elderly residents of the Cooinda Retirement Village in Neptune Street, Umina, that many of them live in fear of constant episodes of vandalism and property damage, including damage to motor vehicles, broken windows and so on. On one occasion thousands of dollars worth of damage resulted from what was described as a weekend vandalism spree in Osborne, Nowack and Australia avenues, Umina, where vandals using spray paint, house paint and brushes defaced everything from cars and boats to garden settings and home walls. One car was left completely covered in hand-painted obscenities. Similar disturbances have occurred at Pozieres and Trafalgar avenues in Umina and throughout the peninsula area.

Why should shopkeepers and business proprietors in Umina, Ettalong and Woy Woy be forced to pay large

sums of money to private security firms to protect their properties against vandalism and property damage? Some Umina businesses have found it necessary to brick or bar their shopfronts. That may be necessary in areas like Bourke or Brewarrina where problems with vandals have been well publicised over many years, but it is ludicrous that it should occur in Central Coast villages. It is not an exaggeration to say that the level of street crime is reaching crisis proportions and the Government has utterly failed to respond.

In terms of population within the patrol area, Woy Woy is by far the most under-staffed and under-resourced patrol in the Central Coast region. While this situation continues, problems of the nature I have outlined cannot be effectively overcome. This Government has determined police staffing on a political rather than needs basis. Beat police allocations on the Central Coast have long been regarded as a joke. All local police stations have at least a full quota of beat police - one sergeant and six constables - except Woy Woy and Toukley.

The ridiculous situation has been reached where Woy Woy has only one patrol car available during week nights and two at weekends, and a chronic shortage of beat police. By contrast, Gosford has 11 beat police to serve the Gosford area alone. A number of these police could be sent to patrol peninsula trouble spots for a couple of hours per night and at weekends as part of their duties. I ask the Minister for Police to give consideration to that suggestion. Obviously, there was direct political interference in the allocation of beat police under former police Minister Pickering. I am advised that if a Labor electorate sought increases in police numbers, often the recommendation for beat police allocations would get the ministerial red line drawn across it.

Incredibly, Woy Woy's beat police strength has been further reduced because of a ridiculous decision by Gosford Police Superintendent, John Toms, who, it might charitably be said, is no enemy of the Liberal Party. The station's highway patrol strength previously comprised one sergeant, seven constables and two vehicles. Following transfers arranged by Superintendent Toms, the patrol was reduced to four constables and one vehicle, effectively halving Woy Woy's highway patrol numbers. Even if general duty officers had the time to patrol, which they do not, on many occasions the vehicles simply are not there.

The residents of the peninsula area are totally fed up with the shortage of police numbers and resources in the area, despite constant and unrelenting campaigning for a better deal. To the credit of the present Minister for Police, he accepted my invitation this afternoon to visit the Woy Woy patrol area to witness firsthand the numerous problems directly caused by these shortages. I thank the Minister for accepting the invitation because I believe his visit will represent the first positive initiative of this Government to overcome the problems to which I have referred.

**Private members' statements noted.**

*[Mr Acting-Speaker (Mr Tink) left the chair at 6.22 p.m. The House resumed at 7.30 p.m.]*

## **HEALTH CARE COMPLAINTS BILL**

### **In Committee (Recommittal)**

**Mr PHILLIPS** (Miranda - Minister for Health) [7.31]: I seek leave to move the amendments standing in my name in globo.

**Leave not granted.**

**Mr PHILLIPS:** I seek the leave of the Committee to move amendments 1 to 4 standing in my name in globo.

**Mr Mills:** On a point of order. Amendments 1 to 4 shown on the first print have already been corrected

in the second print of the bill.

**Mr West:** On the point of order. To assist the Committee, I take the point made by the honourable member for Wallsend, that the clauses to which he refers in the second print are those that have yet to be resolved by the Committee. They are at present before the Committee.

#### **Recommitted clauses 4 and 70.**

##### **Amendments, by leave, by Mr Phillips agreed to:**

Page 2, clause 4, line 28. Omit "section 74", insert instead "section 75".

Page 3, clause 4, line 8. Omit "section 87", insert instead "section 89".

Page 5722

Page 3, clause 4, line 14. Omit "section 83", insert instead "section 85".

Page 4, clause 4, lines 21 and 22. Omit all matter on those lines, insert instead "section 82(1) or whose services are made use of under section 82(2)".

Page 33, clause 70, line 7. Omit "section 71", insert instead "section 72".

#### **New clause 91**

**Mr PHILLIPS** (Miranda - Minister for Health) [7.35]: I move:

Page 43. After line 1, insert:

##### **Recommendations to have regard to available resources**

91. A recommendation made by the Commission in relation to a matter investigated under this Act must be made in such a way that to give effect to it:

- (a) would not be beyond the resources appropriated by Parliament for the delivery of health services; or
- (b) would not be inconsistent with the way in which those resources have been allocated by the Minister and the Director-General in accordance with government policy.

**Dr REFSHAUGE** (Marrickville - Deputy Leader of the Opposition) [7.36]: I move:

That the amendment be amended by deleting all words after "such a way that" and inserting instead:

- (a) recognises the resources appropriated by Parliament for the delivery of health services; and
- (b) recognises the way in which those resources have been allocated by the Minister and the Director-General in accordance with government policy.

I am still waiting for the honourable members who missed the division to tell us whether - and if so, why - they still support the Government. That may avoid having to call for a division. They might tell us what they intend to do, whether they will donate part of their salaries to an appropriate charity. The most important point about this amendment, and I shall put it once more to the Minister as we have basically gone through the arguments, is that to prevent the commission from being independent will diminish the credibility of the commission. To put limitations on any independent organisation's ability to make recommendations destroys

the value of that organisation and its recommendations.

That type of limitation is not put on the Independent Commission Against Corruption, the Ombudsman, royal commissions, judicial inquiries or special commissions. If such a limitation were imposed on any of those organisations, there would be no progress. If the Minister persists with the amendment, that will fit in with his former view that the world must stand still. Again I put to the Minister that the world does not stand still. Just because these are in accord with the Minister's policy now does not mean that he cannot improve them; it does not mean that the Parliament cannot assist the Minister to improve them; it does not mean that a commission cannot assist the Minister to improve them.

The Minister is creating a problem with which he will probably not have to deal. The chances of any recommendations or reports being made to Parliament between now and March 1995 are minimal. I will have to cope with the problems regarding recommendations against our policy or budgets. Let us think in overt political terms. Why lose a major weapon that the Minister might want to have when he is in Opposition? I regarded the Minister as being leadership material. Recently during discussions about who would be the new Leader of the Opposition the Minister's name came up regularly in conversation. That was a great tribute to his abilities.

The Minister should think of this amendment in the long term as an improvement to the democratic process, not in terms of the short, dying days of his ministerial career. Even the honourable member for Ku-ring-gai can see the wisdom of it. If the Minister will not retract his amendment, he should at least accept the modification, which, for the most part, covers his concerns. If he insists on reinserting his amendment, he, the commissioner and the people of New South Wales will suffer as a result. I appeal not just to his principles of social justice but to the principles of progress in policy development and service delivery, and I ask him to consider my amendment in terms of his political career. This is an opportunity for the Minister to advance his political career while advancing democracy. Why not do it? I urge him to accept, at least, my amendment, even if he will not withdraw his amendment.

**Mr O'DOHERTY** (Ku-ring-gai) [7.40]: I do not want to disappoint the Deputy Leader of the Opposition, but I do not support his amendment. I think that the Minister's amendment is most appropriate. It is clearly the Government that sets policy via the democratic process and not a commission such as the one that will be set up by this bill. Everything that the Deputy Leader of the Opposition said ought to and does apply to the elected government. The Government should not accept his amendment, but should include the important clause which, in fact, is a central part of the commission and its operations, as I understand it. The Government should ensure that it is part of the bill that finally goes through the Parliament.

**Mr PHILLIPS** (Miranda - Minister for Health) [7.41]: I noted the comments made by the Deputy Leader of the Opposition that one day he believes the Liberal Party-National Party may be in opposition and, therefore, it might want to take advantage of his amendment. He has thus revealed the prime motive for his moving the amendment, that is, to give the Opposition an opportunity to have a commissioner produce a complaints report that will highlight problems as well as contain recommendations about how health resources should be distributed, or warped or skewed towards a particular problem and then to kick the Government of the day - this Government - to death about that issue. He has admitted that that is his motive.

Therefore, the significant difference between him and me is that in making health policy, I am determined to ensure that the Government does not

Page 5723

work on political opportunity but on health planning in a sensible, non-political way. Health policy has been skewed by too much shroud waving and the squeaking wheel getting the money rather than the oil. I am determined, therefore, to ensure that the complaints commissioner will oversee the system and the professions in that system and will report on and point out problems, including systemic problems, to the health system and will ensure that they are acted upon. But the way they are acted upon and the way they are resolved is up to the system because that is the commission's role, and it has to take into account all the requirements of the health system in making those decisions. That is why, once again, on a straight philosophical point I do not believe



that the powers of the commissioner should be broadened further. I think they are adequate.

**Mr MILLS** (Wallsend) [7.43]: I have great difficulty understanding the Minister's problem. I had the same difficulty last night when I heard him say that it would become compulsory for the Government to implement a recommendation of the Health Care Complaints Commission. It is patently absurd. It is a recommendation of an independent body, not a recommendation of someone who can dictate to the Government. The Minister's attitude is absurd. The commission cannot dictate to government what it should do.

**Mr Phillips:** The honourable member for Wallsend obviously does not understand health politics.

**Mr MILLS:** I understand health politics extremely well, at a local level and at other levels as well, as the Minister would probably be aware. The commission cannot dictate government policy. Government can and must say what resources are allocated and what parts of health receive priority. It is absurd to say that the commission can dictate to government. Therefore, the amendment of the amendment just moved by the Deputy Leader of the Opposition moves away from the misapprehension of the Minister that he is dictated to from outside. To do so is not on. The amendment reads:

(a) recognises the resources appropriated by Parliament for the delivery of Health services; and

That is completely different from saying that it cannot be done; one cannot make a recommendation that would allocate resources. No recommendation can allocate resources. The Ombudsman and the Commissioner for the Independent Commission Against Corruption cannot dictate to government, and the Minister knows that. The Commissioner for the Independent Commission Against Corruption can have an input, but he cannot dictate. The Health Care Complaints Commissioner cannot dictate to Government. The amendment continues:

(b) recognises the way in which those resources have been allocated by the Minister and the Director-General in accordance with Government policy.

That is fine. It puts the responsibility on the Health Care Complaints Commissioner to recognise that he lives in the real world, but the Minister must not say that the commissioner can dictate. He cannot.

**Amendment of amendment negatived.**

**Amendment agreed to.**

**New clause agreed to.**

**Bill reported from Committee secundo with further amendments and passed through remaining stages.**

## **CRIMES (DOMESTIC VIOLENCE) AMENDMENT BILL**

### **BAIL (DOMESTIC VIOLENCE) AMENDMENT BILL**

#### **In Committee**

**Consideration resumed from 17th November.**

**The TEMPORARY CHAIRMAN (Mr Rixon):** Order! The Committee is resuming consideration of the Crimes (Domestic Violence) Amendment Bill.

## Schedule 1

**Mr WHELAN (Ashfield) [7.54]:** I move:

Page 3, Schedule 1(1)(d). After line 3, insert:

**"intimidation"** means the causing of a reasonable apprehension of:

- (a) injury to a person or to any member of his or her family or household; or
- (b) violence or damage to any person or property;

**"stalking"** means the following of a person about or the watching or frequenting of the vicinity of or an approach to a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity, with the intention of intimidating the person or in a manner which may reasonably be thought likely to intimidate the person;

The Opposition wishes to amend the definition contained in the Crimes Act. This amendment will do a number of things. It will add the definition of "intimidation", transpose a shorter definition than that which appears in section 545D, and introduce, for the first time, the new offence of stalking. Government amendments will include in the Act telephone interim orders and other factors relating to the definition of orders. I read the Government's amendment relating to the definition of intimidation and was somewhat attracted by the proposition that the definition of intimidation should be extended by adding the words "conduct amounting to harassment or molestation". That is not contained in the amendments that I have circulated.

If we extend that definition it might be a solution to the problems that have arisen with the definitions I wish to insert in the legislation. Later another member of the Australian Labor Party will move an amendment to extend the definition of intimidation to read, "conduct amounting to harassment or molestation". Honourable members would be aware

Page 5724

that part 15A of the Crimes Act relates to apprehended violence orders. To get the full import of that part one must bear in mind that section 562B provides:

A court may, on complaint, make an apprehended violence order if it is satisfied on the balance of probabilities that a person has reasonable grounds to fear and in fact fears.

That section then talks about "the commission by another person of a personal violence offence against the person or the engagement of conduct amounting to harassment", and other qualifications. My proposed definition of intimidation means "the causing of a reasonable apprehension of injury to a person, or violence or damage to any person or property". There has been some disquiet about my new definition of stalking. I can understand the Government's sensitivity on this question, but the public knows exactly what stalking is. That was highlighted more than ever by the recent, tragic and unnecessary death of Andrea Patrick. Stalking means "the following of a person about or the watching or frequenting of the vicinity of or an approach to a person's place of residence, business or work for the purpose of any social or leisure activity with the intention of intimidating the person".

It should be remembered that intimidation has already been defined as "a reasonable apprehension of injury, violence or damage". The Government is arguing that I have proposed a dual test and that people have to prove to the court reasonable intimidation and intention. That argument is incorrect. The definition of intimidation in part 15A is contained in section 562B of the Act, which deals with apprehended violence orders. That section talks also about the balance of probabilities and the reasonable ground to fear and in fact fear. I do not support the contention that there is any unnecessary and double test that will inconvenience any applicant seeking an apprehended violence order. I can understand the Government's objection to the insertion of this definition. It did not call for it, it did not want it and it does not see the necessity for it. But I believe the community has demanded it. I believe the definition of stalker is inadequately defined in my amendment. If

someone has a better definition I would be happy to take it on board.

I acquired some literature from America, and I know that the South Australian Government is contemplating legislation and the Queensland Government is discussing it. So what? It is nice to be a trailblazer in legislation. If we get it wrong, we will fix it up in March. At least we will get something on the statute books now. The Government should recognise that the community wants stalking to be an offence and wants the protection of women in the community. I urge honourable members to agree to the definition. I seek leave to move a further amendment to the definition of intimidation. By leave, I move:

After (b) insert:

; or

(c) conduct amounting to harassment or molestation.

I give the Government credit, because its definition of intimidation, which is contained elsewhere, contains those words. My definition of stalking and my definition of intimidation do not contain those words, but they are implied in the definitions that I have suggested. I recognise that an applicant who appears before a court and applies for an apprehended violence order would like to have something in writing. Not everyone who applies to a court for an apprehended violence order is a lawyer, so the public will benefit from this definition. Members of the public will be made aware that intimidation means reasonable apprehension, injury, and violence, but also means conduct amounting to harassment or molestation. I urge honourable members to agree to and concur with the Labor Party's first amendment.

**Ms NORI** (Port Jackson) [8.2]: I am pleased that the Parliament is discussing this important issue of domestic violence. I would like to discuss more than the specific amendment.

**Mr Hartcher:** No, we are not going to have a second reading speech.

**Ms NORI:** This important matter was dealt with at about one o'clock this morning.

**Mr Hartcher:** The Government will not allow the honourable member to make a second reading speech.

**The TEMPORARY CHAIRMAN (Mr Rixon):** Order! The honourable member for Port Jackson has the call.

**Ms NORI:** It is important, if one is to contribute to this debate, to talk about the overall importance of this issue and the specific problems that we, as legislators, face in trying to deal with it. That makes it difficult to confine oneself specifically to the amendment. I do not feel that anyone - this Government, previous governments, or society as a whole - has ever understood the dynamics of domestic violence, hence the present difficulties. There is no crime like domestic violence. It cuts across personal and family relationships. It is not a clear-cut case of being hit over the head by someone in the street, finding the perpetrator and taking him or her to court and gaoling him.

Until we address a range of issues we will never solve this problem. It is impossible to deal with what is, after all, pathology by simply relying on the legal justice system and the help of the police. We, as a Parliament, have to recognise that all the laws in the world - everything we do here tonight with all the best intentions - will not solve the problem. If the Minister for the Environment agrees, I should like to allude briefly to some of the matters we should be considering. Perhaps I should foreshadow in an informal sense the sorts of things we might be able to do to improve the situation when the Parliament resumes in March. I feel we are letting down the women of New South Wales - I say women because they comprise the overwhelming majority of victims - unless we consider those broader issues.

Returning to the specific amendment that deals with the problem of stalking, even the current amendment does not go far enough. It fails to recognise that there are two types of stalking. One is the stalking that Andrea Patrick was tragically subjected to, and the other I would call a pre-stalking situation, where a woman is harassed by constant phone calls; her behaviour and activities are constantly monitored; she is constantly checked on, spied on, interrogated, made to account for her actions every second of the day; and constantly barraged with bizarre accusations motivated by extreme pathological sexual jealousy.

The most frightening feature is that women who have been subjected to this problem are so predictable. It is possible to stop them midway through a conversation and tell them what they are about to say next. It is frightening that the perpetrators are not necessarily aberrant monsters. It would be nice to be able to say they are seven-headed nut cases, but they are not. They are teachers, clergy, politicians, fathers, neighbours; they are our friends. That is the extent of the problem. We, as a Parliament, have to learn to deal with it. Though this amendment goes a long way towards helping to address the situation, until we recognise that we are dealing with a pathology, until we put something in place to deal with that pathology, we are not going to help the women of New South Wales.

I should like to speak briefly about a preventive counselling program known as the Duluth model that has been set up in the United States of America. It does not in any way say that the perpetrator is a poor man who cannot control his emotions and who should have therapy to be sorted out, because he has not committed a crime. I would be opposed to any sort of program that treated the perpetrator in that way. These people have to be dealt with using the full force of the criminal justice system, but at the same time I recognise that putting them behind bars or finding them guilty of these crimes does not necessarily stop them. Women with children will have to face their retribution. Unless their behaviour is changed, or unless an attempt is made to change their behaviour, we will not get very far. A preventive therapy model must be introduced and fully integrated into the criminal justice system, for the sake of women. The Duluth model has got it right. It is the model that should be adopted in New South Wales. I quote briefly from a summary of the program relating to the Duluth model:

The most important aspect of this project has been to change the criminal justice system's response to domestic assaults. The Duluth community has a firm commitment to enforce assault laws and civil protection orders. This has involved two fundamental changes in police and court practice. The first has been that the onus of imposing sanctions on perpetrators is shifted from the victim to the community. Agencies are aware that the purpose of battering is to establish and maintain control over the victim and anticipate that the perpetrator will use the control he has established over his partner to protect himself from the legal system.

We are dealing with human beings who have to control every aspect of their lives, including their partners. The document continues:

The nature of the relationship between the abuser and his victim is one in which the abuser imposes his will upon her. Her behaviour is prescribed following guidelines set by the abuser. Like the hostage or prisoner of war, she protects herself by acting for him. Limiting the victim's responsibility in evoking legal sanctions on the abuser decreases his ability to manipulate the system and avoid the consequences of his violence.

That happens often. Many men in particular ask why women put up with it, why they stay. First, there are the obvious economic reasons in many cases. But even if economics are not the major reason, in order to protect herself the woman will start to police her own victimisation. She is faced with trying to make a choice, not between what is good or bad but between bad and worse. She often finds herself putting up with unacceptable treatment because to challenge it would mean far worse treatment for herself or her children.

Though the attitude of the police has improved and they respond well, in many cases the woman knows that even if the police arrive on the scene in 30 seconds, it will be too late. That is the difficulty we are dealing with in this issue. There is no easy solution. That is why I am emphasising the need for some sort of preventive-therapeutic model integrated into the criminal justice system. The woman knows that if she makes the wrong decision - not wrong in a moral sense but the wrong tactical decision - further violence or even death

could result. In these types of circumstances a woman's emotional strength is way down - down to about zero. She does not have the clarity of thought or the emotional energy left to deal with the situation in a clear-headed way. She is too battered emotionally, too tortured psychologically, and she desperately needs a break to build up her emotional energy to deal with what could happen. It is not easy when she has had her life controlled by a pathological male. She is totally isolated from her friends. The first thing these men do is stop the women from having any contact with the outside world or any friendships that could help them, such as the friendship networks that help women deal with their problems.

I believe very strongly that this issue is about men who cannot verbalise, who have become accustomed to expressing their emotions in a physical way, not always by bashing someone but by using fairly aggressive body language, bullying behaviour, loud-mouthed behaviour and, in some cases, violent behaviour. I feel strongly that as a society we have to introduce social skills training into our education system. In my view that should start in infants school, not only to create a generation of young women who are more assertive but, more importantly, to create a generation of men and boys who learn to deal with aggression. I would be very interested to hear from any male members who could explain to me the causes of domestic violence. I would be grateful for any contribution that touches on the issues I have raised in the debate. If our society is to deal with this issue, it must change the way males behave. They cannot believe that it is okay for them to use their physicality to get their own way.

Page 5726

**Dr MACDONALD (Manly)** [8.12]: I support the amendments. At the same time I point out that I do not believe that many males in this place really understand the nature of domestic violence and the feeling of intimidation involved, particularly when it relates to the issue of stalking. Before I address the amendment I should like to pay tribute to certain persons in the Chamber who have been advising me on this bill over the past few months. I refer to Trish Mundy and Ann Mara from the Domestic Violence Advocacy Service, Julie Stubbs from the University of Sydney; and Anne Lanham, who is my research assistant. I could not have had a full appreciation and understanding of the range of problems without that sort of assistance. This is a complex matter. In many cases it is a complex matter of law, about which I do not claim to have expertise. It is also a matter of trying to get an understanding of what is happening in the community, although many of us are remote from that.

This amendment is one of several that relates to stalking and I intend to confine my remarks about stalking to this part of the Committee deliberations and not to repeat the remarks later. This amendment is a key amendment. If this amendment is lost, clearly it would show that the Government does not have a commitment to include the broad concept of stalking within the bill. I would be disappointed if the Government did not accept the amendment. After all, it has almost gone all the way, having regard to the definition at page 10 of the bill where reference is made to following people, watching people and frequenting the vicinity. The word "stalking" has not actually been used. I hope the amendment will not be lost merely because the Government feels churlish about the fact that the Australian Labor Party has used that word. The Committee should not split hairs about it.

My amendments were described by a senior bureaucrat in the Attorney General's Department as obnoxious. I find that disappointing. Domestic violence is obnoxious. For those who have not had a personal involvement in these matters, I want to explain what is obnoxious. The very nature stalking is obnoxious. Honourable members would know that I have been very involved in the Harbord matter of Andrea Patrick, having known her for 20 years and being close to the family. The stalking that occurred in the year or two before she died was absolutely outrageous and went from State to State. In fact, the offender went to gaol for eight months in Victoria for that offence. The last few days of Andrea's life were characterised by stalking to the point that the family was in terror, moving about the Harbord area with mobile phones to keep in touch with each other.

The occurrences of the last few hours and minutes of Andrea's life were appalling, especially the nature of the calls over mobile phones while she was trying to get away from this man. Therefore I understand and have

personal knowledge of the nature of stalking and its impact. The honourable member for Ashfield talked about trailblazing. This legislation is trailblazing within this State but it is not necessarily trailblazing legislation within Australia. Queensland is moving strongly in the direction of addressing this problem of stalking. I draw the Committee's attention to an article in the *Canberra Times* on stalking:

Behaviour to be outlawed with penalties of up to five years in gaol would include persistent phone calls, following and entering a person's property, remaining outside places they frequent, and harassing a person's family members. We are talking about a studied and practised syndrome of behaviour where somebody deliberately sets out to cause fear and terror in another citizen and a citizen's family.

Stalking laws are necessary. It is appropriate that a definition of stalking is included in the bill, and this amendment is quite explicit about what is meant by stalking. I urge the Minister to accept this amendment. The proposed amendment will make it an offence to threaten individuals by repeatedly following them about or placing them under surveillance. The honourable member for Port Jackson spoke about the Dallas experience. In Illinois it is considered to be illegal stalking if someone transmits a threat with intent to place that person within reasonable apprehension of death, bodily harm, sexual assault, confrontation or restraint, or if an offender follows a person, other than within the residence of that person, or places a person under surveillance by remaining outside his or her school, workplace, vehicle or home. This sort of thing is happening everywhere and is regarded as an invidious crime. We have an opportunity to adopt this definition within the legislation. I ask all members to do so.

**Mr O'Doherty:** It is already in there.

**Dr MACDONALD:** It is not: the word "stalking" is not there. That word has been adopted throughout the world, and this amendment seeks to encompass all those aspects of offensive behaviour. Of course, many women have to flee from those who stalk them. A report from Queensland states that several Brisbane women have given up their jobs and moved interstate or overseas to avoid men who continually stalk or harass them. Some women have fled the country. Others have abandoned careers. Some have had to employ bodyguards. The domestic violence centre in Queensland receives up to 50 calls a month from women considering moving overseas, many of them to escape stalking.

Also, women seem to be aware of the inevitable and often feel that men will carry out their death threats. Those men should be held in custody until they can prove that they will not and do not have the capacity to carry out their threat. South Australia is also moving in the direction I have mentioned, and I shall refer to that when speaking on a later amendment. Clearly the other States of Australia are moving strongly in that direction. The first amendment by the Australian Labor Party relates to a definition. I signal to the Temporary Chairman that one of my further amendments - and I think it is amendment No. 8 - seeks to add an extra definition to the Government's definition of "intimidation" by inserting the words "making repeated telephone calls". At this stage I seek leave to move my amendment to the ALP amendment.

Page 5727

**The TEMPORARY CHAIRMAN (Mr Rixon):** Order! As I understand it the honourable member is seeking to insert the words "or, (d) making repeated telephone calls".

**Dr MACDONALD:** Yes. I move:

That the amendment of the honourable member for Ashfield be further amended by adding the words:

"; or

(d) making repeated telephone calls."

**Mr WHELAN (Ashfield) [8.23]:** I agree with that. I compliment the Government because, for the first time, it has introduced a provision for a telephone interim order to be made. That is a worthwhile addition to

the protection that will be afforded to women. It is an excellent measure. There is a new definition of the word "order" to include "a telephone interim order". For that reason I support that clause and also the amendment of the honourable member for Manly.

**Mr HARTCHER** (Gosford - Minister for the Environment) [8.24]: The Government is introducing this legislation because it is seriously concerned about the problem of domestic violence in our society. The Government is determined to take whatever reasonable measures can be taken in a democratic and law-abiding society to stamp out domestic violence. That is the fundamental challenge faced by the Government. We have introduced comprehensive legislation that details and addresses the problem. We are not concerned with playing with words but with getting to the heart of the problem. The Government has introduced novel ideas, such as providing for telephone interim orders and making a change to bail procedures. We have aimed at the whole problem of intimidation. The bill does not contain the word "stalking". That was not because the Australian Labor Party beat us to the punch, as suggested by the honourable member for Manly, but because our legal advice was that this would make the meaning imprecise. Imprecise concepts create loopholes.

The honourable member for Manly shakes his head. He is not a lawyer. I spent 17 years as a solicitor and attended the Local Court two days a week. I have taken out, and fought for in court, dozens if not hundreds of domestic violence orders. It is important that everyone knows exactly where they stand and what the law is so that clever people do not try to find a loophole. The real objective is the protection of the victim, not what a clever lawyer will do, or what the words mean and how one plays around with them. The Australian Labor Party can play around with concepts and speak on radio, that is fine, but the honourable member for Manly should not try to secure brownie points; he should seek to secure a solution to the problem. He should be conscious of what the honourable member for Ashfield said when he moved this amendment. He appealed to the United States and Californian experience.

**Mr Whelan:** I referred to it.

**Mr HARTCHER:** Let us not quibble with words. It was an appeal. The honourable member quoted and appealed to the United States authority. It was not so much a United States lawyer he appealed to but to the United States television. The honourable member for Ashfield has seen many movies and programs on television. Many refer to stalking, and he believes that this sort of talk goes down well in the community. He and his leader have been engaged in this sort of talk for some months in discussion on this legislation.

The Government is concerned with the solution, not about how it is expressed on American television. That is essentially what it is all about. The honourable member for Manly said that the Government does not have a broad definition of stalking. I would invite him to look at proposed section 545BA(c). What does "following a person about" mean? As a disjunctive - only one of these needs to be proved - just watching a person or frequenting the vicinity of, or an approach to, a person's place of residence, business or work is sufficient.

**Mr Whelan:** The Minister is referring to the wrong section.

**Mr HARTCHER:** I am talking about your amendment that relates to intimidation. The honourable member for Port Stephens should keep quiet because he does not even have a copy of the bill. However, that never stops him. At question time, I called him the black hole of the Labor Party.

**Ms Nori:** This is too important to be trivialised.

**Mr HARTCHER:** We are having a debate in Committee.

**Ms Nori:** This matter is most important.

**Mr HARTCHER:** Yes, it is always too important to the honourable member to have a proper discussion. All she wants to do is get emotional about the issue. We are arguing about whether the definition is

comprehensive enough to cover the problems that victims of this particular conduct may face, and it is; it is comprehensive and it is clear. Labor Party concepts will only serve to introduce an element of imprecision, will not achieve anything and, in fact, are cumbersome and verbose. The definition proposed by the Government requires that only an offence relating to watching or following about needs to be proved. But the Labor Party's amendment requires that intention also be proved: ". . . with the intention of intimidating the person or in a manner which may reasonably be thought likely . . ." The honourable member for Ashfield should read his proposed amendment because he does not even know what it says.

When a woman goes before a magistrate, she will have to prove that she was being followed and that the follower had the intention of intimidating. Witnesses attempting to establish what was in a person's mind, and having to answer clever questions by lawyers, will find the court intimidating and

Page 5728

confusing. Women in that situation need to be able to resort to a clear and concise definition; not a folksy definition moved by the honourable member for Ashfield merely to look good on a television show. We are debating whether to have a clear or confusing approach.

The magistrate will have to determine the meaning of "manner" and whether it is likely or reasonably thought to be likely? The honourable member for Ashfield should look at his verbiage and ask what he will be achieving. He gave himself away in his speech. Sometimes the speeches of members are informative. The *Hansard* will show that the honourable member for Ashfield said that there was political reason why the Labor Party proposes this amendment. Of course, the political reason is that he has created expectation through the use of that word and now seeks to justify his actions.

The honourable member for Ashfield seeks to extend the clause by adding a paragraph (c) and the honourable member for Manly by adding paragraph (d) to the clause, but that will make matters more difficult, because a new element will be introduced that will not achieve the protection that people want. Under the Government's proposal when someone appears before the court in an emergency situation they will not have to prove what was likely, what was reasonable, or what was the intention. They will merely have to prove that a person has been following them, watching them, harassing them and molesting them. If the honourable member for Ashfield claims to be seeking to protect the rights of victims in these situations, he should have the courage and honesty to look at this amendment - and I invite the honourable member for Manly to look carefully at the proposed amendment - to see if it is achieving its objective. He should forget about party politics.

Let us look at some of the other points we would have to dwell upon if the amendment of the honourable member for Ashfield is accepted. The court allows orders to be made even where there is no actual or threatened violence. That is important. There need not be any actual or threatened violence; under the existing structure there need only be a reasonable fear of violence. The Government has sought to ensure that its definition of intimidation is wide and comprehensive. We have also sought to extend it to include threatened or actual damage to property and to the family or those who are living in a domestic relationship with the victim, whether a child, parent or someone in a close domestic relationship, but not to include a range of people such as boarders or employees. The definition is comprehensive and clear. The Government does not support the amendment moved by the honourable member for Ashfield or added to by the honourable member for Manly. The Government will oppose the amendment in the interests of the people that the law is designed to protect.

**Dr Macdonald:** You are not genuine.

**Mr HARTCHER:** We are genuine. The Government in introducing this bill will be helping people. But the honourable member for Ashfield seeks to grandstand with words taken from American television. The proposed amendment by the honourable member for Ashfield referring to an order prohibiting stalking says ". . . any social or leisure activity". Shopping would not come within this definition because it is neither a social nor leisure activity. However, it is a necessary activity that people undertake to obtain the necessities of life.

**Mr Whelan:** I will accept the amendment referring to shopping.



**Mr HARTCHER:** You accept that your own definition has a clear flaw.

**Mr Whelan:** No, just to make you happy.

**Mr HARTCHER:** You are not doing it to make me happy; you are acknowledging that your definition is flawed. Does it take a smart lawyer to point out that shopping is not covered by that definition?

**Dr Macdonald:** You are trivialising the definition.

**Mr HARTCHER:** I am not trivialising it. People go shopping often, including victims of these offences. The amendment of the honourable member for Ashfield is not being trivialised; it is being exposed for the fraud that it is. It is an attempt to simply import the word "stalking", which he and the Labor Party think strikes a common chord with the public because much of this sort of activity is seen on television. The amendment will achieve nothing for the people that this legislation is designed to protect. The amendment will introduce an element of imprecision, which I have explained very carefully, into the definition which a clever lawyer will be able to exploit in court. It will not make things easy for a frightened woman who is seeking protection in a court.

The Government does not support the amendment of the honourable member for Ashfield. The Government's legislation is designed to protect the potential victim and those with whom the potential victim lives in a domestic relationship. It cannot go further than that, otherwise we would be changing the whole basis or thrust of a law designed to prevent domestic violence. The Government is not attempting to change the entire structure of criminal law; it is trying to protect women who, as the honourable member for Port Jackson said, are largely in situations of actual, potential, feared or apprehended domestic violence.

**Mr WHELAN (Ashfield) [8.37]:** I wonder how the Minister could have defended the people of Gosford for 17 years. I do not understand why they did not go to gaol. I wish to reply to the most inane comment about American television. I have read a lot about domestic violence in the past 12 months or more. Like the Minister for the Environment, I have

Page 5729

had a great deal of experience as a legal practitioner. I was a court solicitor at a variety of courts. It was during that time that I became aware of the terrible problems and plights women experienced under sections 11 and 12 of the Maintenance Act. I did not get my views from American television; I got them from a document that the Minister should read. It is titled "The Justice System's Response to Domestic Assault Cases. A Guide to Policy Development. Domestic Abuse Intervention Project. Duluth, Minnesota". That was the document from which I quoted last night. No wonder women have terrible problems when we hear a Minister saying that my amendment will not cover women shoppers. Part 15A of the Crimes Act deals with apprehended violence. That does not include any definition of intimidation. That is what this amendment will do.

**Mr Phillips:** That is what we are putting in.

**Mr WHELAN:** You are putting it in the Crimes Act, which is not related to apprehended violence or domestic violence. How many times does the Minister have to be told? He said that he read my speech; he should have read it properly. That definition is not in the bill and that is why I have sought to have it included. The second point that must be made is that the definition of stalking is in addition to the definition that I propose to move in regard to intimidation. The Minister used the example of a woman being followed to a shopping centre. If she is followed two or three times, she comes within a variety of areas of protection from the courts. Is not following harassment? Clearly it is. Does that woman not have an apprehension of fear? Clearly she does. Does she not fear violence? Yes, clearly she does. Does she not feel damage to her person? Yes. That is the existing law. She would qualify for protection under the definition of intimidation.

The Minister was not listening when I told him that the definition of intimidation is new in part 15A. For the first time it will give women the opportunity to have an expanded definition of intimidation and a new

definition of stalking, which everyone in the whole of New South Wales understands - except this dopey Minister. It is an embarrassment for the Minister to say that the law is deficient. My amendment will extend the existing Crimes Act provisions. It is an embarrassment for the Minister to suggest that the definition is deficient and will not protect women. What a load of codswallop! I am embarrassed that a Minister of the Crown should pretend in this Chamber to know something about domestic violence law when it is clear that he knows nothing.

The Minister should realise that the definition of stalking is in addition to the definition of intimidation. The woman going to the shopping centre, in the illustration the Minister gave, would be covered by the existing provisions of the law. The reason I said that shopping should be included is that the definition should be made simple. The Minister is the sort of simpleton who, if appointed to the bench, would say that if that definition is not included in the Act, a woman who was stalked while going shopping would not be entitled to protection. This law should be simplified. Why does the Minister think I included the definitions in the section dealing with apprehended violence and not in the Crimes Act?

The Minister has not given much thought to the legislation. Intimidation in regard to domestic violence is not even defined in the Crimes Act. I keep telling the Minister about that. The definition comes under sections in the Crimes Act dealing with intimidation, and guess what it follows? Bogus advertisements. The next definition in that Act is joining an unlawful assembly. The question of intimidation in the Crimes Act relates to trade union intimidation. It does not relate to people who belt their wives or girlfriends. Why can the Minister not understand that? He should do some research. He is an embarrassment to all of us.

**Dr MACDONALD (Manly) [8.43]:** The Minister for the Environment appeared to indicate to the Committee that stalking is not an accepted or understood term, other than on television. This is a bad start to deliberations at the Committee stage of the bill. If that is the way the Committee is to proceed, we will be here for a long time. Let me read from an editorial in the South Australian *Advertiser* of 13th October:

Stalking or aggravated harassment is an unpleasant fact of late twentieth century life. It is not new. It has taken on nasty new dimensions. That is to consider it in the abstract. For the victim it is terrifying. To describe it as intimidation, while technically correct, is to diminish the fear and helplessness felt by those subjected to it.

Stalking, in other words, is an important noun. The editorial proceeded:

The State Government is to be commended on the proposed legislation to specify it as an offence: stalking within the criminal law.

For the purposes of the Committee I shall quote from the 1993 South Australian bill for an Act to amend the Criminal Law (Consolidation) Act of 1935. Clause 3 says:

Stalking. Unlawful stalking (19AA(1)(a)). A person stalks another if . . .

It then lists a number of things. To suggest that stalking is not an accepted term is wrong. To say that the honourable member for Ashfield has been watching too much American television is to trivialise the issue and is unfortunate. When one speaks to the people in the Domestic Violence Advocacy Service, who deal with this problem day after day, one is told that stalking is a concept that is understood by lawyers, magistrates and victims. The definition should be included in the bill. Clearly that will not be out of line with what is happening in other States and countries. I ask the Minister to reconsider his attitude.

Page 5730

**Question - That the amendment of the amendment be agreed to - put.**

**The Committee divided.**

### Ayes, 41

Ms Allan	Mr McManus
Mr Amery	Mr Markham
Mr Anderson	Mr Martin
Mr A. S. Aquilina	Mr Mills
Mr J. J. Aquilina	Ms Moore
Mr Clough	Mr Moss
Mr Crittenden	Mr Nagle
Mr Doyle	Mr Neilly
Mr Gaudry	Mr Newman
Mr Gibson	Ms Nori
Mrs Grusovin	Mr E. T. Page
Mr Hatton	Mr Price
Mr Hunter	Dr Refshauge
Mr Iemma	Mr Rogan
Mr Irwin	Mr Scully
Mr Knight	Mr Sullivan
Mr Knowles	Mr Whelan
Mr Langton	Mr Yeadon
Mrs Lo Po'	<i>Tellers,</i>
Mr McBride	Mr Beckroge
Dr Macdonald	Mr Davoren

### Noes, 39

Mr Armstrong	Mr W. T. J. Murray
Mr Beck	Mr O'Doherty
Mr Blackmore	Mr D. L. Page
Mr Causley	Mr Petch
Mr Chappell	Mr Phillips
Mr Cochran	Mr Photios
Mrs Cohen	Mr Richardson
Mr Collins	Mr Rixon
Mr Cruickshank	Mr Schipp
Mr Fraser	Mr Schultz
Mr Glachan	Mr Small
Mr Griffiths	Mr Smiles
Mr Hartcher	Mr Smith
Mr Humpherson	Mr Souris
Dr Kernohan	Mr West
Mr Kinross	Mr Windsor
Mr Longley	Mr Zammit
Ms Machin	<i>Tellers,</i>
Mr Merton	Mr Jeffery
Mr Morris	Mr Kerr

### Pairs

Mr Bowman	Mr Baird
Mr Carr	Mrs Chikarovski
Mr Face	Mr Downy
Mr Harrison	Mr Fahey
Mr J. H. Murray	Mr Hazzard

Mr Rumble	Mr Peacocke
Mr Shedden	Mr Rozzoli
Mr Thompson	Mr Tink
Mr Ziolkowski	Mr Yabsley

**Question so resolved in the affirmative.**

**Amendment of amendment agreed to.**

**Amendment as amended agreed to.**

**Mr WHELAN** (Ashfield) [8.59]: I move amendment No. 2 standing in my name:

Page 3, Schedule 1(1). After line 6, insert:

(e) At the end of section 562A, insert:

(2) For the purpose of determining whether a person's conduct amounts to intimidation, a court is to have particular regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour and the effect this would be likely to have on the way the person alleged to have been intimidated would view the behaviour of the person.

For the edification of the Minister for the Environment I say once again that these amendments relate to part 15A of the Crimes Act, which deals with apprehended violence orders. For the Minister's benefit, I inform him again that I wish to insert a new subsection in section 562A of the Crimes Act. My amendment will enable a court, when determining intimidatory conduct, to have regard to the fact that a domestic violence offence is likely to occur or is occurring. There is no reason why the Government should not support this amendment. But if the Government is opposed to it I will expand on it later. The amendment is self-explanatory. I do not believe that the Government, having been defeated on the amendment to include the definition of stalking, would want to divide. My amendment will make it easier for courts to have regard to what definitions in the legislation are to be included. As I have said, my amendment will be inserted at the end of section 562A of the Act. I commend that amendment.

**Mr HARTCHER** (Gosford - Minister for the Environment) [9.1]: Despite the spirited interpretation of the law by the honourable member for Ashfield, the Government will not support this amendment, and for very good reasons. I invite honourable members to look at the amendment which the Opposition proposes to insert in the Act. The Opposition is saying that when a person goes to court to get an order the court, for the purpose of determining whether a person's conduct amounts to intimidation, now has to have particular regard to any pattern of violence. The court cannot simply determine whether a victim was followed around, harassed or molested.

**Mr Whelan:** Untrue.

**Mr HARTCHER:** The honourable member for Ashfield can say "untrue" as much as he likes, but he should read the words in his own amendment. I will not get as excited and as flushed as the honourable member for Ashfield. I will not shout, scream and lean over the desk, but I point out to him, as one lawyer to another, that his amendment will add the words "For the purpose of determining whether a person's conduct amounts to intimidation". So the court would have to look at not just the conduct that is complained about, the following around, the harassment, the molesting or the frequent phone calls; it has to have particular regard to any pattern of violence. The words "particular regard" are contained in the honourable member's amendment. The amendment does not state that the court can take

Page 5731

into account, may examine, may be persuaded by, or may be influenced if there is not enough evidence. It states that the court is to have particular regard to any pattern of violence, especially violence constituting a domestic violence offence.

So a court has to take a further step forward and have particular regard to previous conduct, if there is any. In addition, the court has to have particular regard to the effect this would be likely to have. It then has to look at the person. The Opposition's amendment introduces a new subjective test as to whether this is likely. Honourable members should look at the words contained in the amendment. The Crimes Act sets out a clear, precise system. The Opposition intends to introduce further concepts and further tests which a victim will have to comply with. What will a woman achieve when she goes to court and complains that she has been receiving harassing phone calls? The judge might say, "I have to take into account whether there was intimidation because we are looking at whether a person has been intimidated and whether I will issue an apprehended violence order. I have to have particular regard to any pattern of violence and I have to take into account the effect this would be likely to have on the way the person alleged to have been intimidated would view the behaviour of the offender".

The Government is saying that there should be a clear, objective test, which is what is laid down in the legislation. The Opposition's amendment differs from that. The court is required to establish a victim's fear, based on the evidence before it. A court is able, under present law, to take into account whether the fear is reasonable. But the Opposition's amendment will require a court to compound this with a further test. This may well be counterproductive to the victim as it could place two further hurdles in the victim's path. The honourable member for Ashfield is good at putting words together but, as I have said, this amendment will place two further hurdles in the victim's path. The court will have to look at the victim's fear and at the conduct of the person about whom she or he complains. It will have to determine the best and most appropriate course of action to take to protect the victim.

It is not as though the honourable member for Ashfield is introducing legislation to protect victims of domestic violence; the Government has already done that. It has introduced a complete code to protect victims of domestic violence. The honourable member for Ashfield is simply trying to score political points by adding sections to the Act. The Opposition may well be successful; it might receive support for its amendments. But, at the end of the day, many more concepts will have been introduced. There will be more things in the Act for lawyers to argue about in court.

The honourable member for Ashfield has taken what was designed to be a simple, clear process for victims to obtain orders from magistrates to protect themselves from assailants, and he proposes to add a subsection which I believe could well turn out to be counterproductive and a further test. The amendment states, "a court is to have particular regard". What else is the court supposed to be doing? Lawyers will say, "Your Worship, you must have particular regard to any pattern of violence. My client has no pattern of violence against his wife. There are no convictions against him and he denies the allegations that his wife is making. So what are you having regard to, Your Worship?" They might well say, "Your Worship, you have to take into account the effect this would be likely to have and no evidence has been given to you as to what the effect will be".

The honourable member for Ashfield may now use the weapon of sarcasm that he used before. We can all do that. We can all stand up and say, "I know more than you, and you are a silly little boy". That is not an argument. I have given the honourable member an argument. If he does not like it he can produce a counterargument. We are trying to develop principles in Committee. The honourable member for Ashfield should not hurl insults because sooner or later we will all reach that stage. Until now we have not done that. Earlier, when the honourable member for Ashfield was challenged in relation to his first amendment he got excited and threw insults around the Chamber. The Government will not do that. We want to get through legislation tonight which is designed to protect victims of domestic violence. We must consider these amendments in a cool and rational fashion and determine whether they will enhance the protection of victims in such a way that a police State is not created. We want the ordinary norms of democracy and the rules of law preserved.

**Dr Macdonald:** It is too tough.

**Mr HARTCHER:** It is not a question of whether it is too tough or too hard; it is a question of whether

we achieve our objective of controlling assailants in the way civilised society expects us to. The Government wants the assailants out of the system, and it wants a legal system that does that quickly. The honourable member for Port Jackson said that frequently by the time the police are called it is too late anyway because by that stage the victim has been battered and bashed. We want quick responses; we do not want long arguments in court about whether all the criteria have been exhaustively analysed by the court. We want simple, clear orders so that people can be protected from domestic violence, protected from those who assail them.

**Mr WHELAN** (Ashfield) [9.10]: I do not believe that I get nasty. I could get very nasty about many incidents, and I am happy to swap blows with the Minister at any time on this issue of the stupidity of the Attorney General suggesting that women's problems are resolved by the Inclosed Lands Act. As I said last night, that Act deals with goats and closing gates and doors. How that will protect women I will never know. I could talk about other things as well. The Minister asked a simple question. My answer is that my amendments are complementary. They do not diminish the present law, and no matter how many hurdles or obstacles the Minister has in mind, the

Page 5732

magistrate will decide if a person is harassed and if a person before the court is guilty of intimidation. My definition of intimidation reads causing reasonable apprehension of injury to a person, or violence, or conduct amounting to harassment or molestation. The court will decide that there is reasonable apprehension of injury or violence and will then determine that the order will be made. Section 562B(1) of the Crimes Act reads:

A court may, on complaint, make an apprehended violence order if it is satisfied on the balance of probabilities that a person has reasonable grounds to fear and in fact fears:

- (a) the commission by another person of a personal violence offence against the person; or
- (b) the engagement of another person in conduct . . .

That is the criteria upon which the apprehended violence order will be given. It provides the definition passed by the Parliament of reasonable apprehension of injury or violence to the person. Apprehended violence not only relates to domestic violence - which is a misnomer - it relates also to all conduct between parties; it is the apprehension of violence by a party. There does not have to be a domestic relationship, a marital relationship or a de facto relationship. We are talking about the reasonable apprehension of a person. For the first time the courts will have regard to the fact that a domestic situation exists. This is unique; it is the first time the courts will have a responsibility to determine domestic circumstances.

The court has powers already under section 562B to grant an apprehended violence order; there does not have to be a relationship. The amendment ensures that the magistrate understands that under the definition of intimidation, reasonable apprehension of violence or fear, he is duty bound to consider the fact that it is a domestic violence situation, consider the person's behaviour and the effect it is likely to have on the person who is alleged to have been intimidated and that person's view of the perpetrator's behaviour. The Minister calls these hurdles, but the magistrate will determine that a person who has been intimidated or stalked can apply to the court. The Minister fails to understand that the definition of stalking is supplementary, that it is complementary to the existing definition.

**Dr MACDONALD** (Manly) [9.14]: The Domestic Violence Advocacy Service has told me of its concern that the amendment may create a hurdle to the court if it has to pay particular regard to a previous pattern of violence. It may be that an intimidation conviction or determination cannot be obtained without a prior history of violence. There may be many incidents where intimidation needs to be determined but there is no pattern of violence. The Minister is concerned about that, and his concern is consistent with the views of workers in the field. I should like the Minister and the honourable member for Ashfield to address that.

**Mr WHELAN** (Ashfield) [9.15]: I might have the solution. I understand what has been said, but I disagree. For clarification perhaps the amendment should read, "For the purposes of determining whether a person's conduct amounts to intimidation, a court may have regard to any pattern of violence", so that the words

"is to" and the word "particular" are to be deleted. That would satisfy the complaints about the alleged test and would give the court the authority to determine that if a person's conduct is intimidatory, the court will have regard to the fact that a pattern of violence exists in domestic violence circumstances. That might allay the fears of the honourable member for Manly. I seek leave to amend my amendment. By leave, I move:

That the amendment be amended by omitting the words "is to" and "particular" and inserting in lieu of the words "is to" the word "may".

**Mr HARTCHER** (Gosford - Minister for the Environment) [9.17]: The Government would agree to this section given the amendment moved by the honourable member for Ashfield, because it overcomes the first problem that I pointed out, which, as the honourable member for Manly states, is borne out by the experience of workers in the field. I was trying to make it clear that the Government does not want to impose an extra test. The Government does not agree to what it also regards as a further test and the effect it would be likely to have on the person alleged to have committed the offence. The effect should not have to be proved or argued; the court should be able to consider the pattern of violence. There may not be a pattern of violence, because there is always a first time for people to go to court, and perhaps only one series of incidents may be able to be proved.

There could be a number of incidents, but the woman involved may not have kept a record of them; she may have tried to forget them and live with her relationship or her marriage. She may have put them to one side, cannot remember them and become easily confused about the circumstances. If the honourable member for Ashfield is prepared to delete the words in line 4, "and the effect this would be likely to have on the way the person is alleged to have been intimidated would view the behaviour of the person", so there is no test on the person but simply the power of the court to consider any pattern of violence, the Government will accept the amendment. Our aim is to have simple, clear procedures.

**Dr MACDONALD** (Manly) [9.18]: We may be able to get the best of both worlds. The court may have regard to the pattern of violence, which invites the court to consider it without it being a test or hurdle. I refer to the words of the Premier in his second reading speech, to which I referred last night. He said:

Relevant studies also indicate that the best indicator of future violence is a past history of violence.

This retrospective concept of considering patterns is important. It gets to the very heart of the domestic violence issue, that is, that it is an obsessive, repetitive condition, often not necessarily of public risk but focused on one individual. Because it is repetitive behaviour, there is likely to be a pattern,

Page 5733

and that pattern should be considered but not necessarily exclusive of whether intimidation should be determined.

**Mr WHELAN** (Ashfield) [9.19]: I think the Committee is splitting hairs about this, but half an apple is better than no apple. Although I am of the view that this provision will detract from the court's right to determine how the victim is affected, it gives the court an opportunity to look subjectively at how the victim has been intimidated. However, I acknowledge reality and seek leave to delete all words after "behaviour" to the end of the sentence. By leave, I move:

That the amendment be further amended by omitting all words after the word "behaviour".

**Amendments of amendment agreed to.**

**Amendment as amended agreed to.**

**Mr WHELAN** (Ashfield) [9.21]: I move:

Page 4, Schedule 1(3). After line 20, insert:

**Order prohibits stalking, intimidation etc.**

562BC. Every order (including an order made before the commencement of this section) is taken to specify that the defendant is prohibited from doing any of the following:

- (a) engaging in conduct that intimidates the protected person or a member of his or her family or household;
- (b) stalking the protected person;
- (c) following the person about or watching, or frequenting the vicinity of, or an approach to, the person's place of residence, business or work, or any place that the person frequents for the purposes of any social or leisure activity.

This amendment defines with certainty what the order relating to the prohibition of stalking or intimidation may be. There is an aspect of retrospectivity about the amendment. If the Government or honourable members are not of the view that it should remain, I would be pleased to delete it. I am not a great believer in retrospectivity for any basic laws. If that reference were deleted, the clause would be prospective.

**Mr Hartcher:** Is the honourable member removing that reference?

**Mr WHELAN:** Yes. I move:

That the amendment be amended by omitting the words "(including an order made before the commencement of this section)".

**Mr HARTCHER** (Gosford - Minister for the Environment) [9.25]: The Government was concerned about the retrospective nature of the amendment, and I am pleased that the honourable member for Ashfield has agreed to withdraw that reference. Notwithstanding that, the Government does not agree to the clause and takes that stance for fairly simple and clear reasons. Orders need to be tailored to particular circumstances, and that is the role of the courts. The courts are there to adjudge concerns - in this case disputes between parties. It is up to a magistrate to make an appropriate order in the circumstances. It may be that certain orders are inappropriate in certain circumstances.

Section 562C of the Crimes Act already provides the court with a wide discretion to impose prohibitions or restrictions in apprehended violence matters, as may appear necessary or desirable to the court. As the honourable member said, this legislation is complementary. Section 562C gives the court wide power to impose conditions. Once the court's flexibility is taken away, so that apprehended violence orders include this provision set out in the amendment, there will be situations of inappropriate circumstances, but the courts will be tied to complying with this provision. There are all sorts of circumstances that lead to apprehended violence orders.

An example that has been pointed out to me is one with which I am sure the honourable member for South Coast would be familiar, that of orders imposed in small country towns. The type of conduct that might be clearly and easily identified in a big city as constituting following about or watching might be unavoidable in a very small community. Of course, the object of the exercise is to keep two people away from each other, irrespective of whether they share a domestic situation. One of them may go to court to obtain an order that X keep away from Y, but that does not mean that X and Y will not have contact within that community. The courts must have the appropriate flexibility, and it is for that reason that the Government proposes the amendment.

The Government will not tell the courts that this provision should be included in every order, even though it would be appropriate to be included in some orders. I have given the House an example of what might occur in a small country town. It may be that minor breaches and technical breaches would occur. The smaller the community the greater the risk that such breaches will occur. These breaches will give rise to complaints and will also affect the provision of police resources. It is necessary that magistrates have full power to include



what they consider to be necessary in these orders. The Government does not believe that any interest will be served by including such provisions automatically.

The amendment includes the words "a member of his or her family or household". It may be that members of the family will not want such an order taken out. There is no reason to automatically include the entire family. If that were to be included, orders would be made against people, even though no complaint had been made about their conduct. Obviously in the case of Andrea Patrick her parents would have wanted the protection of the law, and so would anyone who was living with her. Another example is the sad case of the woman at Lane Cove whose fiancé was murdered while he was trying to protect her from the man who was continually harassing her. They are cases where others should be entitled to the protection of such an order. They are entitled to obtain such an order but only where there is complaint or concern about the conduct.

We are not dealing solely with domestic violence; we are dealing with apprehended violence, where that concern may not arise. Two women may

Page 5734

not like each other and one may have committed violence upon the other. That woman may seek an apprehended violence order against the other woman, but the male members of the household may not be concerned about any threat of violence. Therefore, there is no reason why they should necessarily be included in the order. Orders should not be made about the conduct of a person unless there are reasonable and proper grounds for making the order.

We live in a free and democratic society. If someone has a concern about X, and seeks an order against X, that should not be widened to an unnecessarily wide net. The Government clearly agrees that cases arise where parents, offspring, children or other members of the household need protection, but that is already covered. To have the measure as wide as that proposed will introduce an element in the law that is not only unnecessary but highly undesirable. For the reason that in many cases it would be inapplicable and, of course, because it is far too wide, the Government opposes the amendment.

The proposed amendment also fails to include a definition of a member of the family. That is uncertain because a person could be found guilty of breaching an order when he did not even know that person was a member of the family. I do not know every relative of the honourable member for Ashfield. If I have a dispute with X, and X takes out an apprehended violence order against me, that should apply only to me. I should not then be hauled into court some time later and accused of violating that order because I came too close to or followed the brother or brother-in-law of X. "Family" is not defined, and though I did not know X's brother or brother-in-law, I am caught under the terms of the particular order. The amendment is opposed because it is inapplicable in many cases. It imposes a requirement on people in relation to other people where there is no evidence that there has been cause for complaint. The measure is too wide, and it is excessive.

**Mr WHELAN** (Ashfield) [9.33]: I listened with interest to the Minister and wish to draw to his attention the fact that there is a provision in the legislation for a consent order, that is, with the consent of the parties. The consent order can be made between the parties to the matter before the court. The court may make an apprehended violence order without being satisfied about the matters referred to in section 562B, which states, in part:

... if the complainant and the defendant have consented to the order being made.

(2) Such an order may be made whether or not the defendant admits to any or all of the particulars of the complaint.

It is not applicable in those circumstances, whereas the consent order would be. My problem relates to circumstances where an order is granted in favour of a woman and the male follows the children home from school or threatens them. That is the normal pattern. After the court makes an order against the male in the case, the next ordinary step is intimidatory behaviour or other behaviour that amounts to intimidation or harassment. It may not be intimidation of the subject of the order but the brother, sister or children. For that reason this deeming provision that there be an order prohibiting stalking seems appropriate. That is the reason

for the prohibition. If the Minister wishes to leave that in but will provide some discretionary power, perhaps I would agree to that. I was, in fact, working on that aspect.

Is the Minister able to tell me how this automatic prohibition can accommodate the circumstances whereby there is secondary stalking or intimidation? They are the real problems, and that is what this amendment seeks to address. I have no doubt that is the only way to provide protection for the families, and others. If a family member does not want the order, that member can seek the guidance of the magistrate and the court can take cognisance of that fact. I do not believe the Government is right in throwing out the opportunity to protect people who will ordinarily become, a little later on, victims of violence.

**Dr MACDONALD** (Manly) [9.36]: I can see an argument for inserting at the end of paragraph (a), "(if appropriate)". I would be interested in the response of the honourable member for Ashfield and the Minister to that suggestion. Some clarification is needed. I understand that this amendment applies to interim orders, but all interim orders would be subject to this particular provision. Therefore, that means there may be a problem with paragraph (c). If that is the case, I have been advised that if it is to apply to every interim order, we should eliminate paragraph (c) and add "(if appropriate)" at the end of paragraph (a).

**Mr HARTCHER** (Gosford - Minister for the Environment) [9.37]: I shall reply first to the honourable member for Ashfield. The Government does not agree because section 562C of the Crimes Act already provides for the fact that where an order is made, the court has the power to add additional people to that order. Accordingly, where a woman is involved and she is a mother, she is quite entitled, under section 562C, to have the children added to the order. There is no need to introduce new measures. This is an amendment to add to section 562C. It inserts the clause into section 562BC, but section 562C already covers it under part 15A. It protects a family and enables the court to make that order for the protection of the family, which is especially the concern of many women, their parents - as in the case of Mrs Patrick - or their children.

The court already has that power and it is not necessary under that section for the children to have any fear. It is only necessary for the mother to fear for her children in order for her to get protection. That measure is already there. The introduction of new sections that potentially conflict with each other or seek to cover the same area causes confusion and ineffective administration of the law. There is always

Page 5735

that risk when bills are amended. People say this is a good idea and that is a good idea. However, this is an amendment to a principal Act, and the principal Act already covers that problem. I urge honourable members to reconsider the matter. The honourable member for Manly said that he did not agree with paragraph (c) but is of the view that paragraphs (a) and (b) have a part to play.

I am advised that section 562C(4) is the relevant section of the Crimes Act. It states, "A complaint for an order may be made by or on behalf of more than one person". Adding further sections, unless they are really necessary, will only create confusion. A woman is able to seek an order on behalf of herself, her parents or her children. The grounds for the making of the order need only be the fear of a person. Mrs Patrick's parents were not in any danger; they wanted to protect their daughter. If the daughter held a fear for her parents, that would be sufficient to include the parents in the order. A father may love his children but, for whatever tragic reason, he may be tempted to use them as weapons in his war with his wife or de facto wife.

Under the relevant section a mother's fear for the safety of her children is sufficient. Section 562C(4) does not restrict the order to mothers or fathers or children. It gives the court a general discretionary power. The circumstances or relationships of persons may not be known. People may have a close relationship with someone they regard as an uncle or aunt but who is not a blood relative. They are the people who, though they are not family, may need the protection of an order. The court is the important place for these orders to be made, so long as it has the necessary power. The Government does not want the courts tied down with unnecessary matters; it wants to ensure that the appropriate mechanism is at the court's disposal to protect victims of violence and their loved ones.

**Mr WHELAN** (Ashfield) [9.43]: I repeat that my amendment strengthens the current provisions of the

Act. I draw the Minister's attention to the words he read from section 562C: "A complaint for an order may be made by or on behalf of more than one person". My amendment covers the protected person or a member of his or her family or household. The Minister says that there may be circumstances where a member of the household may not want protection. I acknowledge there could be such circumstances and for that reason I am happy if the Committee agrees to include the words "if agreed to" or "if consented to".

Police are the only ones who can initiate apprehended violence orders for children. Women victims cannot obtain these orders. The provision that "A complaint for an order may be made by or on behalf of more than one person" is too vague. My amendment would provide that anyone within the protected person's family or household is automatically entitled to the benefit of the order that prohibits intimidation by stalking. The Minister says my definition is too tough because the people who will be caught unwillingly or unnecessarily are the members of the family or household, if there is agreement.

People will be subject to a court order which is to the effect that the person involved in the aggressive conduct is prohibited from doing any of the following things: engaging in conduct that intimidates the protected person or a member of his or her family or household, or stalking the protected person. My amendments state that when the court grants an apprehended violence order, it will include anyone in the person's family. My amendment simply asks the court, when it grants the apprehended violence order to the single person who has applied, to simply extend that order so that everyone in the immediate family is covered from intimidation or stalking by the aggressor.

The reason I included that amendment is that I felt the Government's bill presented a shortcoming in protection. A variety of instances come to mind. Young children of the protected person being intimidated coming home from school is an example. Under the Government's definition, the children are not given automatic protection. The aggressive person may decide that he or she will intimidate the children on their way home from school. As a result, the wife and children will have to return to the court to obtain yet another order. The purpose of my amendment is to ensure that the children are protected in circumstances such as the example I outlined by virtue of the court granting the order of prohibition on stalking intimidation by the aggressor.

The aggressors in the community must be stopped from intimidating and finding other methods by which they can intimidate or threaten members of the family. For those reasons I urge the Government to acknowledge that my amendment is a better provision. I have just received advice in relation to proposed section 562BC that it may interfere in the case where there is a working but strained continuing domestic relationship. For that reason, I seek the Committee's concurrence to remove that interference. In essence, in relation to proposed section 562BC I seek to delete the retrospectivity provision. After paragraph (a) I ask that the words be inserted "if agreed" and that paragraph (c) be deleted.

**Mr HARTCHER** (Gosford - Minister for the Environment) [9.48]: The honourable member for Ashfield has acknowledged that some of the matters he has put forward need correcting, and I inform the House that one of the matters I have put forward also needs correction. I was under a misapprehension. I thought that the mother could obtain an order that covered the children. The honourable member for Ashfield is quite correct: the order regarding children must be obtained by a police officer on behalf of the mother, but police officers are instructed nonetheless to assist in the circumstances. Notwithstanding the correction made by the honourable member for Ashfield, the Government does not accept the amendment to the clause. The clause imports into orders a new set of rules. It speaks about engaging in conduct that intimidates the protected person or that person's relations or household.

Page 5736

Many cases of domestic violence do not involve only young mothers and children or young women. They concern people of various ages. For example, a husband and wife in their fifties or sixties may have children who have grown up and left home. The wife seeks and obtains an order against her husband. The children are not worried by their father; they live away from home, not with their father, and may still have a good and harmonious relationship with him. There is no reason for their being included in such an order. The tendency

is to focus on specific cases. The standard image of violence in these cases is of a mother with young children. Tragically that is commonplace, but they are not the only cases in which this type of order is sought. They are sought in many different circumstances. It often happens that late in life a husband and wife, or a couple in a de facto relationship, separate; the woman gets an order, but the children may still have a harmonious relationship with the man. They should not be included in any such order. Why would anyone want them to be included automatically?

**Mr Whelan:** To give them protection.

**Mr HARTCHER:** Why have that protection?

**Mr Whelan:** Because they do not want to get flogged.

**Mr HARTCHER:** If they are grown up and have left home? I am not speaking about little children. The honourable member's amendment will import into orders standards that will apply across-the-board. They will be inflexible and rigid. If those children have a problem with their father, and are living away from home -

**Mr Whelan:** I have the answer.

**Mr HARTCHER:** I am prepared to listen.

**Mr Whelan:** After 562BC insert the words "Unless otherwise ordered" and delete the words, as we have already agreed.

**Mr HARTCHER:** It will then read "Unless otherwise ordered, every order is taken to specify that the defendant is prohibited from doing any of the following:".

**Amendments, by leave, withdrawn.**

**Mr WHELAN (Ashfield) [9.54]:** The amendment that I now move is:

Page 4, Schedule 1(3). After line 20, insert:

**Order prohibits stalking, intimidation etc.**

562BC. Unless otherwise ordered, every order is taken to specify that the defendant is prohibited from doing any of the following:

- (a) engaging in conduct that intimidates the protected person or a member of his or her family or household;
- (b) stalking the protected person;

**Mr HARTCHER (Gosford - Minister for the Environment) [9.54]:** The Government accepts the amendment as amended by the honourable member for Ashfield.

**Amendment agreed to.**

**Mr WHELAN (Ashfield) [9.54]:** I move amendment No. 5 standing in my name:

Page 4, Schedule 1(3). Before line 21, insert:

**Order can also protect family etc.**

562BD. The power of a court under this Part to make an order for the protection of a person extends to authorise the making of an order for the protection of a person who is a member of the family or household of the person for whose protection the order was applied

for.

The Committee has had a reasonable discussion on the proposed amendment.

**Mr HARTCHER** (Gosford - Minister for the Environment) [9.55]: The amendment is agreed to.

**Amendment agreed to.**

**Dr MACDONALD** (Manly) [9.55]: I move amendment No. 1 standing in my name:

Page 5, Schedule 1(7) (proposed section 562H(2)(b)), lines 31-33. Omit all words on those lines.

The amendment seeks to omit paragraph (b), which reads:

(b) the person against whom the order is sought to be made is not arrested for an alleged offence in connection with the incident; and

This is an important amendment. The bill provides that the police may apply by telephone for an interim apprehended violence order. That will happen at the scene of an incident and will give immediate protection to the person in fear of violence and in that event the defendant is not arrested for any offence. The paragraph of the bill provides that if a defendant is arrested for an offence related to the incident, an application by telephone for an interim order may not be made, because a bail condition would be imposed to protect the person. The amendment will enable police to apply for an interim order by telephone even if the defendant is arrested. The question is whether it is better for a person to be protected by a telephone interim order or by conditions that apply to bail. I argue that the amendment will give much more strength to this provision by having the conditions of an interim order apply, rather than bail conditions.

I give the Committee an example that happened in my electorate, to highlight the difference between bail conditions and domestic violence order conditions. A person appealed against a domestic violence order and was therefore subject only to bail conditions. He managed to get conditions of bail to apply rather than the conditions of the domestic violence order. I am paraphrasing a long account of the incident that I received. This person threatened his children and forced them to reveal where their mother was living. He hid overnight in the laundry, tampered with her car, and broke into her home. The police were notified, but because only bail conditions

Page 5737

were set they could not arrest him. The heart of my amendment is that if someone has been arrested, the police will have an opportunity to apply by telephone for an interim order that will allow the interim conditions to apply, rather than the bail conditions. I ask the Minister: why is this exception available for someone who has been arrested?

**Mr HARTCHER** (Gosford - Minister for the Environment) [10.0]: The Government does not agree to the amendment. At the time of the case mentioned by the honourable member for Manly, the Bail Act had not been amended. The honourable member for Manly will appreciate that cognate with this measure, the Bail Act will also be amended. That casts a whole different perspective on what will happen in future. This is a package. The bill will empower justices to give interim telephone orders for the protection of victims where no arrest has been made, where the offender has assaulted his wife and run off. If the police deem the situation to be dangerous, they can apply for an interim order over the telephone. That is one situation. The other situation is where the police can arrest the person. Once the person is in custody, the Bail Act should apply. The Bail Act allows for conditional bail. It allows for bail to be granted unconditionally, refused, or granted conditionally. The Bail Act is being amended so that in cases like this, appropriate conditions can be imposed. That satisfies the concern expressed by the honourable member for Manly.

**Ms Nori:** No it does not. The amendment to the Bail Act will not achieve that.

**Mr HARTCHER:** No, it provides that the person determining bail shall not be bound by any

presumptions and shall consider the concerns of the victim.

**Mr Whelan:** In which circumstances? That of a person who has a history of violence? It would not apply to a person who has not had a conviction recorded against him.

**Mr HARTCHER:** That does not mean that conditional bail cannot be granted. Conditional bail can still be granted.

**Mr Whelan:** It will be unlikely.

**Mr HARTCHER:** It will not be guaranteed, but there is no reason to assume that it will be likely or unlikely. It will not automatically follow.

**Mr Whelan:** It is weak.

**Mr HARTCHER:** It is clear-cut. The interim telephone system will protect victims in cases where the offender has absconded and cannot be arrested. The Bail Act is appropriate where the person has been arrested. Society also has a duty to people in custody. Let us not pretend that in solving one problem we simply cut a path through the whole system of law that has been established. Once a person is in custody the Bail Act is the appropriate mechanism. Accordingly there should not be two pieces of legislation covering people in custody. If that is the way it is to be tackled, it would be more appropriate to amend the Bail Act than to insert this amendment in the Crimes Act. People in custody should be subject to the Bail Act. The Government rejects the amendment. It would impose an unnecessary out-of-hours burden upon authorised justices. A fair and reasonable system is required, so that where the offender cannot be arrested, the victim is protected; and where the offender can be arrested, the victim is protected but by the appropriate mechanism of the granting of bail. The Government has set up a comprehensive and clear system, and this amendment would intrude upon that.

Section 32 of the Bail Act requires a court to always consider the protection of the community and the victim when determining bail, regardless of whether there is a presumption in favour of the granting of bail. Section 32 covers it clearly and in this case there is no presumption of bail for the offender. There is no presumption that entitles the offender to bail. That hurdle, which once existed, will be abolished by the cognate amendments to the Act.

**Dr MACDONALD (Manly) [10.4]:** As a layman I struggle with some of the finer points of law but it appears to me that two things are important. The first is that if conditions of an interim order apply, they tend to be much more restrictive than conditions of bail, particularly orders relating to stalking. The second is, as I understand, that the offence of breaching an order is far more severe than the offence of breaching bail. If that is the case, there are two reasons why interim telephone orders should apply to someone who has been arrested. I would be happy to take guidance from the Minister as to whether this Act or the Bail Act should be amended. Clearly they seem to be the two important elements.

**Mr HARTCHER (Gosford - Minister for the Environment) [10.5]:** The honourable member for Manly is saying that interim orders are normally more restrictive than bail conditions. This Committee cannot presuppose how the law will be administered. A clear signal is being sent to all those administering the law that domestic violence will not be tolerated. The very passage of this legislation makes that clear. Those administering the Bail Act will have a responsibility cast upon them, as they already have under section 32, to consider the protection of the victim and of the community, and accordingly there are no reasonable grounds for amending an Act merely on the presumption that one system will be more restrictive than another. That is not the basis upon which Parliament makes laws. The whole purpose of this bill is to set up a procedural system to protect the victims of domestic violence. This measure ensures that where the offender is arrested there is a procedure, and where the offender is not arrested there is a procedure. It is not appropriate to guess which is going to be the more restrictive procedure, and accordingly the Government cannot accept the amendment.

**Dr MACDONALD** (Manly) [10.7]: Just as the Minister has taken advice from his senior bureaucrats, I have taken advice from the Domestic Violence Advocacy Service, and a number of points need to be emphasised. The breach of an apprehended violence order is simpler to deal with than breach of bail. Second, such orders go on a police register when police have difficulty administering bail conditions. Third, and I think this applies more to small rural country towns, people will not remain in custody for a length of time, so an interim order can offer real protection. Those three points should be addressed.

**Mr WHELAN** (Ashfield) [10.8]: The Government's bill provides that the application is to be made where there is an incident and the offender is not arrested for the alleged offence in connection with that incident. I assume the phrase "the person is not arrested" means that the person is at large?

**Mr Hartcher:** Yes.

**Mr WHELAN:** So a person could have been charged and released on bail, and there is no order. The Minister is relying on the power in the Bail Act to grant bail. The Minister will not be able to rely on his amendments to the Bail Act or the provisions of the Bail Act because, as we discussed earlier, the only basis on which bail will be refused is if a 10-year history of violence can be proved. If the Minister intends to rely on the Bail Act - and the court, as everyone knows, has wide discretionary powers to grant bail, except in cases where it is now limited - there may be circumstances where the court would grant bail, but it would not have, as the honourable member for Manly has pointed out, the effect of an apprehended violence order or a condition of bail that the offender not molest the complainant. Following my earlier amendment, apprehended violence orders, unless otherwise directed, will guarantee that offenders will not be able to intimidate their victims. Section 31 of the Bail Act provides that the court may grant bail, but that granting of bail could result in serious harm being occasioned to the complainant. It is a difficult area, and I hope the Government will not rely on its amendments to the Bail Act, which I regard as being inadequate.

**Mr HARTCHER** (Gosford - Minister for the Environment) [10.11]: The Government believes that the procedure it has established will provide an adequate and a fair system of security for the victims of domestic violence. That security will be achieved through the procedures laid down by the Act. We are dealing with an immediate response situation that, for example, takes place inside a house. In such circumstances the police can do two things: either arrest the offender or not arrest the offender. If the police do not arrest the offender, an interim order will apply until the matter can be brought to court, when final orders will be made. If the police do arrest the offender, he will be taken away and held in police custody.

The offender is released from police custody only when the procedures laid down by law are followed; when the appropriate person - an experienced senior officer of the Police Service - examines all the circumstances, including the need to protect the victim, and imposes the ordinary conditions that are appropriate to the case. In domestic violence cases, one would expect that an experienced person would impose appropriate conditions to ensure that the victim is protected. There is nothing wrong with that. That is fundamental in our society. I know that some people who are concerned about domestic violence want the system to be harder and tougher, and want hurdles created to ensure that the offender remains in custody, but what is needed is a simple and effective system.

If the system imposes constant demands upon justices even in circumstances where the offender has been arrested, it will be unworkable. For that reason, and almost for that reason alone, the system has to be scrutinised. If honourable members really believe that bail procedures in this State are so deficient as to be untrustworthy, and we can trust only the interim order obtained from the justice via the telephone, we really do have a problem with the bail system. But I do not believe that is the case. The bail system does not have a 100 per cent record - nothing in our society does - but it does provide a reasonable and fair balance, which must exist between the rights of people in custody and the necessity to prevent the repetition of an offence, any offence, but in this particular case an offence involving domestic violence. The two mechanisms exist, and one of the two will come into play: either an arrest will occur, in which case the Bail Act comes into play; or an arrest will not occur, in which case the interim order comes into play. Either way there is an immediate response.

Previously the problem was that there was no immediate response because unless police arrested the assailant, the victim - usually a woman - was left unprotected until she could get to a court and obtain an apprehended violence order. That is why so many women were put in the desperate situation of seeking refuge at all hours of the night, often with their children, from friends, neighbours or women's refuge centres. This bill is designed to overcome that situation, but it will not prevent the occurrence of domestic violence. Domestic violence will certainly continue. The bill endeavours to achieve an effective legal system that will minimise domestic violence as much as possible. Therefore, the Government cannot agree to this amendment, not because it is not anxious to achieve the desired result, but because it believes the amendment is ineffective and will not achieve the aims of the legislation.

**Dr MACDONALD (Manly) [10.15]:** The more we debate this matter, the more convinced I am that this is a particularly important amendment. The amendments to the legislation seek to provide maximum protection for the victim, and I believe that all honourable members should bear that in mind. Better protection is provided by the application of an apprehended violence order because it is much more likely that the offender will be arrested. Indeed, as I understand it, the commission of an act of domestic violence is an offence and, therefore, the assailant

Page 5739

may be automatically arrested. But to breach a bail condition, as I understand it, is not an offence. I need only refer again to the case I quoted earlier in which a person appealed his apprehended violence order. He was released on bail with conditions but he re-offended. The result of his rearrest was that he was released again on bail with conditions. It seems that one can continually be released on bail, re-offend, be re-arrested and released again on bail with conditions. It seems that conditions of bail do not provide anything like the protection an apprehended violence order provides. A victim of apprehended violence needs maximum protection.

**Question - That the amendment be agreed to - put.**

**The Committee divided.**

**Ayes, 42**

Ms Allan	Mr McManus
Mr Amery	Mr Martin
Mr Anderson	Mr Mills
Mr A. S. Aquilina	Ms Moore
Mr J. J. Aquilina	Mr Moss
Mr Bowman	Mr J. H. Murray
Mr Clough	Mr Nagle
Mr Crittenden	Mr Newman
Mr Doyle	Ms Nori
Mr Face	Mr E. T. Page
Mr Gaudry	Mr Price
Mr Gibson	Dr Refshauge
Mrs Grusovin	Mr Scully
Mr Hatton	Mr Sullivan
Mr Hunter	Mr Thompson
Mr Iemma	Mr Whelan
Mr Irwin	Mr Windsor
Mr Knight	Mr Yeadon
Mr Knowles	
Mr Langton	<i>Tellers,</i>
Mrs Lo Po'	Mr Beckroge
Dr Macdonald	Mr Davoren



## Noes, 38

Mr Armstrong	Mr W. T. J. Murray
Mr Beck	Mr O'Doherty
Mr Blackmore	Mr D. L. Page
Mr Causley	Mr Petch
Mr Chappell	Mr Phillips
Mr Cochran	Mr Photios
Mrs Cohen	Mr Richardson
Mr Collins	Mr Schipp
Mr Cruickshank	Mr Schultz
Mr Fraser	Mr Small
Mr Glachan	Mr Smiles
Mr Griffiths	Mr Smith
Mr Hartcher	Mr Souris
Mr Humpherson	Mr Turner
Dr Kernohan	Mr West
Mr Kinross	Mr Zammit
Mr Longley	
Ms Machin	<i>Tellers,</i>
Mr Merton	Mr Jeffery
Mr Morris	Mr Kerr

## Pairs

Mr Carr	Mr Baird
Mr Harrison	Mrs Chikarovski
Mr McBride	Mr Downy
Mr Markham	Mr Fahey
Mr Neilly	Mr Hazzard
Mr Rogan	Mr Peacocke
Mr Rumble	Mr Rozzoli
Mr Shedden	Mr Tink
Mr Ziolkowski	Mr Yabsley

**Question so resolved in the affirmative.**

**Amendment agreed to.**

**Dr MACDONALD (Manly) [10.26]:** I move:

Page 7, Schedule 1 (7) (proposed section 562H (8)), line 10. After "is made.", insert "Failure to serve the order does not prevent the defendant being convicted of an offence of contravening the order as provided by section 562I".

The heart of the amendment is that it relates to further measures within the bill about the contravention of orders. Interim orders can be obtained by telephone at the scene of a domestic violence incident. The bill provides that the order must be personally served on the defendant before the defendant can be convicted of a criminal offence for contravening the order. A police officer who decides to apply for a telephone order may detain the defendant in order to serve the order on him. But before the order can be served on the defendant he may abscond. It seems to me that the bill will give an opportunity to the defendant to escape the application of the interim telephone order by absconding. My amendment would allow the defendant still to be convicted of contravening the order, even if he has absconded, if he comes back and harasses his wife or returns to his home, whether or not he is aware that the order has been made. Not making such a change would allow one rule for

one and another rule for others. I would need to be convinced by the Minister that this is not a most appropriate amendment to allow an interim order to have meaning, even though it has not been actually served.

**Mr HARTCHER** (Gosford - Minister for the Environment) [10.29]: The Government does not agree to the proposed amendment. It believes that a person cannot be convicted on the basis of an order of which he does not have proper and full notice. That is fundamental to any principled legal system. Accordingly, the Government will not agree to the amendment moved by the honourable member for Manly.

**Mr WHELAN** (Ashfield) [10.30]: I hope what I am about to say does not set a precedent, but I have some sympathy for what the Minister has said. This amendment presents major difficulties. The amendment of the honourable member for Manly will enable a court automatically to convict a person who contravenes a telephone interim order about which he or she has had no notice. A person would have to be pretty brave to suggest that someone who has not had an order served on him or her could be in

Page 5740

contravention of that order. The Act states that such an order should be served personally. Telephone interim orders can be issued urgently after several conditions have been met and where a police officer is of the opinion that the life and liberty of a victim is at risk.

A telephone interim order, which is issued when dangerous circumstances exist, will prohibit an offender from going anywhere near a victim and restrict his or her access. That is a far cry from what the honourable member for Manly wants to do. The Government's bill provides that a telephone interim order is to be served personally on the defendant by a police officer as soon as practicable after it has been made. The amendment of the honourable member for Manly states, "Failure to serve the order does not prevent the defendant being convicted of an offence of contravening the order as provided by section 562I". The amendment refers to an order that has not been served on a defendant because the police have not been able to find him.

A telephone interim order will place an obligation upon the police to ensure that a victim is well protected. Take the case of an aggressor who disappears and who escapes being served a telephone interim order. The police would have to be informed of this fact. When a telephone interim order is granted I hope that the police who are seeking the order know full well the last address or addresses of the defendant. I hope they seek out the defendant at those addresses. If the defendant is not at those addresses, I hope that it registers in the minds of the police that the defendant is trying to escape personal service of an order. I am troubled by those matters.

Other methods of service are provided for in other sections of the Act. I ask the Minister to think about this matter. If a telephone interim order is to be served personally in those circumstances, it might be worth while for us to permit evidence to be given to demonstrate that reasonable attempts were been made to serve an order and that a defendant either knew or did not know of an application before the court. That might be a way to resolve this problem. It could be that it is too difficult to serve orders upon defendants. The honourable member for Manly is saying that the Act does not require a person who is in contravention of an order which has not been served on him or her to have that order served personally. Let us say, for argument's sake, that the aggressor is hiding and an order cannot be served.

If the police are unable to serve an order, that order has to be returned to the police station. If the police can give evidence to the court that they attempted to serve an order and that someone told them that the defendant was hiding, or they knew the defendant knew of the court proceedings that instituted the telephone interim order, that evidence could be sufficient to trigger what the honourable member for Manly wants to do. It is a dangerous precedent to leave a telephone interim order unserved. I take on board what the honourable member for Manly has said. I hope the Government does too. It may be necessary to look at some sort of method of substituted service to accommodate the fears expressed by the honourable member for Manly.

**Mr HARTCHER** (Gosford - Minister for the Environment) [10.34]: The Government is hoping that debate on this legislation will be finalised this week. Once it becomes law it will be in force for a period of 3½ months before the Parliament resumes. If the system proves unsatisfactory, the Government might be inclined to look at appropriate amendments. The honourable member for Manly might then wish to move additional

amendments.

**Amendment negatived.**

**Dr MACDONALD** (Manly) [10.35]: I move:

Page 7, Schedule 1(7) (proposed section 562H(9)(b)), lines 18 and 19. Omit all words on those lines, insert instead:

(b) in any other case - the fifth working day after the next sitting of the Local Court for the district in which the incident occurred.

This amendment relates to the duration of a telephone interim order. The Minister would be aware that the bill provides for a telephone interim order to lapse at the end of five days. That would create difficulties because after a period of five days the victim is likely to be vulnerable. Often at that stage people are aggressive or resentful about what has occurred. My amendment will extend the period within which the telephone interim order applies up to five working days after the next sitting of the Local Court. The interim order would be valid right up until the time that the court sits and five days beyond. Clearly, there might be minor difficulties where the Local Court does not sit very often, but I understand those difficulties could be overcome.

Why is a period of only five days allowed? If we are wanting to protect a person whose case cannot be dealt with by a court, what do we gain at the end of five days when the interim order lapses? As I have said, that is the time within which a victim is particularly vulnerable as an offender is likely to reoffend. I ask the Government to support my amendment, which is not likely to be particularly onerous or unfair. Indeed, it will continue the protection that the Minister seeks through this bill. The Minister seeks to provide protection through these telephone interim orders, but at the same time he is saying, "By the way, at the end of this five-day period, it will lapse".

**Mr Hartcher:** We can do that.

**Dr MACDONALD:** If the interim order lapses, the person the Government is seeking to protect is unprotected. The order should not lapse until a victim's case has been dealt with by the Local Court. If the Minister is saying that a victim's case can be dealt with within that five-day period, he should not fear my amendment.

**Mr HARTCHER** (Gosford - Minister for the Environment) [10.38]: Telephone interim orders are an advice of immediate response. They are issued to  
Page 5741

overcome the urgency of a situation. There was no provision for such orders up until now. This bill will provide for those orders to be issued. But the orders, which are to be made against a defendant, should not last any longer than is necessary to get the parties before a court. That is why there is a time limit on them of five working days to get to a court and to obtain an order. There are no grounds for believing that those orders should be left in place for any length of time. They are orders against a defendant; they are ex parte - in other words, they are made on behalf of only one person. That is the first point which must be emphasised. The second point is that, where a court is not sitting in a country area, police are able to transmit a facsimile copy of a complaint to a court in another country town where the court is sitting.

The bill will amend section 562C of the Crimes Act to enable courts to act on facsimiles. So we will not experience problems in country towns where courts might not be sitting for a long time. The police have only to send a facsimile copy to the place where the court is sitting and it will be reviewed by that court. It is fundamental to our legal system that orders made against a defendant should be speedily reviewed by a court. That process, which is clear, can be followed through. Where a court is sitting locally, it is appropriate for that court, prior to the expiry of the telephone interim order, to consider a complaint of apprehended violence and, where a complaint is not made, to look at the reasons given by the police for not making a complaint, such as in a case where a domestic violence issue has been resolved.

There is no need, therefore, for any interim order to extend beyond five working days. The honourable member for Manly has expressed his concern, but a duration of five working days is provided. If an order is made on the Friday before a long weekend, that order could well extend until the Monday following the public holiday. The Saturday, Sunday and Monday after the granting of the order would not be counted - followed by four working days - nor would the following Saturday and Sunday. Five working days will be available to have the interim order reviewed by a court. If a court is not sitting in one country town, a complaint can be faxed to a court sitting elsewhere, so that that court may review it. It is inappropriate in any fair and proper legal system that a court would not be able to review an order and decide whether it should have longer duration. The Government will not support such an amendment.

**Mr HATTON** (South Coast) [10.41]: I need to be convinced that in a country town, especially in the Far West, where a court might be 100 kilometres or more distant, the provision in the bill would be fairer to an accused than the proposition put forward by the honourable member for Manly. A person against whom a telephone order is made could receive notification that the complaint will be dealt with at a town 100 or 150 kilometres distant. How does that person get there, and how do they get representation? Where are we at here? Can someone explain how that mechanism will work? I am quite surprised by it.

**Mr WHELAN** (Ashfield) [10.42]: I know the Minister is taking advice, but I have serious concerns about this clause. The bill provides that a telephone order will remain in force for such period as is specified in the order. However, an order that contains prohibitions may not extend beyond 9 p.m. on the next working day, and an order that does not contain prohibitions may not extend beyond five working days after the order is made. Prohibitions will arise as a result of police forming an opinion that the protected person is in imminent danger of personal injury. The prohibitions restrict approaches by a defendant, or prohibit or restrict access by a defendant to any specified premises. An order should have long duration where a prohibition applies.

The bill provides that in grave circumstances an order will last until 9 p.m. on the next working day after the order is made. However, where a telephone interim order is made and a police officer or magistrate thinks that a prohibition should not apply - in other words, a less grave circumstance - the order will last five days. I do not understand why a telephone interim order, granted in grave circumstances and involving prohibitions or restrictions on access or approaches - prohibitions which involve protection of the woman - would not last five days. An order in respect of non-violent behaviour, where the police are not of the view that prohibitions are needed, should have a duration of one working day. I am troubled by the intention of the provision. I am baffled that a person who has received a telephone interim order for a very serious offence will be granted an order with a duration of one working day, whereas a person who commits an ordinary breach will be granted an order with a duration of five working days. The reverse should apply.

**Mr HARTCHER** (Gosford - Minister for the Environment) [10.43]: Dealing with the concerns expressed by the honourable member for South Coast, I advise that the facsimile complaint would normally be dealt with in the absence of the parties. It is not intended that parties should travel such a distance. An interim order would be sought. If the court making an interim order is satisfied that such an order is appropriate, the Act will require the defendant to be summonsed to appear before the court for determination of the complaint. It will always be difficult in the more remote areas of this State to establish any satisfactory system to enable courts to deal with these matters. Fortunately, that difficulty is not as great as it was years ago. However, some process has to be set in place in an attempt to cover all reasonable eventualities. All eventualities cannot be covered. When Parliament attempts to do that, it ties itself up in knots. That, essentially, is the answer to the concerns expressed by the honourable member for South Coast. Does the honourable member for Ashfield wish to move on to other matters and return later to the concerns he has expressed?

**Mr WHELAN** (Ashfield) [10.45]: There may be an easy answer, but I think a grave problem confronts the bill. The bill could be amended in this

Page 5742

Chamber but perhaps that would be better done in the upper House. I do not want at this stage to put on the record any possible wording of an amendment. The Government should think about it.

**Mr HARTCHER** (Gosford - Minister for the Environment) [10.46]: I have taken instruction on the matter. I recall similar instances when I was in private practice. Under that provision, on an ex parte order and on an interim basis, a person can be excluded from the home. Such an order should be reviewed immediately by a court. That is the reason for the tight restriction on it. Telephone orders are urgent interim protection mechanisms and are not designed to be a final solution. These orders are designed to protect the woman until a court reviews the matter. If orders have the effect of throwing persons out of their homes and prohibiting their entry to the homes, they should be reviewed immediately by a court.

**Dr MACDONALD** (Manly) [10.47]: The provision does not say that. It says that in the case of exclusion the interim order will last only one working day. The provision does not impose any requirement on the court to hear the matter. It is likely that a very serious offence will result in exclusion, but that exclusion will last only 24 hours. The order needs to be bound in until the court sits; or some provision should be made that a court has to hear the matter, ex parte or otherwise; or the person against whom an order is made should be able, where a local court is not about to sit, to apply to have a matter dealt with in the nearest appropriate court so that he is not excluded for a long time from his own home. This provision puts a sunset limit on interim orders but does not necessarily make provision for a matter to be reviewed. A vacuum will be created if exclusion orders are extinguished after 24 hours and other orders are extinguished after five working days. No requirement is imposed for local courts to hear such matters before other cases. That is what my amendment - though not the complete amendment - seeks to do.

**Mr HARTCHER** (Gosford - Minister for the Environment) [10.49]: I am tempted to agree with the honourable member for Ashfield, much as it goes against the grain. Perhaps consideration of that provision could be left until I receive further instructions for the purposes of clarification.

**Mr Whelan:** Yes, that could be done.

#### **Consideration of amendment postponed.**

**Dr MACDONALD** (Manly) [10.50]: I move amendment No. 4 standing in my name:

Page 7, Schedule 1(7) (proposed section 562H(11)), lines 27-32. Omit all words on those lines, insert instead:

(11) **Revocation.** A telephone interim order may be revoked by any court dealing with a complaint for an order against the same defendant.

At present the bill provides that a telephone interim order can be revoked by a court dealing with an application for an order against the same defendant, or by the authorised justice who issued it, or by any other authorised justice. It also provides that the police officer who applied for the interim order, or any other police officer who applied for an order to replace the interim order, should explain to an authorised justice why such an application has not been made. At that time the authorised justice may revoke the interim order that he or she issued.

I am concerned about the revocation process. I would like to see it dealt with at another level. I appreciate that clerks of the court can act as authorised justices and authorise telephone interim orders, but I am arguing that any revocation of such a telephone interim order should only be dealt with by a magistrate, in other words by the court itself. The order will remain in force for the relevant period unless the application for an ordinary order is made within that time and is revoked by the magistrate when granting or refusing the ordinary order. It merely elevates the status of the person who can revoke rather than applying to all those who are able to issue such an interim order.

**Mr HARTCHER** (Gosford - Minister for the Environment) [10.51]: The amendment is not accepted. Because of the short duration, it is envisaged that most telephone interim orders will expire on the date and time specified by the issuing authorised justice. Alternatively, it would be revoked by a court on the next working day after the domestic violence incident. However, the Government is mindful of the fact that situations may arise which would warrant revocation of a telephone interim order prior to its expiry and prior to a complaint for

an apprehended violence order arising out of the domestic violence incident being listed before a court. Situations which would warrant revocation of standard telephone interim orders prohibiting assault, harassment or molestation of a victim would be expected to arise only rarely, as these activities are always unlawful and will remain unlawful.

However, there may be occasions on which extended orders excluding the defendant from his or her residence or prohibiting approaches to the victim will no longer be desired by either party and could properly be revoked. For example, the parties may be reconciled. Reconciliation occurs frequently in domestic violence situations. Alternatively, urgent circumstances may arise which require the parties to meet, yet to do so may breach orders restricting approaches to the victim. A degree of flexibility is required to deal with these eventualities. Especially where children are involved, the parties may be required to meet. An order made on a Friday night may not be able to be reviewed by a court for three days or even longer during public holiday periods.

A further proposal in the amendment of the honourable member for Manly is that a court would only be able to revoke a telephone interim order if it deals with a complaint for an apprehended violence order in respect of the same defendant. Where police and the victim decide subsequently not to proceed with the complaint to the court for an order, no

Page 5743

mechanism would be available for evoking what may have become a superfluous as well as a restrictive order. By allowing authorised justices to revoke telephone interim orders, the Government's bill will provide necessary flexibility in the implementation of the after-hours scheme.

We are essentially talking about an after-hours scheme; we are not talking about the permanent court order system. The Government expects that revocation of orders by authorised justices will be an uncommon occurrence to be exercised only where the circumstances indicate that there appears to be no risk of further incidents between the parties. To have a system of urgent and emergency orders, some flexibility is needed to handle subsequent situations which may arise such as reconciliation and urgent circumstances. That is why the authorised justice has that power.

**Dr MACDONALD (Manly) [10.55]:** This is an important amendment for those interim orders which are issued in country areas. They can be issued by an authorised justice. Authorised justice is defined in the bill as:

... a justice of the peace who is employed in the Department of Courts Administration and who is declared under the Search Warrants Act ...

That can refer to a person who may be relatively unqualified in the finer points of the law and the implications of lifting or revoking a telephone interim order. If the Minister is concerned about the amendment being onerous and argues that it is not appropriate that only a magistrate can revoke an interim telephone order, perhaps we should consider the possibility that such revocation should remain according to my amendment but can also be dealt with by fax. The Minister indicated earlier that he was happy for it to be dealt with ex parte. The qualification of the authorised justices may not be adequate to deal with the issues that might arise as to whether such a telephone interim order may be revoked. I ask the Minister to support this amendment and if he is concerned about it he should consider whether it can be dealt with by fax.

**Mr HARTCHER (Gosford - Minister for the Environment) [10.57]:** The Government is setting up a system whereby urgent orders can be obtained. An authorised justice will receive a call in the middle of the night from a police officer who asks for an interim order to protect a woman. The authorised justice will know the police officer or, if he does not know the police officer, he will need to be satisfied that he can rely on the word of the officer. He will need to be satisfied that the making of the order will not impose an unfair burden, an unjustified burden on the parties. The Government is relying on the authorised justice to readily grant these types of orders. If those orders are difficult to change, inflexible and rigid, the authorised justice will be reluctant to grant them. Instead of merely being satisfied that there is a complaint and that the police officer is

satisfied enough to make the complaint, he will be conscious of the fact that he is making an order that will be difficult to change, that will need to be reviewed by a magistrate, and there will need to be more judicial procedures because he will be that extra bit reluctant to grant the order unless every "i" is dotted and every "t" is crossed.

These are urgent procedures designed to cover urgent circumstances. The more formal the procedures, the more difficult they are to follow; the more conditions that are built into procedures, the more difficult it will be to get orders. The Government does not want those difficulties and obstacles. The Government wants women in difficult circumstances to be able to get protection easily and quickly. It does not want them to have to go through elaborate court procedures, which are necessarily elaborate, designed to protect everyone. The Government is trying to provide immediate protection. It is the immediate situation that we are designed to overcome. The more the honourable member plays around with this, toughens it or stiffens it, the more reluctant and the more difficult these orders will be to get. That is the normal course that human life follows.

**Dr Macdonald:** I am trying to improve the bill.

**Mr HARTCHER:** This bill has been hit with seemingly hundreds of amendments. The honourable member is not necessarily improving the bill at all. I suggest the amendment would not improve it because it would make it more difficult for women in these circumstances to get their orders. I urge the honourable member to carefully consider that line of amendment. The Government does not accept it.

**Dr MACDONALD (Manly) [11.1]:** I am surprised that the Government does not accept the amendment, which has application to country areas. It is worth pointing out that statistically homicides in rural areas are disproportionately high. The figures I have been given show that 27 per cent of all family killings occur in rural areas, which have only 11 per cent of the population. The Minister talked about telephone interim orders being a mechanism to be used out of hours. The out of hours period in the country is much longer than it is in the city. It is quite likely that the telephone interim order process would be used much more extensively in the country.

I ask the Minister to take all these matters into account: first, the fact that domestic violence, particularly severe domestic violence involving homicide, is more prevalent in the country; second, the use of these orders will be much more prevalent in the country because of the different concept of out of hours; third, in the country the authorised justice who issues the order is likely to be less qualified than a justice in the city. I ask the Minister to address those considerations. This is not a trivial amendment but a very appropriate amendment.

**Mr HATTON (South Coast) [11.3]:** I cannot follow the thinking of the honourable member for Manly. If the community representative, say a police officer, feels that the justice of the peace concerned is sufficiently mature and responsible to authorise the

Page 5744

order in the first place, then that justice of the peace should be competent to remove the order. I cannot see the problem there. However, I can see situations where a young constable might overreact on a domestic violence report, convince a justice of the peace to issue an order and then, in the calm light of day, realise his mistake. The justice of the peace will issue the order, quite properly accepting the constable's word on the urgency and seriousness of the matter. That is what I would do if I were in his position; I would not take the risk.

If I were a justice of the peace in a country town and I received a telephone call in the middle of the night, I would not take the risk of not acting. I would not feel like getting out of bed and travelling 50 kilometres to have a look for myself. And, even if I did, by the time I got there the fracas would most likely be over. I would accept the constable's word for it. If I found later that the situation was not as it was portrayed, I would have the opportunity to lift the order, upon reasonable application. I have gone along with every amendment to toughen up this bill, because I feel very strongly about domestic violence. The Shoalhaven area has the highest level of reported cases of domestic violence in country areas of New South Wales.

I become concerned that advice we are getting is always against the accused. We could get to the stage

where there are absolutely no rights left for the accused. I am even more concerned that further down the track there will be a mandatory sentence of imprisonment. I worry about that. I firmly believe that in more than 90 per cent of cases it is true that the bully and the coward who acts violently towards a weaker partner is really at fault, but I know of a situation where a particularly vindictive woman made a man's life hell, for no sound reason. In a small village not far from my home a woman took the furniture out of the house and when the man tried to get it back she counter-attacked by accusing her spouse of sexually molesting the young boy. That man was a wreck when he came to see me. He was so distraught. The accusation alone was enough to destroy his reputation in that small community.

When the whole issue eventually unfolded - because I could not sort out who was right and who was wrong - her motive was revealed to be not only to get back at her husband but, for heaven's sake, to get an award of crime victim compensation. She was hoping to pick up a cheque! Let us live in the real world. I concede that more than 90 per cent of the time the male is at fault. But one cannot take the view that the accused is at fault all the time. There has to be a reasonable sense of justice. This proposal is proceeding along the line of trying to close all doors and trying to cater for all circumstances. No law can do that.

**Amendment negatived.**

**Mr WHELAN** (Ashfield) [11.6]: I move:

Page 9, Schedule 1(8). After line 6, insert:

(b) After section 562I(1), insert:

(1A) A person who recklessly contravenes a prohibition or restriction specified in an order made against the person is guilty of an offence. Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

I laughed yesterday when I read a press release by either the Premier or the Attorney General that said we are weakening the offence of contravening an order. They obviously had not read it. The Government is increasing the penalties for the offence of contravening an order. The Opposition agrees with that; it provides for a person who knowingly contravenes a prohibition. My amendment relates to a person who recklessly contravenes a prohibition or restriction. My amendment will provide for the absence of mens rea where a person, as the Act currently provides, knowingly contravenes a prohibition or restriction. My amendment states that a person who recklessly contravenes a prohibition or restriction specified in an order made against the person is guilty of an offence. In other words, yet again, a further strengthening of the test required. The penalties are less because reckless contravention is not as serious as a person who knowingly breaching those offences. I move the amendment accordingly.

**Mr HATTON** (South Coast) [11.9]: What is the difference? Could someone tell me a definition of the difference, and what is the court's view of recklessly?

**Mr WHELAN** (Ashfield) [11.9]: In the first instance, where a person knowingly contravenes a prohibition or restriction, the person knows and understands that an order has been made. It is not the case referred to by the honourable member for Manly, who referred to the inability of service, where a person cannot be served. A domestic violence order can be served personally or by other methods, as determined by the court. It can be served by way of substituted service. If an order is to be served by substituted service and, for instance, is sent to a person's brother rather than to the person for whom it is intended, that person would not be guilty of an offence because he or she did not knowingly contravene the prohibition.

I suggest the lesser offence relates to a person who recklessly contravenes a prohibition or a restriction. Recklessly in this sense means that a person has refused to acknowledge that a prohibition is outstanding in the court. For that reason it is a lesser offence than one committed by a person who has the full knowledge of the circumstances in which the prohibition has been breached. There are circumstances in which people pretend they do not know. The court may doubt that some people are fully aware that an order has been made against



them. Such people will fall into the net provided by this amendment.

**Mr HARTCHER** (Gosford - Minister for the Environment) [11.11]: The Government does not agree to this amendment. The idea is to have a system whereby people are punished for offences that they know about or should know about. The test of knowledge is the test of a reasonable man. Would a reasonable man have known that he was breaching the

Page 5745

order? It has to be an objective test because one cannot apply a subjective test and try to get into a person's mind. If the person knew or should have known that what he or she was doing was wrong, that person will be guilty of an offence.

The honourable member for Ashfield may try to introduce a concept that is not often used in law, that of recklessness. Essentially, recklessness means without care, whether or not a breach of an order is involved. If a person acts in that way, overwhelmingly he or she will also knowingly be in breach of the order because a reasonable man would have known about the order. Once one starts to fiddle with these things to give the appearance of toughness, to make them harsher and tougher, one erodes the simple system of law that we all strive for so that ordinary people can readily understand it and obey it. The honourable member for South Coast, not being a lawyer, had to ask what the difference is. Ordinary citizens will not know what the difference was. Is anything to be achieved by the honourable member's amendment? I think not. We could have lawyers' arguments across the table all night -

**Mr Scully:** But not from you.

**Mr HARTCHER:** I know more about law than the honourable member for Smithfield does. I do not have to make a show of what limited knowledge I have, as the honourable member does in every debate in which he participates, when the House is inflicted with having to listen to him. This amendment will not increase the range of people to be caught by this section; it will introduce a new word and possibly a new concept about which most people will be uncertain. There must be certainty in law. The whole basis of our legal system is that there be certainty so that individuals know, courts know and victims know what the law is. A victim does not want to be tied up with legal arguments about whether an assailant's conduct was reckless. A victim wants to know that he or she has the protection of an order, that a reasonable person would have known or should have known the constraints imposed by the order and that the order was breached. I urge the Committee to accept the spirit of the bill as it stands.

**Amendment negatived.**

**Dr MACDONALD** (Manly) [11.15]: I move:

Page 9, Schedule 1(8) (section 562I). After line 15, insert:

(2B) If a person is convicted of an offence against this section, the person must be sentenced to a term of imprisonment if the act constituting the offence was an act of violence against a person or property or was an act of intimidation. This section has effect despite any other Act or law to the contrary. This section does not apply if the person was under 18 years of age at the time of the alleged offence.

At present the bill provides that a person who is convicted of contravening an apprehended violence order is liable to a maximum penalty of \$5,000, or two years' imprisonment, or both. Indeed, the court has discretion whether to impose a penalty and about the type of penalty it may impose. If this amendment is agreed to, that discretion will be removed if the contravention of the order was the result of an act of violence against the person or property, or an act of intimidation. In that case the court must sentence the defendant to imprisonment, not for more than two years, and it may be for a short time only. This sends out a very clear message. It is one amendment about which I feel very strongly.

I invite the Committee to revisit the words of the judge in Quincy, Massachusetts, who said that when he

issues a domestic violence order it is a contract between the applicant, the judge and the offender. If that contract is breached, and if it is breached violently, gaol follows automatically. In Quincy things are tougher than they are here. I draw the attention of those who would ridicule this amendment to the fact that in the Quincy, Massachusetts, experience in the United States all offenders who breach a domestic violence order, even if that breach involves sending the victim a bunch of flowers, are automatically gaoled. The offender is sent to prison until there is a court appearance, and that may take a couple of days. That is the deterrent that I would like to see.

Fifteen years ago in Quincy there was a tragic episode when a man shot his wife and children before turning the gun on himself. The police, judges, social workers, probation officers and support service workers all met to formulate a plan to protect women from death and injury in domestic situations. The Quincy experience is now being held up as a model. That program allows for special training of police officers and the reporting of every family disturbance that police attend, with that report being sent to the District Attorney's Office. Trained victims advocates deal with women the day following the incident to give extensive ongoing support. Every case is taken seriously, including the laying of criminal charges against offenders, wherever possible. The probation office contacts the victim when an offender is being released from gaol.

Surely they are examples of how the matter is being dealt with responsibly in Quincy. As I say, any offenders in Quincy are sent to gaol. I believe the provisions in this amendment are not as tough as provisions that apply in other places. However, it does say that if someone is the subject of a domestic violence order - and I challenge any member of this House to disagree with this - and if the order is breached violently or by intimidation, that person should go to gaol until he or she appears before a court. I believe that deterrent will have a significant impact on the level of domestic violence in this society.

**Mr HATTON** (South Coast) [11.20]: I should like someone to explain to me exactly how this amendment would work. Would it give a policeman the right to automatically put a person in gaol until there is a court hearing? Did I hear the honourable member for Manly correctly? I am in strong sympathy with the reasons for such a provision in the law. However, I am very concerned that if a policeman can say that another person committed an

Page 5746

act of violence, that person goes straight to gaol. Is that what is being suggested we do in our free society?

**Dr Macdonald:** Yes, automatically.

**Mr HATTON:** The honourable member for Manly would be giving the policeman a right to make that value judgment, without proving it to a court. What happens if the policeman's judgment is wrong or vindictive? Is the policeman penalised in some way? I am concerned about automatically putting a person in gaol. Also, is the person put in gaol until the next court hearing? What are the imperatives there? Does that mean a Local Court hearing, the nearest court or what? I want to know how it would work before I even consider giving someone the power to automatically put another person in gaol. Though I am compelled by the reasons given by the honourable member for Manly, I am very concerned about this entirely new concept in law. I have been around this place for 20 years, and I have never seen an Act of Parliament that gives a person the power to automatically gaol another person without a court hearing. I am most concerned about that.

**Dr MACDONALD** (Manly) [11.21]: I think I may have misled the House. This amendment provides that when a person has been convicted of an offence and then commits an act of violence in defiance or in breach of a domestic violence order, he must go to gaol. That act of violence can be against a person or property, or it can be an act of intimidation. It could be argued that one act of intimidation is an inappropriate breach of a domestic violence order, and that the person should not go to gaol. I understand that under the South Australian legislation there have to be two acts of intimidation. To clarify this for the honourable member for South Coast, the court must sentence the defendant to imprisonment if he violently breaches a domestic violence order.

**Mr HATTON** (South Coast) [11.22]: Would the honourable member for Manly consider removing from

the amendment the words "or was an act of intimidation"? Surely a person should not go to gaol for intimidating someone else. If they are convicted of an offence, it is clear that the magistrate, on sentencing the person, would say, "And I might remind you that if you offend violently now that you have had this conviction, you will go straight to gaol". There has to be some moderation in this. I would like to hear the opinions of other members on this.

**Mr HARTCHER** (Gosford - Minister for the Environment) [11.23]: The Government strongly opposes the amendment and will not support it. The amendment states:

If a person is convicted of an offence against this section, the person must be sentenced to a term of imprisonment if the act constituting the offence was an act of violence against a person or property . . .

It could be possible that a man is not happy about a woman, and she has an order out against him. He may be in the street and pass her parked car - even though she may be in a shopping centre miles away - and he may kick her car -

**Dr Macdonald:** Automatic gaol!

**Mr HARTCHER:** The honourable member for Manly says "Automatic gaol". This man would go to gaol for kicking her car! Murderers do not automatically go to gaol under our system.

**Ms Nori:** Murderers do not go home and bash again.

**Mr HARTCHER:** I am not advocating the bashing of wives; I am talking about offences the Government believes the courts should determine, not this Parliament. The courts should have the power to send a person to gaol for two years, but they need to have a hearing and to impose an appropriate penalty. This part of the amendment refers just to property: if he kicks her car door, even if she is a mile away, he automatically goes to gaol under the amendment proposed by the honourable member for Manly.

**Mr Hatton:** Or if she provokes him.

**Mr HARTCHER:** Yes, and he could then kick her car. We should live in the real world. We are trying to get a situation where the courts and the police will enforce the law. There have always been laws against domestic violence. In the past 80 years it has not been lawful for a husband to bash his wife, but the police would never interfere. They said that it was a domestic situation. The courts did not want to interfere either. If too harsh a penalty is imposed, if too rigid a system is put in place, people will be reluctant to take action unless there is a very clear case. People would then start to think that it was a grey area and they would wait until the case was clarified. We want to avoid that.

We want women protected against violence; we do not want such a harsh system that everyone is reluctant to enforce it unless there is a very clear-cut case. Though the amendment of the honourable member for Manly may achieve his objective of sending out a message to people in the community that violence against women will not be tolerated - nor should it be, and nor will it be under this legislation - we cannot have a system where the penalties are so harsh that courts and police become reluctant to enforce them.

Under the amendment moved by the honourable member for Manly, a person who commits the slightest act of violence will automatically go to gaol. We know that the slightest act of violence, at law, is touching a person without their consent. We should be realistic. It is not necessarily a punch; any physical contact with the person without consent is an act of violence at law - as it should be. People have the sacrosanct right to their own personality and body. However, that does not mean that a person should automatically go to gaol. For example, a husband may have custody of children for the day; he then takes them home; he and his wife do not get along particularly well - a domestic violence order has been issued; and he may lay a hand upon her shoulder. Under the amendment of the honourable member for Manly the husband would go straight to gaol. Is that

an appropriate system? Surely that is for the court to decide. The court may decide that he laid a hand upon her and that he should be sent to gaol - but a judge should decide that; we should not decide.

We need a fair and reasonable system. I emphasise to the honourable member that if the system is too harsh or unfair the courts and the police will be reluctant to intervene, unless the case is clear-cut. We want a system that comes immediately to the aid of women in these situations; we do not want the police and the courts standing back until they have a watertight case. This amendment would force them to do that. Whether the honourable member for Manly likes it or not, he is being counterproductive to our aim: to provide a backup system for women so that they do not have to fear violence. We want to take such fear out of their lives. The imposition of punishments, rather than the removal of fear, will not help. The Government will not support this amendment.

**Mr WHELAN** (Ashfield) [11.28]: Let us just take this back a bit. This amendment, read in isolation, is serious. It talks about a person convicted of an offence of contravening an apprehended violence order. A few objectionable things stand out: for example, the absence of the discretion of the court. The honourable member for Manly says that a person must be sentenced to a term of imprisonment. That is wrong. That discretion always has to be provided in the court. This is a cousin to the Monopoly clause; that discretion has to be provided. I do not say that in a humorous sense - we were talking about it earlier. The amendment states, "... if the act constituting the offence was an act of violence against a person or property or was an act of intimidation".

The next part of the amendment has to be looked at also. It states, "This section has effect despite any other Act or law to the contrary". This provision will exclude everything else that is said in relation to the whole of the Act. They are two very important objections to the amendment. The honourable member for Manly would be familiar with the offence of contravening an order under section 562I. Everyone agrees that the penalty should be increased. The section provides that if a person knowingly contravenes - that is why I wanted a lesser test - a prohibition or restriction specified in the order he is guilty of an offence and the penalty units increase from 20 points to 50 points, or the period of imprisonment will be increased from six months to two years, or both. The honourable member for Manly should note that the principal clause of the bill provides for a discretion. Section 562I of the Crimes Act provides that the penalty is 50 penalty units or imprisonment for two years - because we are amending it - or both. The court has the discretion. We are changing the next section, and that is where the amending bill comes in, in 2(b). Subsection (3) states:

If a member of the Police Force believes on reasonable grounds that a person has committed an offence against this section, the member of the Police Force may, without warrant, arrest and detain the person.

Detention and arrest is far different from a term of imprisonment set by a court because the amendment specifies that the offender must go to gaol. There is a set term of imprisonment. There is power in the present legislation for the immediate arrest and detention of the person. The same applies to telephone interim orders. In a telephone interim order situation, power exists for a police officer to arrest a person and detain that person. I thought the honourable member for South Coast would object to that. There is essential agreement that if there is a breach, the person is immediately arrested, detained and taken to court.

That is the most important factor. It is not that the court will send someone to gaol. The violence must be stopped, and the only way to do that is by detention and arrest. The Government is not amending the section, nor is the Opposition. The amendment seeks an automatic term of imprisonment, thus removing the discretion of the court. This amendment, despite any other Act or law to the contrary, is alien to the whole proposal. The Act provides that the person so arrested is to be brought before the court as quickly as possible. That is absolutely vital. There is a statutory obligation. When a person is arrested and the offence is heinous - as many of them are - and the issue is emotional, the court will decide whether there has been a breach. I do not know why people breach the Act. It may be a breach in order of priority and gravity from one to 100, and perhaps the most severe breach should warrant automatic imprisonment. However, many people between the one and 50 gradient may not deserve to go to prison. For those personal reasons I support the Government.

**Dr MACDONALD** (Manly) [11.33]: One of the great difficulties in making laws is that lawyers become involved. I am beginning to understand that this concept is alien to lawyers. The management of domestic violence in this society is absolutely hopeless. At least 50 per cent of all murders are committed by a person who is known intimately by the murdered person. We cannot be proud about the way we have handled domestic violence. Domestic violence has very special features. For that reason I am asking whether those who can flick through the Crimes Act and give us chapter and verse of every clause can suggest that this is inconsistent with the Crimes Act. I would say domestic violence is very different.

Maximum penalties are set with 20 penalty points and six months imprisonment for many bills of this type. If there is a maximum, why should there not be a minimum? I ask the lawyers to answer that. As a lay person I do not have any difficulty with removing discretion from the courts in certain circumstances. I do not think the community has any difficulty. Lawyers become involved and start sweating when these matters are brought up. I do not think there is any difficulty with the lack of discretion. It sends out all the right messages and signals, and that is exactly what I am attempting to do with this amendment. I am quite prepared to remove  
Page 5748

from it the question of intimidation. I am not prepared to remove from it the question of property because, from my experience and from what has been recounted to me on many occasions by those who have advised me, the act of violence can be just as intimidating against property as it is against the person. Those dealing with these matters at the coalface can confirm that. I seek leave to remove from my amendment after the word "property" on the third line, "or was an act of intimidation", otherwise I intend to leave my amendment as it is and I feel particularly strongly about it.

**Leave granted.**

I move:

That the amendment be amended by omitting the words "or was an act of intimidation".

**Mr HATTON** (South Coast) [11.36]: It may not be a very good analogy, but if a person's life is threatened by cancer, does some higher authority say to a doctor, "Thou shalt operate" and remove the discretion, because the circumstances are extraordinarily serious. If that principle is applied to medicine, I am sure the honourable member for Manly, as a practitioner of medicine, would be outraged. One would wonder why a judge or magistrate would not be similarly outraged if that principle was applied to the law. There are myriad considerations whether one operates, the same as there are myriad considerations whether a person is put in gaol. The honourable member has alleviated many of my fears about property or the act of intimidation. When debating the first amendment the meaning of intimidation was relaxed to mean reasonable apprehension of injury to a person, or repeated telephone calls, or harassment. The honourable member suggests that offenders be gaoled automatically for that. I am in a bit of a quandary because a person may have reasons for committing an act of violence. I am concerned about making it mandatory on a court. I would like some guidance from someone more knowledgeable than I.

**Mr WHELAN** (Ashfield) [11.37]: I am trying to find a solution. However, I should like to point out that we are talking about denying a person bail because there is a compulsion on the breach in accordance with the amendment moved by the honourable member for Manly that there be a term of imprisonment. There is no prospect of bail. There are countless mitigating factors, which I shall not detail, that enable a court to exercise discretion. That is why I mention this. The honourable member should not be so sensitive about lawyers interpreting laws. We are trying to work out how legislation will work in practice. The amendment of the honourable member will put offenders in gaol automatically - there is no trial, hearing or discretion.

**Dr Macdonald:** Following a court appearance.

**Mr WHELAN:** It is no use having a court appearance if a judge or magistrate does not have a discretion. The amendment states that offenders automatically go to gaol.

**Dr Macdonald:** For one day or one year.

**Mr WHELAN:** It may be one day or one year. The honourable member is talking about a year. Gaol is the denial of a person's right to liberty. The amendment in relation to bail may overcome the fear of the honourable member for Manly. A breach of an apprehended violence order is tantamount to a refusal of bail.

**Dr Macdonald:** It is a lack of presumption.

**Mr WHELAN:** I concur with that, but when one looks at the lack of presumption following the breach of an apprehended violence order, the court makes the decision as to whether the breach is sufficient.

**Dr Macdonald:** It is vital that the court has the discretion.

**Mr WHELAN:** It is vital that the court has the discretion because, as I have said, there are mitigating circumstances. The honourable member for Manly seeks to take away the right to bail. Murderers get bail. The bill provides for a presumption against bail. Even the most heinous offenders lodge an application before the courts for bail and have their application refused. People may apply for bail and bail may be validly refused. No person will have any right, under the amendment of the honourable member for Manly, to secure bail; they must go to gaol. That is too heavy a penalty. Frankly, we need a little time to work through the gravity of the amendment. I understand the emotionalism of it, but there are practical disabilities associated with a person who knowingly contravenes an order. That is why I wanted the other definition that was thrown out. "Recklessly" seemed to throw everyone out of kilter. If a person knowingly contravenes an order, they will go straight to gaol. That is tough and grossly offends every principle. Even victims would probably regard it as unfair.

**Mr Hatton:** We do not even do that to second-offence paedophiles.

**Mr WHELAN:** They will go to gaol for ever. If there is a prohibition in the apprehended violence order against a person going near or walking past the victim, and on one occasion in perhaps six months he walks past, that would be a breach of the order.

**Dr Macdonald:** It must be violence against property or person.

**Mr WHELAN:** But that is the apprehended violence order. We went over that before. If one is subject to an apprehended violence order, having regard to the definition of intimidation and stalking, merely walking past on one occasion in six months is a breach of that order.

*[Interruption]*

That does not matter. An apprehended violence order has been made. The definition provides that a person may make an application if, on the balance of probabilities, that person has reasonable grounds to fear. That has not been changed. None of those circumstances have been changed. The point I am trying to make is that a technical breach will put that person in gaol. I do not think that is right. Another

Page 5749

amendment has been deferred. Why do we not think about how we will resolve this matter? At the moment, I cannot support the amendment.

**Dr MACDONALD (Manly) [11.43]:** I seek the leave of the Committee to defer consideration of the amendment, but I ask that it be dealt with before the Committee concludes its consideration tonight.

**Consideration of amendment and amendment of amendment, by leave, postponed.**

**Mr WHELAN (Ashfield) [11.43]:** I move:

Page 9, Schedule 1(9). After line 30, insert:

(b) After section 562J(3), insert:

(4) The Commissioner of Police is to make a record of the details of the material forwarded to the Commissioner under this section and is to retain that record for at least 10 years after the order to which it relates ceases to be in force.

The bill provides that the clerk of the court shall make a written record of the order. Proposed new section 562J(2) provides that the clerk of the court is to serve a copy of the record of the order personally on the defendant if he is present in court. That is a handy administrative arrangement. Proposed section 562J(2A) provides that if the defendant is not present at the time, the clerk is to arrange for a copy of the record to be served personally on the defendant by a police officer or such other person as the clerk thinks fit. Service on the defendant of the copy of the record of the order concerned may be effected in such manner as the court directs. My amendment fits in after that. The Government relies on section 562J(3), which provides that the clerk of the court shall cause a copy of the record of an order, or the variation or revocation of an order, and a copy of any complaint for an order to be forwarded to the Commissioner of Police. My amendment takes it one step further. It seeks to impose a statutory obligation on the Commissioner of Police to record for a 10-year period all the details of the material forwarded to him by the clerk of the court. He must retain it for 10 years after the order to which it relates is enforced. It is an important amendment and I hope the Government agrees to it.

**Mr HARTCHER** (Gosford - Minister for the Environment) [11.45]: The Bail (Domestic Violence) Amendment Bill deals with this matter. For the purpose of the bill, a person has a history of violence if he or she has, within the past 10 years, been found guilty of a personal violence offence or an offence of breaching an apprehended violence order by any act involving violence. To give effect to this amendment, the Commissioner of Police will be required to keep records of breaches of apprehended violence orders for a minimum of 10 years. I am not sure what the honourable member for Ashfield believes will be achieved by inserting this amendment into the Crimes Act. The Crimes Act is about crime. People will not go to the Crimes Act when they are looking for provisions about the keeping of records. The amendment is already inserted in the Bail Act.

**Mr Whelan:** Is the Minister telling me that the Commissioner of Police keeps records of apprehended violence orders?

**Mr HARTCHER:** He will be required to do so under the amendment to the Bail Act.

**Mr Whelan:** I have looked at that and I cannot find any statutory obligation on the Commissioner of Police. If the Minister can direct me to the section that provides specifically that the Commissioner of Police has a statutory obligation to maintain records for 10 years, I will withdraw my amendment. Please do not ask me to withdraw my amendment if it is anything less than that.

**Mr HARTCHER:** It does not use those express words. It provides that a person has a history of violence if that person has committed an act of violence in the previous 10 years. The only way that can be given effect to is if the Commissioner of Police is required to keep records of breaches of apprehended violence orders for a minimum period of 10 years. Otherwise it is a meaningless proviso. The necessary implication and responsibility on the Commissioner of Police are there.

**Mr Hatton:** 10 years?

**Mr HARTCHER:** Yes. If the Police Service is to comply with that provision, the only way it can do so is by keeping the records. If Acts of Parliament are passed that tell the Police Service what records to keep and what records not to keep, that should be done on a more systemised basis rather than having sections here and sections there. However, in this particular instance, if the honourable member for Ashfield believes that is the

only way the Committee can be satisfied, the Government will accept the amendment. The Government is not trying to be difficult about it. The Government is saying that putting more sections in bills is not an effective way of telling the police what records to keep and what records not to keep. Surely a more systemic approach is needed. The Government accepts the amendment, but does not agree it is the correct way to handle the matter.

**Mr WHELAN** (Ashfield) [11.49]: This amendment will be important in relation to the interstate registration factor. It will have great applicability to tragedies such as that which happened to Andrea Patrick.

**Amendment agreed to.**

**Mr WHELAN** (Ashfield) [11.49]: I move:

Page 3, Schedule 1(2). After line 7, insert:

(a) At the end of section 562B(1)(b), insert:

; or

(c) the engagement of another person in conduct in which the other person:

(i) intimidates the person or a member of his or her family or household; or

(ii) stalks the person; or

(iii) follows the person about or watches, or frequents the vicinity of or an approach to, the person's place of residence, business or work or any place that the person frequents for the purposes of any social or leisure activity,

being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.

Page 5750

This amendment is important because it relates to additional factors to an apprehended violence order. It provides additional grounds on which a court can grant an apprehended violence order. As honourable members would know, a court may make an apprehended violence order if it is satisfied on the balance of probabilities that there is a personal violence offence or if it involves the engagement of another person. My amendment provides for the engagement of another person in conduct in which the other person intimidates, stalks, follows the person about, or watches or frequents the vicinity, being conduct that, in the opinion of the court, is sufficient to warrant the making of the order. The amendment provides additional grounds on which a court may grant an apprehended violence order. The section will be clarified so that there can be no ambiguity about the commission of an offence of violence or the engagement of another person in such conduct. It is simple and I urge the House to support it.

**Mr HARTCHER** (Gosford - Minister for the Environment) [11.51]: The Government does not support the amendment. It is unnecessary because the behaviour concerned is dealt with under the existing provisions of the Act. The honourable member for Ashfield may regard it as a simple amendment, but it is not helpful to the administration or issue of apprehended violence orders. It would add further words and verbiage to section 562B and would not be effective in the operation of the Act. It purports to allow orders to be made to protect a claimant where he or she does not fear any unlawful behaviour towards himself or herself but only towards another person. The arguments about stalking have already been put forward. Part of the amendment proposed by the honourable member for Ashfield says, "intimidates the person or a member of his or her family . . .". Why should a person obtain an apprehended violence order if another person is being intimidated? Surely the person being intimidated should make the application. The amendment is much too wide and is superfluous to the objects of the bill.



**Mr HATTON** (South Coast) [11.53]: But what if a member of the family is a minor? Someone has to protect those persons. I kept my peace for the first couple of hours of the debate; I watched the body language and I listened to the contest across the Chamber. I cannot understand why so much time is being spent on discussing stalking. It seems to me to be self-explanatory. A lot of time could be saved if we agreed to the amendment relating to stalking. However, I would like to hear further explanation about intimidation of a member of the family.

**Mr HARTCHER** (Gosford - Minister for the Environment) [11.54]: Could I inquire whether the honourable member for Ashfield is still pressing part (iii) of this amendment?

**Mr WHELAN** (Ashfield) [11.54]: I am maintaining that part because it relates to conduct being sufficient in the court's discretion to warrant the making of the order.

**Question - That the amendment be agreed to - put.**

**The Committee divided.**

**Ayes, 40**

Ms Allan	Mr McManus
Mr Amery	Mr Martin
Mr Anderson	Mr Mills
Mr A. S. Aquilina	Ms Moore
Mr J. J. Aquilina	Mr Moss
Mr Bowman	Mr J. H. Murray
Mr Crittenden	Mr Nagle
Mr Doyle	Mr Newman
Mr Face	Ms Nori
Mr Gaudry	Mr E. T. Page
Mr Gibson	Mr Price
Mrs Grusovin	Dr Refshauge
Mr Hatton	Mr Scully
Mr Hunter	Mr Sullivan
Mr Iemma	Mr Thompson
Mr Irwin	Mr Whelan
Mr Knight	Mr Yeadon
Mr Knowles	
Mr Langton	<i>Tellers,</i>
Mrs Lo Po'	Mr Beckroge
Dr Macdonald	Mr Davoren

**Noes, 38**

Mr Armstrong	Mr W. T. J. Murray
Mr Beck	Mr O'Doherty
Mr Blackmore	Mr D. L. Page
Mr Causley	Mr Petch
Mr Chappell	Mr Phillips
Mr Cochran	Mr Photios
Mrs Cohen	Mr Richardson
Mr Collins	Mr Rixon
Mr Cruickshank	Mr Schultz
Mr Fraser	Mr Small
Mr Glachan	Mr Smiles

Mr Griffiths	Mr Smith
Mr Hartcher	Mr Souris
Mr Humpherson	Mr West
Dr Kernohan	Mr Windsor
Mr Kinross	Mr Zammit
Mr Longley	
Ms Machin	<i>Tellers,</i>
Mr Merton	Mr Jeffery
Mr Morris	Mr Kerr

### Pairs

Mr Carr	Mr Baird
Mr Clough	Mrs Chikarovski
Mr Harrison	Mr Downy
Mr McBride	Mr Fahey
Mr Markham	Mr Hazzard
Mr Neilly	Mr Peacocke
Mr Rogan	Mr Rozzoli
Mr Rumble	Mr Schipp
Mr Shedden	Mr Tink
Mr Ziolkowski	Mr Yabsley

**Question so resolved in the affirmative.**

**Amendment agreed to.**

Page 5751

### Postponed amendment No. 3 (Dr Macdonald)

**Dr MACDONALD** (Manly) [12.4 a.m.]: I seek the concurrence of the Committee to consider amendment No. 3 standing in my name, which the Committee deferred earlier. This matter essentially relates to duration. It was a complex issue and there was uncertainty as to how long an interim order would last. There was confusion in the bill and I wonder if the Minister for the Environment could clarify the issue. As honourable members know, I am opposed to a sunset clause in respect of interim orders without the Local Court being able to deal with them - particularly those that include prohibitions and restrictions. Is the Minister now in a position to clarify what was meant and whether he agrees with my amendment? The idea that an interim protection order - which is there to protect someone, particularly when the offence has occurred out of hours, and in cases involving prohibition or restriction - would automatically extinguish after 24 hours is beyond belief. Equally, in respect of other cases, it is not acceptable that at the end of five working days the order extinguishes and evaporates. I believe that the court should determine that issue.

**Mr HARTCHER** (Gosford - Minister for the Environment) [12.6 a.m.]: We are dealing with the amendment that says, "in any other case - the fifth working day after the next sitting of the Local Court for the district in which the incident occurred".

**Dr MACDONALD** (Manly) [12.7 a.m.]: I am not seeking to dissect the bill. I merely seek to support my amendment. If my amendment has merit, it may well be that an amendment to paragraph (a) is also necessary.

**Mr HARTCHER** (Gosford - Minister for the Environment) [12.7 a.m.]: The honourable member for Ashfield has pointed out a concern that has not yet been resolved. The Government does not agree with the amendment moved by the honourable member for Manly. He suggested it should be the fifth working day after

the next sitting of the Local Court for the district in which the incident occurred. The parties, or the victim, may no longer be living in the district. A woman often leaves the district because she wants to go and live with her parents. She wants to get away from the area. This amendment would govern that with a set of criteria that may not be applicable. That is the first point. The honourable member understands that. Those involved may live at Manly and the Local Court at Manly may be the appropriate district. The victim may separate from her husband because she is not happy to be with him and move to Parramatta to be with her family, yet the honourable member says the duration should still be dependent upon the sittings of the court at Manly. That may not be appropriate. The second point is that the whole idea of tying it to court sittings is no longer appropriate when the Government has a system in place whereby the matter can be dealt with in country areas, within that period. The Government does not agree to the amendment of the honourable member for Manly. The concern he expressed has to be answered separately.

**Mr WHELAN** (Ashfield) [12.9 a.m.]: When are you going to do that?

**Mr HARTCHER** (Gosford - Minister for the Environment) [12.9 a.m.]: Can we deal with this amendment?

**Dr MACDONALD** (Manly) [12.10 a.m.]: As I understand it the Minister is indicating that there may be difficulties because a victim may have moved. I am not speaking about that. The interim order is against the offender. The amendment provides that such an interim order cannot be extinguished unless that is done by the local court. If necessary the words "or another appropriate Local Court" could be inserted after the words "the district in which the incident occurred". Perhaps the Minister has misunderstood the amendment. He said the victim may move away. I do not mind how far the victim moves; this amendment deals with the duration of an interim order. I do not mind which court hears the application, so long as there is not an automatic sunset provision that must be dealt with by the court.

**Mr HARTCHER** (Gosford - Minister for the Environment) [12.11 a.m.]: I understand where the honourable member for Manly is coming from, but he fails to understand where I am coming from. The duration of the order should not be governed by the sittings of a court, because the court specified may not be the appropriate court if the victim has moved, for example, from Manly to Parramatta. Why should the duration of the court be dependent upon the sittings of the court at Manly? That is a nonsense and will not be a relevant yardstick by which to determine the duration of the court's order. That is one objection the Government has to the amendment. Another point that the honourable member for Manly has failed to address is that the parties may have a reconciliation and it may not be necessary to have a further court hearing. These are only interim orders.

Unless the victim wants to apply for a permanent order - in which case she would be entitled to an extension of the interim order until the permanent order is disposed of - the interim order should not continue in force. The victim may become reconciled and may not want the order to continue. Reconciliations are common in these circumstances. Sometimes one wishes they did not happen. Even in the Patrick case a reconciliation took place for a period of time. We do not want the duration of these orders to be determined by that process. The five working days allowed is a reasonable period. Working days do not include Saturdays, Sundays or public holidays. That is a reasonable time for the victim to determine whether she wants a permanent court order.

**Mr WHELAN** (Ashfield) [12.12 a.m.]: I have already expressed my concern about the duration clause. We should not let the bill pass with that ambiguity.

**Mr HARTCHER** (Gosford - Minister for the Environment) [12.12 a.m.]: I concede the ambiguity to which the honourable member referred. I have had

Page 5752

it checked and there is no argument about it. The Government will not agree to amend the proposed section in the way proposed by the honourable member for Manly. To remove any doubt, I put it on record that it is declared that the standard orders imposed by a telephone interim order may extend until 9 p.m. on the fifth

working day after the order is made, notwithstanding that the order also includes prohibitions or restrictions referred to in subsection (5). That puts on the record what the Government is seeking to achieve. I do not know whether the honourable member wishes to postpone further consideration of the amendment until the other amendments have been completed, to enable us to frame the wording of the amendment.

**Amendment, by leave, withdrawn.**

**Amendment, by leave, by Mr Hartcher agreed to:**

Page 7, Schedule 1(9) lines 15 to 18. Omit all words on those lines up to the word "case" on line 18.

**Postponed amendment No. 6 (Dr Macdonald)**

**Dr MACDONALD** (Manly) [12.17 a.m.]: I seek leave to withdraw amendment No. 6 in my name, and the amendment I moved to it, in view of an amendment foreshadowed by the Opposition.

**Leave granted.**

**Amendment, by leave, withdrawn.**

**Mr WHELAN** (Ashfield) [12.18 a.m.]: I move:

Page 9, Schedule 1(8). After line 15, insert:

(3) If a person is convicted of an offence against this section the person must be sentenced to a term of imprisonment if the act constituting the offence was an act of violence against the person. This section does not apply if the person was under 18 years of age at the time of the alleged offence.

(4) Prior to the sentence by the court in (3) and the offence being proven, the court shall not proceed to sentence until the defendant has been remanded in custody and a full psychiatric assessment and pre-sentence report is considered by the court.

The amendment that was withdrawn by the honourable member for Manly provided for the fixing of a compulsory term of imprisonment without the necessity for a psychiatric assessment and pre-sentence report. This amendment will make it possible for a person who breaches the apprehended violence order by an act of violence to be held in custody to await a pre-sentence report and psychiatric assessment. That might go a long way towards allaying the fears of the honourable member for Manly.

**Ms NORI** (Port Jackson) [12.20 a.m.]: Two examples of the difficulties that women face in having their assailants put behind bars so that they feel safe were recently brought to my attention. The first involved a woman and her two children who were held at knife-point for a day. It was a hostage situation. The police regarded the man involved as dangerous. When he was finally prevailed upon to release the people he was granted bail. I contacted the Attorney General's office, which then invoked the Director of Public Prosecutions, but although the DPP took the case to the Supreme Court the person was still granted bail. This woman had to leave her house, move her children out of school and live in a refuge. Her life has been turned upside down. I do not understand how, in these serious situations, such offenders are allowed to walk the streets.

The second case involved a person who had been convicted of violence against a woman. The DPP appealed against the leniency of the sentence but in the meantime the offender's behaviour was such that the woman felt the need to take out an apprehended violence order. He breached the AVO. The police could not find him, but they knew he was to appear in court on the day that the DPP was appealing the leniency of his sentence and intended to arrest him that day. However, they failed to do so. When I telephoned them they were apologetic. When they finally found him somewhere in the suburb in which he lived, they gave him police bail. These people mean business. Though they have breached AVOs and been convicted of violent crimes against individuals, they are still being released on bail.

The need for this amendment is patently clear. We are dealing with people who have been found by the court to have breached AVOs in a violent manner. We are talking about the kind of person who killed Andrea Patrick in Manly, someone who should not be allowed to walk the streets without being taught a lesson first, being brought to heel, and made to understand the nature of his behaviour and how dangerous it is. I draw the attention of honourable members to the speech I made on an earlier occasion in this House when I said that domestic violence is not an ordinary crime. It involves a set of psychodynamics, people who do not understand what it is like to have limits put on them, who think they can control others. They desperately need to be shown that they cannot do that. If it takes a couple of burly police to throw them in the back of a black maria and shanghai them to Long Bay to teach them that lesson, so be it.

The beauty of this amendment is that we are not suggesting we should put them in gaol and throw away the key. It should be recognised that some of these people might wake up to themselves after they have been in the slammer for a week or two. This amendment has the effect of saying, "You are going to be in the slammer. You are going to be assessed. The court will not sentence you until you have had that psychiatric assessment". If the judge feels that the person has learned his lesson and will genuinely try to modify his behaviour and submit to counselling, fine. If he learns a lesson, perhaps the poor bloody woman who has had to live with him will have some peace. However, if the judge feels he is dealing with a total fruitcake who needs to be in gaol for longer or put away in a forensic ward, that option will be available. That aspect is tremendously important. I emphasise that the kinds of rules and regulations in the law that protect offenders - and I never thought I would hear myself say this - cannot be applied in the

Page 5753

case of domestic violence, because we are not dealing with reasonable people. We are dealing with a set of psychodynamics who need to be treated differently.

**Mr ANDERSON** (Liverpool) [12.24 a.m.]: I support the amendment proposed by the honourable member for Ashfield, which seeks to overcome an impasse in trying to address the issue of a compulsory gaol sentence on conviction for a breach of an apprehended violence order by an act of violence against a person - something with which I think we would all agree. The difficulty with imposing a mandatory gaol sentence is deciding how long it should be. It is possible, within the technical meaning of a sentence, for a court to sentence the offender to the rising of the court and for that purpose to deem the court to have risen forthwith. That is not unknown in the criminal court system. This particular provision needs more certainty to ensure that the victim is given adequate protection, and that the court has before it all necessary relevant information to make an informed judgment of how long the person ought to be sent to gaol.

The amendment requires a finding that the offence has been found proved. Having reached that stage, this mechanism then comes into play - that is that the court, confronted with having to sentence the offender to gaol, must, before determining that sentence, obtain a full psychiatric assessment and pre-sentence report from the community corrections department, formerly the Probation and Parole Service. That brings with it a whole host of things: the professional assessment by a psychiatrist of the mental state and attitude of the offender; the advantage of having a broader range of information available from community corrections about the offender; and, for whatever period is involved for that assessment, it allows the prosecution and the informant - and one would hope that the informant, the victim, and the prosecution would both be heading down the same path in this situation - the opportunity to place before the court, when the matter is finally determined as to sentence, issues of importance to the victim. That would allow the victim generally to get on with her life, conscious that her protection and the needs with regard to the sentence are uppermost in the court's mind in determining that sentence.

Generally speaking under the law, the usual period of remand in custody without the consent of the defendant is usually eight days. It is unrealistic to expect to complete either or both of these requirements, which will become statutory if this amendment is adopted, within an eight-day period. It is not unreasonable that they could be completed within a period of a fortnight. Some may say that would extend the existing provision of remand in custody without consent, but we are enacting a provision for a mandatory gaol sentence, so a 14-day period would be in the interests of both the defendants and the victims. It is absolutely vital, in this

more than any other offence that is being dealt with by the criminal court system, that the sentencing magistrate - and it would generally be a magistrate - has before him or her all the necessary information to impose the appropriate punishment; to reform the behaviour of the defendant in the medium to long term; and more importantly, to ensure the protection of the victim in the long term.

Though we are dealing with a proposition that makes a significant impact on what might have been termed long-term legal principles, it is being done for the best of reasons in that everyone's requirements are being addressed by it. I concede at the outset that it is an unusual proposition, but it is the only way to overcome what could otherwise be described as a somewhat nebulous concept. The provision simply says that the defendant shall be sentenced to a term of imprisonment; it does not say for how long. It does not require the court to take into account conditions that could be attached to that sentence.

For example, having received the psychiatric assessment and having received the report from community corrections, the court may require or recommend to the correctional authorities that a particular offender, during the course of his - and I use the word "his" because that is the dominant gender in such situations - incarceration submit to a particular program or continue to receive psychiatric treatment during the term of his gaol sentence. All these features are positives for the offender but, more particularly, have regard to the rights of the victim. Honourable members have to bear in mind that the victim is paramount in this particular situation.

We are not talking about dealing with someone merely for breaching a bond and imposing a pecuniary penalty. If the legal system established by legislation to deal with these matters makes a mistake, it probably will not be the Magistrates Court that deals with the problem, it will be the Coroners Court, and that must be understood. For legal purists who say, "You are breaching all these principles", I say, "Bad luck". This is one of the few opportunities honourable members get to address the problem. If honourable members were to look closely at what has happened in the majority of American States that have sought to deal with this issue and the broader issue of stalking, they would find that a wide variety of draconian and moderate measures was introduced.

But women who have been victims of such violence - and, indeed, members of Parliament who have sought to assist victims - know how powerless they are and, regrettably, we are, almost without exception, to satisfactorily address the principles of justice and, more particularly, the protection of the women involved. Although I concede that the amendments are being debated hastily, and in the middle of the night, they are being debated for the best of reasons. If there is a flaw in the drafting of the amendment - despite the great skill of my friend and colleague the honourable member for Ashfield - it can be corrected by a minor amendment in the other place. That is the advantage we have. I ask the Government to consider the amendment proposed by the honourable member for Ashfield in the good faith in which it has been moved, with the best of intentions to try to resolve what seems to be an impasse in the consideration of this vital question. I support the amendment.

Page 5754

**Mr HARTCHER** (Gosford - Minister for the Environment) [12.32 a.m.]: I acknowledge the eloquence of the honourable member for Liverpool. I say that sincerely; I am not trying to be funny.

**Mr Whelan:** Is the Government going to vote for the amendment?

**Mr HARTCHER:** The Government will not support the amendment. I do not think that the honourable member for Ashfield really thought the Government would vote for it. The Government will not support an amendment that seeks to abolish the discretion of the courts. The Government accepts the fact that many of these people should go to gaol and expects that magistrates and judges will send them to gaol, but the right of the court to make that decision will be preserved. The procedure laid down by the honourable member for Ashfield in paragraph 2, for a compulsory psychiatric assessment in each case, is not appropriate. There is no need for a psychiatric assessment in every case.

**Ms Nori:** You have not understood a thing we have said.

**Mr HARTCHER:** It is up to the magistrate or the judge to order a psychiatric assessment. I understand the sensitivities that people may have about this issue, and it is because of those sensitivities that the Government has introduced this legislation. Nevertheless, the Opposition has to accept the fact that the Government is endeavouring to achieve a result that will work in society. As I said earlier to the honourable member for Manly in debate on an earlier amendment, if a situation arises in which a mandatory gaol term will result from a breach of the order, which may be only a technical breach, the police and the courts will be reluctant to enforce the law. That is the first risk, and it cannot be ignored. It is a very real risk. Secondly, despite the eloquence of the honourable member for Liverpool, if the amendment were to succeed, the principle that the courts should decide the penalties, not the Parliament, will be destroyed. The same situation applies to offences such as murder and sexual assault - right across the range. The honourable member for Port Jackson, who has taken a very real and genuine interest in this matter, is not proposing an amendment that says that the courts must impose a sentence of imprisonment in serious cases of sexual assault, yet she is supporting an amendment that would require the courts to impose a sentence of imprisonment in a technical case.

**Ms Nori:** No.

**Mr HARTCHER:** That is what the amendment proposes. It refers to any act of violence.

**Ms Nori:** Any act of violence?

**Mr HARTCHER:** Yes, any act of violence, that is what it says. At law the definition of violence is very broad. It can mean simply touching a person without that person's consent.

**Mr Thompson:** The Minister ought to lock up the lawyers. That would make it easier.

**Mr HARTCHER:** That is not what the amendment says, and the honourable member for Ashfield well knows that violence can be as trivial and as technical as that.

**Mr Thompson:** Get fair dinkum.

**Mr HARTCHER:** The Government is fair dinkum. It has introduced this legislation. It is anxious to have it enacted before Christmas, because a large number of these offences occur over the Christmas period. It is one of the worst times of the year for the commission of these types of offences. The Government would like to have the legislation passed by both Houses, assented to by the Governor, and enforced well before the commencement of the Christmas school holidays. I would ask all honourable members to realise that this particular amendment will not advance the objects of the bill, the objective of which is to help women and not merely impose massive penalties upon offenders. The Government does not support the amendment.

**Mr WHELAN (Ashfield) [12.36 a.m.]:** I should like to explain to the House that this amendment is a far cry from the previous amendment, which would have removed the liberty of an offender where property is involved. The first part of the amendment relates to a term of imprisonment to be determined by the court. The second part of the amendment states that the court will consider the offence: the court will be the one to determine the term of imprisonment after a person has been remanded in custody following a full psychiatric assessment and the court will consider the pre-sentence report. The most important provision is that any breach of an apprehended violence order will constitute an act of violence. That is the reason the law has to be so tough in relation to domestic violence.

We are not talking about technical breaches, we are talking about acts of violence that breach apprehended violence orders. It may be that the court decides that the person is able to obtain the psychiatric report and the pre-sentence report as expeditiously as possible, but think of the risk if that does not occur. Apprehended violence orders as they exist at present have failed the community. The amendment attempts to restore the balance in favour of the victim. Honourable members have to understand that the amendment was drafted on the run, so to speak, but its intention is very clear. It is more than a message, it is an important amendment.

The Opposition intends to vote in favour of the amendment tonight. Tomorrow I will send the amendment to the Parliamentary Counsel and to my colleagues in the upper House, who may suggest some refinements. But this message has to be sent right through the Legislative Assembly, and every member of the Legislative Assembly should support this amendment.

Page 5755

**Question - That the amendment be agreed to - put.**

**The Committee divided.**

**Ayes, 39**

Ms Allan	Dr Macdonald
Mr Amery	Mr McManus
Mr Anderson	Mr Martin
Mr A. S. Aquilina	Mr Mills
Mr J. J. Aquilina	Ms Moore
Mr Bowman	Mr Moss
Mr Crittenden	Mr J. H. Murray
Mr Doyle	Mr Nagle
Mr Face	Ms Nori
Mr Gaudry	Mr E. T. Page
Mr Gibson	Mr Price
Mrs Grusovin	Dr Refshauge
Mr Hatton	Mr Scully
Mr Hunter	Mr Sullivan
Mr Iemma	Mr Thompson
Mr Irwin	Mr Whelan
Mr Knight	Mr Yeadon
Mr Knowles	<i>Tellers,</i>
Mr Langton	Mr Beckroge
Mrs Lo Po'	Mr Davoren

**Noes, 37**

Mr Armstrong	Mr Morris
Mr Beck	Mr W. T. J. Murray
Mr Blackmore	Mr O'Doherty
Mr Causley	Mr D. L. Page
Mr Chappell	Mr Phillips
Mr Cochran	Mr Photios
Mrs Cohen	Mr Richardson
Mr Collins	Mr Schultz
Mr Cruickshank	Mr Small
Mr Fraser	Mr Smiles
Mr Glachan	Mr Smith
Mr Griffiths	Mr Souris
Mr Hartcher	Mr Turner
Mr Humpherson	Mr West
Dr Kernohan	Mr Windsor
Mr Kinross	Mr Zammit
Mr Longley	<i>Tellers,</i>
Ms Machin	Mr Jeffery



Mr Merton

Mr Kerr

**Pairs**

Mr Carr

Mr Baird

Mr Clough

Mrs Chikarovski

Mr Harrison

Mr Downy

Mr McBride

Mr Fahey

Mr Markham

Mr Hazzard

Mr Neilly

Mr Peacocke

Mr Newman

Mr Petch

Mr Rogan

Mr Rozzoli

Mr Rumble

Mr Schipp

Mr Shedden

Mr Tink

Mr Ziolkowski

Mr Yabsley

**Question so resolved in the affirmative.**

**Amendment agreed to.**

**Schedule as amended agreed to.**

**Schedule 2**

**Dr MACDONALD** (Manly) [12.46 a.m.]: I inform the Committee that I do not intend to move amendment No. 7 circulated in my name. I now move amendment No. 8 standing in my name:

Page 10, Schedule 2 (2) (proposed section 545BA (2)). After line 30, insert:

; or

(e) making repeated telephone calls.

This matter has already been debated by the Committee. The amendment relates to the addition of the words "making repeated telephone calls", which the Australian Labor Party earlier included in the definition. I understand that the Government will not divide on this consequential amendment.

**Amendment agreed to.**

**Mr WHELAN** (Ashfield) [12.47 a.m.]: With the approval of the Committee I wish to include in the definition of intimidation in amendment No. 8 standing in my name "(c) conduct amounting to harassment or molestation". By leave, I now move:

Pages 10 and 11, Schedule 2 (2), line 18 on page 10 to line 20 on page 11. Omit all words on those lines, insert instead:

**Stalking**

545BA. (1) A person who follows another person about or watches or frequents the vicinity of or an approach to another person's place of residence, business or work or a place that another person frequents for the purposes of a social or leisure activity, with the intention of intimidating that other person or in a manner which may reasonably be thought likely to intimidate that other person is guilty of an offence.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

(2) In this section:

**"intimidation"** means the causing of a reasonable apprehension of:

- (a) injury to a person or to any member of his or her family or household; or
- (b) violence or damage to any person or property; or
- (c) conduct amounting to harassment or molestation.

(3) An offence against this section and section 5621 (Offence of contravening order) may be prosecuted and punished under either of those sections, but a person is not to be punished twice for the same offence.

When dealing earlier with the question of stalking I explained the reasons for this amendment. The issue is simple: the Australian Labor Party and the Independents believe that stalking should be a specific offence under the Crimes (Domestic Violence) Amendment Bill and the Government does not. We support the amendment strongly and ask the Government to support it also.

**Mr HARTCHER** (Gosford - Minister for the Environment) [12.50 a.m.]: For the reasons I stated earlier, the Government believes that existing law adequately covers this provision. The Australian Labor Party is simply grandstanding by seeking to add a further offence to the Crimes Act.

Page 5756

**Question - That the amendment be agreed to - put.**

**The Committee divided.**

**Ayes, 39**

Ms Allan	Dr Macdonald
Mr Amery	Mr McManus
Mr Anderson	Mr Martin
Mr A. S. Aquilina	Mr Mills
Mr J. J. Aquilina	Ms Moore
Mr Bowman	Mr Moss
Mr Crittenden	Mr J. H. Murray
Mr Doyle	Mr Nagle
Mr Face	Ms Nori
Mr Gaudry	Mr E. T. Page
Mr Gibson	Mr Price
Mrs Grusovin	Dr Refshauge
Mr Hatton	Mr Scully
Mr Hunter	Mr Sullivan
Mr Iemma	Mr Thompson
Mr Irwin	Mr Whelan
Mr Knight	Mr Yeadon
Mr Knowles	<i>Tellers,</i>
Mr Langton	Mr Beckroge
Mrs Lo Po'	Mr Davoren

**Noes, 36**

Mr Armstrong	Mr Morris
--------------	-----------

Mr Beck	Mr W. T. J. Murray
Mr Blackmore	Mr O'Doherty
Mr Causley	Mr D. L. Page
Mr Chappell	Mr Phillips
Mr Cochran	Mr Photios
Mrs Cohen	Mr Richardson
Mr Collins	Mr Schultz
Mr Cruickshank	Mr Small
Mr Fraser	Mr Smiles
Mr Glachan	Mr Smith
Mr Griffiths	Mr Souris
Mr Hartcher	Mr Turner
Mr Humpherson	Mr West
Dr Kernohan	Mr Windsor
Mr Kinross	
Mr Longley	<i>Tellers,</i>
Ms Machin	Mr Jeffery
Mr Merton	Mr Kerr

### **Pairs**

Mr Carr	Mr Baird
Mr Clough	Mrs Chikarovski
Mr Harrison	Mr Downy
Mr McBride	Mr Fahey
Mr Markham	Mr Hazzard
Mr Neilly	Mr Peacocke
Mr Newman	Mr Petch
Mr Rogan	Mr Rozzoli
Mr Rumble	Mr Schipp
Mr Shedden	Mr Tink
Mr Ziolkowski	Mr Yabsley

**Question so resolved in the affirmative.**

**Amendment agreed to.**

**Dr MACDONALD** (Manly) [12.58 a.m.]: I move amendment No. 9 standing in my name:

Page 11, Schedule 2(2) (proposed section 545BA(4)), lines 3-6. Omit all words on those lines, insert instead:

(4) For the purposes of this section, a person intends to cause fear of personal injury if it could be reasonably expected that the conduct concerned would arouse that fear in the other person.

I genuinely believe that there is a drafting error in the bill. I draw to the attention of the Committee the way in which the South Australians have handled this problem. I invite honourable members to obtain a copy of the bill and to read the first subsection on page 11, which basically states that a person is not guilty of the proposed new summary offence of intimidation with intent to cause fear for personal safety unless that person has reasonable cause to believe that the "conduct concerned is capable of causing that fear". My amendment provides that a person may be convicted on an objective rather than a subjective test of whether the conduct could cause fear.

Subsection (4) of proposed new section 545BA does not read properly. I draw to the attention of the Committee the example of a police officer who sat at a dining room table with his wife seated opposite him.

He had on the table his revolver, which he was cleaning. He has been invited to claim that he did not intend to cause any harassment or fear. Any reasonable person would know that that could be referred to as intimidation. That is only one example of many. I invite honourable members to read that proposed subsection, as it is confusing. Why should the offender be the one who is invited to determine whether his actions are likely to cause fear? The South Australians have it right, in my view. Their provision states that a person stalks another if he or she acts covertly in a way that could reasonably be expected to arouse the other person's apprehension or fear. That is very close to my amendment. I ask the Minister to accept it.

**Mr HARTCHER** (Gosford - Minister for the Environment) [1.0 a.m.]: The provision is similar to the South Australian section. Perhaps at this late hour we are all interpreting the same wording differently. The wording is if a person has "reasonable cause" to believe that the conduct concerned is capable of causing fear, that is, in the victim - the test of a reasonable man. That person cannot afterwards say, "I never intended following her from shopping centre to shopping centre to cause her fear" when a reasonable person would know that such behaviour would cause fear. It is similar to the South Australian test, that is, where a person has reasonable cause - not an unreasonable cause - to believe that the conduct is capable of causing fear in the victim. That is what it says.

**Dr MACDONALD** (Manly) [1.1 a.m.]: In that case I would be happy if the Minister adopted the wording of the South Australian legislation. If the Minister is genuine in saying the bill is similar to the South Australian legislation, I invite him to adopt the South Australian wording.

Page 5757

**Mr HARTCHER** (Gosford - Minister for the Environment) [1.2 a.m.]: Why do not the South Australians adopt our wording? I cannot accept that argument by the honourable member. The words are there. We may not be reading them the same way at this hour, but those words say just that. The honourable member for Manly can read them himself. I am not being smart in saying that, but they clearly say, "If the conduct concerned is capable of causing fear in the victim".

**Dr Macdonald:** As judged by whom?

**Mr HARTCHER:** As judged by the court.

**Dr Macdonald:** That is what my amendment says.

**Mr HARTCHER:** Exactly. We are not arguing that.

**Dr Macdonald:** So you accept my amendment?

**Mr HARTCHER:** No. Why should we accept an amendment when the provision is clear in what it says?

**Mr WHELAN** (Ashfield) [1.3 a.m.]: I do not think this is worth a division, but it is worth a good look. This is a very strange test. The person intimidated is the one who should benefit. However, the person whose test is to be applied about whether there is reasonable cause to believe that the conduct concerned is capable of causing fear is the aggressor. That does not make sense. The provision is not correctly phrased and should be rephrased. It states that for the purpose of this section a person intends to cause fear if that person has reasonable cause to believe that the conduct concerned is capable of causing that fear. It is the intention of the aggressor that seems to be referred to. Perhaps the words "in the opinion of the court" or words to that effect need to be added to the clause so that it can make sense. The honourable member for Manly has an excellent point. The wording of the provision should be amended to take that factor into account.

**Dr MACDONALD** (Manly) [1.4 a.m.]: I draw a comparison. A person is driving negligently and is apprehended by a police officer. The officer asks, "Do you think you were driving negligently?" The answer

given is, "No, I do not think I was driving negligently". So it is no longer an offence. One test is subjective, the other is objective.

**Mr HARTCHER** (Gosford - Minister for the Environment) [1.5 a.m.]: This section is inserted for the assistance of a court. The provision states that a person intends to cause fear if he or she has reasonable cause - that is, the reasonable person test of believing that the conduct is capable of causing fear.

**Mr Whelan:** That is not a reasonable person test.

**Mr HARTCHER:** It is, if the person had reasonable cause.

**Mr Whelan:** The test is that the person who is causing the fear has reasonable cause to believe -

**Mr HARTCHER:** - that the conduct concerned is capable of causing that fear. The Government is prepared to review the effect of the other clause after it has been in operation for a period of time. That always happens. If the honourable member for Manly and the honourable member for Ashfield still have trouble with that provision after the legislation has been operating for some time, they can bring it to the Parliament.

**Dr MACDONALD** (Manly) [1.6 a.m.]: The explanatory note on page 4 of the bill states that the offence may be established if the accused has reasonable cause to believe that his or her conduct is capable of causing fear. I think that is very offensive.

**Mr HARTCHER** (Gosford - Minister for the Environment) [1.7 a.m.]: It is "reasonable cause" to believe. The principle underlying our law is mens rea, that is, that an intention must have been formed to commit an offence. People are released on the grounds they were mentally ill at the time they committed an offence, though they carried out the conduct, went into a house, pulled a trigger and killed a person. Two days ago a person was released after he stabbed his own psychiatrist to death at Fairfield. That person went there with a knife intending to kill his psychiatrist, and he did kill him. But he was released because he did not have the capacity to form in his mind an intention legally to kill. Intention is always the test. People are not punished for what others think but for knowing they are going to commit a crime and then committing it. That fundamental mens rea principle runs through the British common law legal system. The honourable member for Ashfield knows that well.

**Mr WHELAN** (Ashfield) [1.8 a.m.]: The Government is saying that in a court case the Crown has to prove that the aggressor had reasonable cause to believe that his conduct was causing that fear. The Minister is saying that the Crown will have to prove in court that an aggressor is guilty of conduct capable of causing fear. Earlier there was discussion about how this method would simplify procedures. The Minister spoke about hurdles and tests that women have to overcome to get into court. That is nothing to do with intention. The Minister should consider the amendment. I know the Government does not want to introduce a law that will be an impost, but this amendment clearly warrants another look. Given that the explanatory note is in error, the mistake should be admitted and cured so that other matters can be dealt with.

**Amendment agreed to.**

**Schedule as amended agreed to.**

**The TEMPORARY CHAIRMAN (Mr Rixon)** Order! The Committee will next deal with the Bail (Domestic Violence) Amendment Bill.

Page 5758

## **Schedule 1**

**Dr MACDONALD** (Manly) [1.9 a.m.]: I move amendment No.1 standing in my name:

Page 3, Schedule 1(2) (proposed section 9A(1)(b)), line 5. After "involving violence", insert "or by intimidation".

The amendment is in relation to exceptions from presumption in favour of bail. I welcome the change proposed to the Bail Act to remove presumption in favour of bail where a history of violence is involved. My amendment merely seeks to include intimidation as an exception from presumption in favour of bail.

**Amendment agreed to.**

**Mr WHELAN** (Ashfield) [1.10 a.m.]: I move:

Page 3, Schedule 1(2), lines 6 and 7. Omit all words on those lines, insert instead:

if the authorised officer or court is satisfied that:

- (c) the accused person has a history of violence against any person; or
- (d) there has been previous violence by the accused person against a person in respect of whom the offence referred to in paragraph (a) or (b) is alleged to have been committed (whether or not the accused person has been convicted of an offence in respect of that previous violence); or
- (e) it is in the public interest that the accused person not be entitled under section 9 to be granted bail.

The Government amendment does not go far enough. The Government is saying, under its amendments to the Bail Act, that if a person has a history of violence, the presumption or rebuttal of bail is invoked. The Government defines a history of violence as where an accused person has a history of violence or where the accused person has been found guilty. That is, there has to be a conviction, and that conviction must have occurred in the previous 10 years. The offence has to be a violent offence committed against any person, or a contravention of an order in the previous 10 years. That is not adequate, and I ask the Government to consider the amendment I have moved.

I have taken paragraph (c) further than the Government's paragraph to include the rebuttal provision where there has been previous violence by the accused against the person in respect of whom the offence referred to in the paragraph is alleged to have been committed, whether or not there has been a conviction. It is not necessary to prove that there has been a conviction, because the majority of apprehended violence orders are made once. Many women who are the subject of domestic violence never go to court but have a long-term history of violence that never reaches the court. The Government is precluding those people who have a non-convicted history of violence in their families. They have to prove that there has been a conviction; that is too much to expect.

The Government should toughen up the law to provide that there is a presumption against a person who has been convicted, but where a history of violence is not evidenced by a conviction, that conviction should not be necessary. A history of violence can be proved by the victim, by neighbours, or by anyone else who is happy to attend court on behalf of the victim and testify that there has been a history of violence. The non-conviction for violence will trigger the rebuttal of presumption of bail. The last paragraph refers to public interest, and it may be stating the obvious. If a person has a history of violence it may not necessarily be domestic violence.

If a major hoodlum is involved in violence, the public interest factor must be determined. For instance, in the Andrea Patrick case the interstate court order was not available. That court order may have given the magistrate the opportunity to refuse the rebuttal on the ground that the court orders were defective or that there was no transmission of that court order from Victoria. If that court order had been available at Manly court, the murderer would not have been granted bail. The breakdown between Victorian and New South Wales police is a tragedy that led to the unnecessary death of this young lady. For that reason, the public interest factor is

placed in the amendment, and I urge the Government to accept it.

**Mr HARTCHER** (Gosford - Minister for the Environment) [1.14 a.m]: The Government does not accept the amendment. The amendment would make accusations proof. The honourable member for Ashfield is saying that people will be invited to a bail hearing to make accusations of past violence that can never be substantiated and proved, unless the allegations can only be made by the person claiming the violence, with no separate corroborative evidence. The honourable member for Ashfield wants to abolish the idea that people are presumed innocent until proved guilty, to introduce a system wherein any allegation can be made of previous violence without any corroborative strength to support it and allow that to stand in the law as a criterion for determining whether a person is granted bail.

The honourable member for Ashfield knows the implications of his amendments, which are quite extensive and substitute accusation for conviction. Under New South Wales law a person is a cleanskin unless convicted. Accusations are not tantamount to conviction, and everyone is entitled to the reasonable presumption that unless there is substantial evidence to the contrary they will be judged innocent. The judge or the authorised officer is entitled, under the Bail Act, to consider separate criteria such as protection of the victim and of the community. That provision already exists. This amendment, considered in isolation, might even appear to the impartial observer to be reasonable, if that observer was not aware of the other sections of the Bail Act that impose extensive obligations on the authorised officer to look carefully at the circumstances in which he is releasing the person and the protection of the victim of the assailant's crime. This amendment will not achieve a purpose. It is unreasonable, and it is opposed.

**Mr WHELAN** (Ashfield) [1.17 a.m.]: The Minister does not understand. This amendment enables the presumption against bail to be triggered

Page 5759

where there is a history of violence but no conviction is recorded by the court. When the applicant attends court the bail application will be granted. The presumption is for bail where there is a non-conviction, but there may be a history of violence. All honourable members would know of relationships that exist around violent circumstances, where the woman remains for the sake of the marriage and is subjected to beatings. These beatings may continue for 10 years. If there is no guilty plea and no conviction, under the Government's bill the presumption against bail is not triggered. My amendment states that if there is a history of violence, notwithstanding the fact that there is no conviction, the court can say the presumption of bail is on the defendant - the defendant must prove why he should be granted bail. It provides for a tougher test than that provided by the Government's amendment.

There is a basic misunderstanding of the intention of this amendment. It is not the promise that the Premier gave to the people of New South Wales. The Premier promised the people of New South Wales, after I promised them, that there would be a rebuttal of bail in the circumstances. However, the Premier has come up with a presumption of bail if there is a history of violence and a conviction. Too many hurdles are placed in front of women who approach the court for some benefit from the presumption of bail. Again, it is only a presumption. The court can grant bail if it is satisfied, under the Bail Act, that it should be granted. I know of circumstances where a person has not been convicted where violence occurs. This amendment will enable women to go to the court where there is no proven court history of violence to apply for and receive the benefit of the presumption of bail.

#### **Amendment agreed to.**

**Dr MACDONALD** (Manly) [1.20 a.m.]: I move:

Page 3, Schedule 1(2) (proposed section 9A). After line 7, insert:

(2) An authorised officer or court dealing with an application in relation to bail in respect of an offence referred to in subsection (1) may delay dealing with the application for a reasonable time in order to obtain information of any prior criminal record of the accused if it is alleged that the accused has a history of violence against any person.

Briefly, the amendment provides that in the case of alleged domestic violence offences, or contraventions of apprehended violence orders, the accused may be retained in custody for a reasonable time to obtain information of any prior criminal record, if there is an allegation that the accused has a history of violence. That history of violence is currently defined in the bill. This is important because where a court is dealing with bail, the police officer is required to take into account the prior known criminal record of the accused. That is covered under section 32. This amendment will extend that provision. The amendment provides that past history must be taken into account.

The honourable member for Ashfield referred to where this went wrong in the Andrea Patrick case. Within 1½ hours of the offender's release the information was provided to the court from Victoria. As the honourable member for Ashfield said, had that information been provided, the magistrate would have decided differently. Earlier this evening we started with the words of the Premier, who said that the best prediction for a domestic violence offence is the history of an offence. The amendment merely allows an authorised officer to obtain information not only from intrastate but also from interstate. Clearly many domestic violence victims move from State to State. Therefore the offenders often have records in different States. I ask the Government to support this amendment. It would free up the system sufficiently to allow the concept of repetitive recurrent offences by people to be taken into account, whether in this State or other States, before a decision is made to release the offender.

**Mr HARTCHER** (Gosford - Minister for the Environment) [1.23 a.m.]: The wording of the amendment provides that people can be held in custody without being brought before a court or without being dealt with and given bail. Is that the principle this Committee wants to establish? The honourable member for Manly is very strong on this issue and understandably so. It is a serious issue. The amendment would allow authorised officers to delay dealing with bail applications. It would lead to the holding of more people in custody and, by statute, a bureaucratic delay.

**Dr Macdonald:** It may.

**Mr HARTCHER:** Yes it may. This amendment would vest authorised officers with a power - they are not a court - to delay bringing people before a court either to answer the charge or seek bail. This is fundamental. The honourable member for Manly may well think he is appeasing certain people who are determined - no matter what - to wipe this stain from our society. We are all determined to wipe the stain of domestic violence from our society, and that is why we are introducing the legislation. In that process we are not ensuring that bureaucrats - authorised officers - can delay processing bail applications on the excuse that they are looking for more information. Is that what the honourable member wants? I do not think so. The Government wants a system of law where people are accountable to courts or are granted bail or refused bail. Let the authorised officer refuse them bail, let the authorised officer grant them bail, but do not by statute interpose a system of delay. That is what this amendment would do. I will read it:

An authorised officer or court dealing with an application in relation to bail in respect of an offence referred to in subsection (1) may delay dealing with the application for a reasonable time.

That is not justice. Bail should not be delayed. It is either dealt with or it is not dealt with, or it is adjourned for a specific purpose. The courts have always had the power to refuse bail, and to adjourn the hearing and refer the matter for judicial review.

Page 5760

Is the amendment designed to further judicial review or to institute a delaying process that no one can review? A common problem with Independents' amendments is that though they sound good, they do not take into account the whole picture that is to be addressed. This is a classic case. The Government opposes this amendment. If the Labor Party supports the amendment, I will not call a division, as I have indicated, but the Government will seek to correct the amendment in the Legislative Council, as it will seek to correct many of the amendments it regards as inappropriate to this worthy legislation.



**Dr MACDONALD** (Manly) [1.26 a.m.]: The last few words of the amendment state, "if it is alleged that the accused has a history of violence against any person". So a magistrate or other authorised person would hear the words, "alleged . . . history of violence". I draw from the Andrea Patrick case where the family pleaded with the magistrate to delay the matter until the evidence became available from interstate. Clearly a submission was made by Andrea Patrick and members of the family that there had been a strong history of violence on many occasions. Nothing could be done to delay the proceedings because the information was not available to the magistrate dealing with the application.

If a clear history is alleged and the magistrate ultimately has a discretion - which the Minister appears to welcome - and the magistrate is impressed by the alleged history of violence, the amendment would give him the right under the law to wait. The magistrate does not have to wait. He can deal with the matter expeditiously and immediately if he wishes. I understand in the Andrea Patrick case that the magistrate was impressed by the allegations, but there was nothing he could do to delay the application because the information was not available.

**Mr WHELAN** (Ashfield) [1.28 a.m.]: I agree with the Minister. It is double jeopardy to delay for a reasonable time in order to obtain information of any prior criminal record that might be available. Why should the defendant be denied his liberty while the court waits for the records? The Crown should have those records available. It is not the fault of the accused. The plaintiff is only alleging that there is a history of violence. The Legislative Assembly has agreed to the Australian Labor Party definition on the question of rebuttal. The history of violence has been toughened up. I cannot support the amendment. I understand the general thrust of the honourable member for Manly. In view of the lateness of the hour I will look at the amendment. It may be modified when it gets to the upper House. I cannot support it in its current form.

**Amendment negatived.**

**Dr MACDONALD** (Manly) [1.29 a.m.]: I move:

Page 3, Schedule 1(2) (proposed section 9A(3)). After line 31, insert:

"intimidation" means any act of intimidation that constitutes an offence against section 545BA of the Crimes Act 1900;

Amendment 3 does not need any explanation. I have already made the definition clear.

**Mr HARTCHER** (Gosford - Minister for the Environment) [1.29 a.m.]: The Government does not agree to the amendment.

**Amendment negatived.**

**Schedule as amended agreed to.**

**Bills reported from Committee with amendments, and report adopted.**

## **BUSH FIRES (AMENDMENT) BILL**

## **FIRE BRIGADES (AMENDMENT) BILL**

### **Second Reading**

**Debate resumed from 27th October.**

**Mr ANDERSON** (Liverpool) [1.31 a.m.]: I am delighted to lead for the Opposition on this legislation and I will try to keep my remarks brief, given the hour. There will be no amendments or divisions on this matter

from the Opposition. I know that all honourable members not presently in the Chamber will be glued to their monitors listening to this debate. To assist honourable members I refer them to bills digest No. 38/93 issued by the Parliamentary Library. Honourable members are fortunate to receive the assistance they get by way of a considerable range of bills digests and briefing papers prepared by the substantially under-resourced Parliamentary Library. I am delighted to hear my colleagues say "Hear! Hear!" Despite the difficulties, the Library churns these documents out and they are of enormous assistance to members.

Although the Opposition does not oppose the bills, the House needs to understand what is involved. The issue of fire funding, be it funding for the Bush Fire Services or the Fire Brigades, has perplexed governments of all persuasions for many years. I am the first to concede that it is not an easy matter. In May 1992 I placed a notice on motion proposing the establishment of a select committee to inquire into and report upon all aspects of fire and emergency service funding in this State. It is regrettable that, despite several attempts to seek leave to bring the matter on - might I say, with the concurrence of many members of the Government - I was unable to have the matter brought on. The motion was supported at that stage by the Insurance Council, the Local Government and Shires Associations, a number of individual councils and many other people involved in all facets of firefighting. However, the former Minister was not prepared to allow the matter to come on and, of course, it has not been called on since, given its position on the notice paper.

The Minister indicated in his second reading speech that this proposal has the support of the Insurance Council and others, and I have no doubt that as an interim measure it does. That was brought to my attention when reading an article written by Howard Moxam under the headline "Bush fire funding changes ahead" in the November 1993 issue of *New South Wales Farmers News*, which I read regularly. It is clear that though the Opposition is not opposing

Page 5761

this matter - and I have indicated support for these measures from a number of people - it certainly is not supported by the New South Wales Farmers Association. That association is extremely critical, might I say with some validity, about the legislation and has referred to the lack of consultation with them. It must be borne in mind that the rural community, particularly farmers, makes hefty contributions through various mechanisms to bush fire fighting. Many rural communities are actively involved in giving time and resources to bush fire brigades in local communities. It is a pity they were apparently left out of the process.

I accept that the Minister has indicated the review will get under way soon. Though a review is obviously necessary - and that is why I proposed a select committee - I do not believe that the review as proposed will achieve the same result the select committee would have achieved. Members of Parliament are able to bring a considerable range of views to the select committee process, representing as they do very different electorates. It is interesting to look at my proposal for the establishment of a select committee because it included a wide range of people. It included the honourable member for Monaro, a former fire control officer; myself as a former Minister for Emergency Services; the honourable member for Camden, Dr Kernohan, who had been the mayor of what might be called a semirural council, involving fire brigades and bush fire funding; my colleague the honourable member from Swansea, a metropolitan electorate on the northern end of the Central Coast; the honourable member for Tamworth, Mr Windsor, with his academic qualifications, representing a rural electorate; and others that I could go on to name.

Such a committee would have enabled the Parliament to look at the totality of fire service funding and emergency service funding. If at the end of the process the Minister proposes we are in a position to consider new and more equitable arrangements for fire funding, we will not have resolved the problem for other emergency service funding. One of the difficulties that becomes readily apparent both with regard to the amendments to bush fire funding and in respect of fire brigade funding is that the insurance industry makes a massive contribution. However, that contribution will be substantially increased by consent of that industry through this measure. But it is not the industry that pays that contribution; it is the policyholders. The greatest inequity of all in fire funding is that only 60 per cent of property-owners have insurance. Basically, 60 per cent are paying 100 per cent of that proportion, and the majority proportion of the contribution.

One might ask what the answer is. The answer is that there is no simple answer, but the matter needs to

be addressed. Different measures have been adopted in other parts of Australia. The matter needs to be investigated and that is why I believe the select committee process would have been the appropriate way to investigate it. I say that, in no way knocking the people involved in the review process to be established by the Minister. I reiterate that when I proposed the establishment of the select committee I had a substantial number of letters of support from local government and industry. Given the hour, I will not go through those letters to the same degree that I might have done were it not so late. For that reason the review process is an interim measure. Because it will be reviewed, I am happy for that to occur, although I maintain that it is not the best option available.

The other issue raised relates to changes that would be implemented as a consequence of the provisions of the legislation. The role of the Bush Fire Council is to be substantially altered. There may be an argument as to whether that was appropriate. It is my view that the government of the day, unless it is doing something that is diabolically detrimental, should have the opportunity to introduce measures it believes will have some impact. A relatively small total amount of money is involved for bush fire funding as distinct from the fire brigades. The Bush Fire Council is an organisation of critical importance. Usually people would say that a group of 27 people is too big and too unwieldy, but the reality with the Bush Fire Council is that it encompasses every conceivable organisation that needs input, even those with observer status, such as the Bureau of Meteorology.

Those of us with an interest in bushfire matters know that meteorology plays an enormously important part in preparing to combat bushfires and predicting what may or may not happen, particularly in times of high fire danger. People from the conservation movement were involved in the Bush Fire Council. Some might ask: Why have them involved? Everyone acknowledges that the current fire season could be the worst for many years, because of the build-up of fuel on the ground. Hazard reduction is a vitally important issue. Hazard reduction is not simply a question of someone taking a decision to do something in a particular place. The input of organisations such as the National Parks and Wildlife Service gives us the opportunity to take well-considered approaches. The difficulty would arise if that process became an impediment to hazard reduction. However, I believe that hazard reduction can be dealt with in another context.

Whilst I understand the principle of reducing the Bush Fire Council from 27 to 16 members, I think that with fewer members it will lose much of the input it has had. I do not have any difficulty with the amendments resulting from the submission by the insurance companies relating to premium reports at particular times of the year and matters such as that. However, one matter took me by surprise: the change of the title of the head of the Department of Bush Fire Services from Director-General to Commissioner for

Page 5762

Bush Fire Services. The Opposition is not going to oppose that change in title, but the Government has failed to explain why it is necessary. I understand the Minister's point about the position being the senior operations officer, but I do not think this is a necessary change. Is the next step that the Director-General of the New South Wales Fire Brigades becomes the Commissioner for Fire Brigades?

**Mr Griffiths:** Yes.

**Mr ANDERSON:** The Minister has answered yes. We will now have the difficulty as to whether that person, Mr Rath, will be confused in that situation. That is a possibility. I know people will think that this is fanciful, but if we change the title of the head of the bush fire services to commissioner, the next thing is that we will have him in a uniform.

**Mr Griffiths:** He has been in a uniform for a long time.

**Mr ANDERSON:** The Minister says that he has been in a uniform for a long time. Quite frankly, I do not understand why he needs to have a uniform. I hesitate to pose this question, but is it proposed that Mr Rath, as director-general, will have a uniform?

**Mr Griffiths:** That is not in the bill.

**Mr ANDERSON:** I know, but I have posed those questions because they might be of interest to other people. The Opposition does not oppose the bills. I look forward to seeing the end result of this review process, but I very much regret that we did not go down the path the Labor Party proposed in May 1992. Had that been done then, we would have had the report and we would have been dealing within this time frame - it is not this Minister's fault - and we would probably be implementing a new scheme this session, instead of now starting a process which, according to the Minister's second reading speech, is not due for completion until 30th June, 1994. That is unfortunate. I await that report with interest.

Local government will be pleased that its contribution is to be reduced somewhat; and no-one has missed the fact that the Government's contribution will also be decreased as a result of the change in formula. Some people think, "It's the insurance industry; you don't need to worry". But the insurance industry does not ultimately pay; the people who take out insurance to protect their properties are the ones who will be slugged yet again. It is those people, as much as local government, who are crying out for the issue to be redressed and for the principles of equity to be introduced into the formulas adopted for the funding of both the bush fire services and the New South Wales Fire Brigades. It is to be regretted that it appears we are not going to see a comprehensive emergency services concept of funding, which I think would have resolved a number of the difficulties confronting people in that field. As I have said, the Opposition does not oppose the bills. We look forward with interest to the report.

**Mr GRIFFITHS** (Georges River - Minister for Police) [1.45 a.m.], in reply: I thank the honourable member for Liverpool for his positive contribution to this debate and for his support of these bills, and I commend them to the House.

**Motion agreed to.**

**Bills read a second time and passed through remaining stages.**

## **FIRE BRIGADES (HAZARDOUS MATERIALS) AMENDMENT BILL**

### **Second Reading**

**Debate resumed from 10th November.**

**Mr ANDERSON** (Liverpool) [1.46 a.m.]: I lead for the Opposition on the Fire Brigades (Hazardous Materials) Amendment Bill. I inform the House that the Opposition will not move amendments and will not divide on the bill. As the Minister for Police indicated in his second reading speech, this bill arose from two major hazardous materials incidents, which led to an inquiry, which made certain recommendations. This bill is important, even though it is only codifying the existing situation in which the New South Wales Fire Brigades is the combat authority for land-based hazardous materials incidents. The bill simply provides legislative support for that. It is important that the powers of the officers in charge of such incidents are made clear in relation not only to the incident but so that other agencies understand that the fire brigade officers will have authority in these circumstances.

It is admirable that the bill seeks to extend the same principles that apply to claims on insurance policies for damage done to property by fire brigade officers in the course of fighting a fire as apply to their attending a hazardous materials incident. That is a worthwhile provision. The cost recovery process whereby the Director-General of the New South Wales Fire Brigades will be able to recover the costs of the brigade in dealing with a hazardous material incident is not unreasonable under the circumstances. The director-general will have the discretion to scale down the schedule of charges where unreasonable hardship would be caused or where it is against the public interest.

People have a concern about that, but I think most reasonable people would say that when such an incident occurs, the people who have the responsibility for it having occurred also have the responsibility to contribute to

the cost of dealing with it. The cost should not simply fall upon the general community, particularly in matters of this nature. The Opposition is pleased to support the bill. It gives due recognition to the New South Wales Fire Brigades for its operational effectiveness and capacity. There is no option but to do this, certainly in light of the incidents and the report which led to the bill. I support the bill.

Page 5763

**Mr GRIFFITHS** (Georges River - Minister for Police) [1.49 a.m.], in reply: I thank the honourable member for Liverpool for his contribution and his support, and I commend the bill.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## **BUSINESS OF THE HOUSE**

### **Bills: Suspension of Standing and Sessional Orders**

**Motion, by leave, by Mr West agreed to:**

That so much of the standing and sessional orders be suspended as would preclude the following bills being passed through all remaining stages at this sitting:

Choice of Law (Limitation Periods) Bill

Limitation (Amendment) Bill

Limitation of Actions (Recovery of Imposts) Amendment Bill

## **LIMITATION OF ACTIONS (RECOVERY OF IMPOSTS) AMENDMENT BILL**

### **Second Reading**

**Debate resumed from 17th November.**

**Mr J. H. MURRAY** (Drummoyne) [1.50 a.m.]: Members would be aware that the States and Territories cannot impose duties of excise, but have been allowed to impose business franchise fees on liquor, tobacco and petroleum following a decision of the High Court a little more than 30 years ago. More recently, the validity of Australian Capital Territory legislation to impose licence fees on the manufacture and sale of X-rated videos has been challenged under section 90 of the Constitution. This case was heard by the High Court in April this year. The court has reserved its decision. I understand the decision is due to be handed down on 7th December. It is possible that the court will decide to completely dispense with the current system and come up with a new definition of the term "duties of excise". A narrower definition of the term would remove any uncertainty surrounding the validity of existing legislation.

There is also the chance that the court may adopt a broader definition of the term "excise" which could exclude the States from the field altogether. This would strike down all franchise fee legislation in all States and Territories with the potential loss of approximately \$1.4 billion of revenue in 1993-94 for New South Wales and up to \$4 billion Australia-wide and have a potential liability to make refunds of all tax paid in the past 12 months. It is these pessimistic outcomes that the bill addresses. The consequences for State finances of an adverse High Court decision raises the question of Commonwealth compensation, that is, the imposition of a Commonwealth tax and the distribution of the proceeds to the States and Territories. To this end the Commonwealth informed the High Court that it would immediately implement safety net arrangements designed to protect State revenues by replacing State and Territory franchise fees with equivalent

Commonwealth franchise fees.

I understand that substantial discussions have taken place between Commonwealth and State officials, but given the short time remaining before the court's decision it appears that the likely outcome will be, first, that the Commonwealth will draft windfall gains tax legislation to recoup for the States and Territories any money refunded as a result of an adverse decision in the Capital Duplicators case, and, second, the Commonwealth would increase excise and sales tax rates on petroleum and tobacco products to replace State and Territory franchise fees imposed on these products.

Unfortunately, the Commonwealth has not made any commitment as to the levels of the tax or the amount of revenue it intended to raise and distribute to the States and Territories or the manner in which the revenue raised would be distributed to them. The High Court has recently held, in the case of David Securities, that there is no Australian case law which would preclude a taxpayer from recovering taxes paid under a mistake of law. However, this general right of recovery has been limited by the Limitation of Actions (Recovery of Imposts) Act 1963. This Act limits the time period within which an action may be brought for the recovery of taxes to 12 months after the date of payment. Unless other Acts contain provisions for challenging the validity of, or for seeking the recovery of, taxes and other impost, then the actions for the recovery of overpaid taxes becomes subject to a 12-month limitation period.

It is obvious that a refund of all tax payments made in the 12-month period to 7th December, 1993, would be too great an impost for the New South Wales Government and taxpayers to bear. Amendments to the Limitation of Actions (Recovery of Imposts) Act propose to make refunds of tax and other impost subject to three further tests: first, a passing through of benefit test, that is, that the claimant has actually paid the tax and not passed the liability on to another person; second, an onus of proof test, which states that the burden of providing evidence to support the refund should rest with the claimant; and, third, a prospective overruling condition which embodies the principle that refunds will not be entertained where invalidity arises from a re-interpretation of the law.

There is also the need to prevent potential claimants from seeking to take advantage of more generous limitation provisions in other States and Territories by applying for refunds on New South Wales tax in another jurisdiction. This practice is known as forum shopping. This can be countered by two further bills, the Choice of Law (Limitation Periods) Bill and the Limitation (Amendment) Bill. These bills will ensure that the New South Wales law relating to limitation periods as proposed will take precedence over the law of any other jurisdiction. As it is obvious the Opposition will be on the Treasury benches in the near future, I support the bill.

**Mr COLLINS** (Willoughby - Treasurer, and Minister for the Arts) [1.55 a.m.], in reply; I thank the honourable member for Drummoyne for indicating the Opposition's support for this bill and providing an  
Page 5764

important safety net in the event of the High Court of Australia deciding in a way that would jeopardise the States' revenues in the near future. This is an important safety net which this legislation intends to provide. With the exception of the remark made by the honourable member for Drummoyne about occupying the Treasury benches in the near future, I endorse every comment he made and warmly commend this legislation.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## **CHOICE OF LAW (LIMITATION PERIODS) BILL**

### **LIMITATION (AMENDMENT) BILL**

#### **Second Reading**

**Debate resumed from 17th November.**

**Mr J. H. MURRAY** (Drummoyne) [1.57 a.m.]: The Opposition supports these bills.

**Motion agreed to.**

**Bills read a second time and passed through remaining stages.**

**JOINT SELECT COMMITTEE UPON THE  
SYDNEY WATER BOARD**

**Message**

**Mr Acting-Speaker (Mr Tink)** reported the receipt of a message from the Legislative Council advising that it had agreed that the reporting date for the Committee be extended until 17th December 1993.

**BILLS RETURNED**

The following bills were returned from the Legislative Council without amendment:

Health Care Complaints Bill

Election Funding (Amendment) Bill

**SPECIAL ADJOURNMENT**

**Precedence of Business**

**Motion by Mr West agreed to:**

That this House meet for the despatch of business on Friday, 19th November, 1993, at 9.00 a.m. with Government Business having precedence of all other business until 2.15 p.m., followed by the routine of business outlined in sessional orders.

**House adjourned at 2.2 a.m., Friday.**

---