## LEGISLATIVE COUNCIL

Wednesday, 20 April 1994

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**The President (The Hon. Max Frederick Willis)** took the chair at 2.30 p.m.

**The President** offered the Prayers.

## PROPERTY, STOCK AND BUSINESS AGENTS (AMENDMENT) BILL

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

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

## PETITION

### Anti-Discrimination (Homosexual Vilification) Legislation

Petition praying that because the homosexual vilification amendments to the Anti-Discrimination Act censor criticism of homosexuals, they be repealed, received from **Reverend the Hon. F. J. Nile**.

## UNIVERSITY LEGISLATION (AMENDMENT) BILL

### Second Reading

**Debate resumed from 14 April.**

**The Hon. Dr MEREDITH BURGMANN** [2.38]: On behalf of the Opposition I support the bill, and in doing so I should draw attention to the final part of the Minister's second reading speech in which she said:

> I thank all those at universities, vice-chancellors and chancellors, who have been so patient as we have consulted our way to this point, and I thank the officers of my own ministry, particularly the higher education unit, who have worked on this matter to achieve unanimity over several years.

It is in those thanks that one of the problems arises, that the Minister in her consultations has failed to speak to the people who really count - and I refer to the workers at universities. Universities consist of academics and general staff. Those people put their emotional energy into making universities work. Three very fine unions cover the workers in universities: the Health and Research Employees Association of New South Wales, the Public Service Association and the National Tertiary Education Union. The last-named union heard about this legislation only on Monday. It is not appropriate to thank the chancellors and vice-chancellors of the universities for their involvement in the consultation when the unions have not been consulted throughout this process.

**The Hon. J. F. RYAN** [2.40]: It gives me great pleasure to speak in support of the bill and the initiatives introduced by the Government. Members were somewhat astonished by the remarks of the Hon. Dr Meredith Burgmann when she said that we have not consulted the people who really count at universities. I would have thought that the people who really count are the students, as opposed to the members of various unions at universities. In terms of consultation in this matter, the honourable member referred to one group, the academic staff, who, as I understand, are represented on the board of governors of every university. And every board of governors has been consulted. I am sure that the Hon. Dr Meredith Burgmann would not seriously suggest that on each occasion, and on every aspect of legislation that comes before the Parliament, it is necessary to consult with the various unions involved, or that the only people who count are the trade unionists. The Minister has consulted with the vice-chancellors and their advisers in each of the universities, and to date there has not emerged -

**The Hon. Dr Meredith Burgmann:** What about the students?

**The Hon. J. F. RYAN:** I shall deal with students and workers shortly because they have expressed a few views on this matter. I am certainly one for going to the customer.

**The Hon. Dr Meredith Burgmann:** Why were the students not consulted?

**The Hon. J. F. RYAN:** A slight logistical problem would arise with consulting all students on this issue.

**The Hon. Dr Meredith Burgmann:** You can ask the student council. Do you not believe in representative democracy?

**The Hon. J. F. RYAN:** The honourable member is treading somewhat on thin ice in referring to representative democracy, considering the factional disposition she represents within the Australian Labor Party.

**The Hon. Dr Meredith Burgmann:** I would not carry on if I were you. You put off your preselections again.

**The Hon. J. F. RYAN:** What on earth has that got to do with this?

**The PRESIDENT:** Order! The honourable member will address the Chair.

**The Hon. J. F. RYAN:** I shall return to the scope of the bill and refer to the role of the Visitor. Honourable members may be interested to know that the term "Visitor", a term used in universities, has an historical origin in church canon law. Even in Australia today a number of ecclesiastical bodies are liable to visitation by a bishop or some other dignitary; so, too, are certain university colleges.

The visitorial power enables the Visitor to settle disputes between the members of the body of which he or she is a Visitor, to inspect and regulate their actions and behaviour, and generally to correct all abuses and irregularities in the administration of that body.

The jurisdiction originated as an item of property vested in the donor who established the charity and the right passed to the donor's heirs, but lapsed in the event of the failure of heirs, incapacity and other causes. Where it lapsed, the jurisdiction passed to the Crown and was exercisable by judges on behalf of the Crown. In New South Wales the Governor of New South Wales, His Excellency Rear Admiral Peter Sinclair, is the Visitor of each State and public university. He has full authority and jurisdiction to exercise all functions pertaining to the office of Visitor. Over recent years the need for a special dispute settling authority, such as the Visitor, has been questioned. The desirability of the Governor being placed in a position of having to adjudicate on the internal disputes of universities also has been questioned - for reasonable cause, one would have thought.

My only surprise about members opposite seeking to talk about consultation on this issue would be that the concept of the Governor becoming involved in disputes that can arise within a university in a representative, modern, constitutional democracy such as Australia would have been a statement of the obvious. I do not think any member opposite would seek to defend the Governor having a role in deciding whether an academic award is to be awarded, in the discipline of any student of the university, in the appointment of staff, or in the resolution of disputes between staff and the university. We have more than adequate jurisdictions for all those disputes to be adequately litigated or dealt with. It seems to be a statement of the obvious that they ought not to involve someone like His Excellency the Governor.

It is important to consult, and it is useful to obtain the views of consumers about whether that is a satisfactory way to resolve disputes. One of the most famous disputes in which the Governor, as Visitor of Macquarie University, was asked to be involved concerned a Dr Ong, who brought a petition claiming that he had been unfairly dismissed from the university. As it so happened, his petition to the Governor was successful and he was given the theoretical satisfaction of being told that he had been unfairly dismissed. But even Dr Ong has voiced his opinion about whether an appeal to the Visitor is a satisfactory way to resolve conflict. Dr Ong said that the jurisdiction is unclear, slow, and limited in its range of remedies. He also said, "My own experience as a petitioner to the Visitor disposes me against the retention of his jurisdiction". He said later that he received no advantage that was not available to an ordinary litigant. There it is from the lips of a successful customer: a statement that the retention of the Visitor was not a brilliant idea. The Government is following not only the view expressed by customers but also the fairly sensible view put to it by our Solicitor General, who has said:

> It is my view that the jurisdiction is obsolete, unnecessary, costly and deficient. It should be abolished by statute in terms that would confirm the ordinary jurisdiction of the civil courts to deal with appropriate industrial, contractual and administrative law disputes.

I am sure all members would concur with that view expressed by the Solicitor General, Keith Mason, Q.C.

**The Hon. J. R. Johnson**: What about tradition?

**The Hon. J. F. RYAN**: The Hon. J. R. Johnson raises the interesting concept of retaining the tradition of the Visitor. The proposed legislation provides for continuation of the office of the Visitor in its ceremonial role, which is its most relevant role. I am sure all public universities want to continue the relationship they have with the Governor, particularly with His Excellency Governor Peter Sinclair. The tradition is to be maintained but the legal substance that attached to the role of the Visitor is to be abolished by the proposed legislation. All universities have indicated support for the removal of visitorial jurisdiction. A majority of universities have indicated their support for the retention of the ceremonial or official role of the Governor.

Another leg of the proposed legislation deals with the making by universities of by-laws and rules. Essentially, the bill seeks to clarify the ability of universities to make by-laws about matters relating to their internal administration. Plenty of examples can be given as to why it is not appropriate for the Minister to allow herself to be involved in these two matters, which really should be subject only to internal administration by the universities. They involve, for example, the kind of costume people might wear at ceremonial functions, the use of the university seal and what documents it might be attached to. It has not been unusual to ask the Minister to approve the conferring of honorary degrees on dignatories visiting a university.

Matters involving routine administration should be subject only to internal consideration by universities. I instance the discipline of students and the management of traffic and parking on campuses. I think all honourable members would agree that they are the sorts of things that universities should decide for themselves. Making those matters subject to by-laws involves unnecessary public expense and introduces Ministerial involvement - which in some ways involves political involvement - into

matters that are rightly the domain of the universities.

The legislation allows universities to lease their property for periods of less than 21 years, so that they can enter into joint ventures. At the moment, universities wishing to lease their land for a period less than 21 years are required to seek the approval of the Minister. Apparently, this is quite a common practice by universities; so common that it is considered to be routine. Generally it relates to joint ventures between a university and a variety of other educational institutions.

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I understand there is a proposal for the creation of a research park in the Eveleigh area, with the involvement of three universities: the University of Technology, the University of Sydney, and the University of New South Wales. Clearly, this is the sort of arrangement that we should encourage our universities to become involved in. A requirement for them to seek the Minister's approval would be an unnecessary imposition on efficient administration. I understand there is also a proposal for the University of Technology, Sydney to enter into a joint venture with an interstate language school. That will clearly be of educational benefit to people in this State, and is something that we should encourage.

The Minister should not have to be personally responsible for those sorts of matters, and the legislation seeks to clarify and extend the power of universities to administer their property. Major projects that involve leases beyond 21 years will continue to be subject to ministerial approval. That is appropriate, given that in many cases it involves the use of public land. Those are the three matters dealt with in this legislation. They appear to be commonsense measures that are worthy of the support of honourable members, and it is my pleasure to support the bill.

**The Hon. ELISABETH KIRKBY** [2.54]: The Australian Democrats support the University Legislation (Amendment) Bill. As members will now be aware, the bill will limit the role of the Visitor to this State's universities to the performing of ceremonial functions. For many years the Visitor also had dispute-settling powers, but as the civil courts are available to deal with industrial, contractual and administrative law disputes, those powers have now been called into question. The Ombudsman also has powers in relation to universities. The dispute-settling powers of the Visitor are clearly anachronistic and should therefore be abolished, and this measure has been supported by all the universities involved.

The second aim of the bill is to clarify the rule-making powers of university governing bodies. The bill will allow universities to regulate on minor internal matters such as the use of emblems and seals and the imposition of parking and traffic fines on campus, by way of rules made by their governing bodies rather than by way of by-laws. By-laws have traditionally been used in order to confer greater legal certainty upon those matters. The enhancement of the status of rules will encourage universities to deal with more matters by way of rules rather than by by-laws, which involve much formality and government expense. Matters that impact on the public accountability of universities - for example, the election of designated people to governing bodies, borrowings and investments - will be exempted from being dealt with by rules.

The third provision of the bill will amend the law so that universities may lease property for terms less than 21 years where there is economic or educational benefit to the universities. At present the Minister can enter into leasing agreements of 21 years or less if the highest rent is reserved for the whole of that term. It should be pointed out in conclusion that leases of more than 21 years will continue to be subject to the approval of the Minister. This is a useful and valuable piece of legislation that tidies up many anomalies, and it gives me pleasure to support it.

**Reverend the Hon. F. J. NILE** [2.57]: The Call to Australia group is pleased to support the University Legislation (Amendment) Bill 1994. As other speakers have said, it has three main measures. One relates to the Visitor, which is an office held by the Governor of this State. Although the Visitor will no longer be involved in day-to-day disputes concerning the disciplining of students and the promotion or

dismissal of staff, we are pleased that the ceremonial role of the Visitor will be maintained. We understand that the universities also want the Visitor to retain that role. I believe that it is desirable to maintain a close association between the Governor and the universities. The bill provides also for the leasing powers of universities. Currently a university must obtain the approval of the Minister to lease its property, unless the term of the lease does not exceed 21 years and the highest rent that can be obtained is reserved for the whole of that term.

The amendment will change the existing provisions so that the Minister's approval need not be obtained if the term of the lease does not exceed 21 years and if the governing body of the university is satisfied that it is to the benefit of the university, whether from a financial or educational standpoint or otherwise, that the lease be entered into. The third amendment will clarify the powers of universities with regard to by-laws, rules and orders, and should increase the efficient operation of universities. The University of Sydney, which I attended as a student, and the University of New England are like small communities or towns, with security requirements, security guards, roads, parking stations and so on. Universities should certainly have the authority to administer those matters. We believe the bill will achieve that, so we are very pleased to support it.

**The Hon. VIRGINIA CHADWICK** (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [2.59], in reply: I thank honourable members for their contributions and their support for what has been described by many as practical and commonsense legislation. I reiterate my thanks to the universities for the patience they showed during negotiations on the legislation. Those negotiations had to be dealt with in a sensitive fashion because of the involvement of the Governor and because of the long history and tradition of this matter. For obvious and commonsense reasons I have no desire to raise any matter in the Parliament that may affect the Governor unless there is unanimity. I am grateful to all who have worked hard in that regard.

The only point of discord raised by any honourable member was that raised by my colleague the Hon. Dr Meredith Burgmann in her comments
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about negotiation and consultation with what she called unions or associations that represent academic staff. She used that term; I did not. It is beyond dispute that every university in this State has on its governing body representatives of academic staff and students. If any members of the so-called union or association are concerned about the conduct of those negotiations, which were held openly and honestly over a long period, I suggest either they go back through the papers of the board or governing body, or they take the matter up with their vice-chancellor. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## GAMING AND BETTING (RACE-MEETINGS) AMENDMENT BILL

### Second Reading

**The Hon. VIRGINIA CHADWICK** (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [3.3]: I move:

That this bill be now read a second time.

I seek leave of the House to incorporate the second reading speech in *Hansard*.

**Leave granted.**

Unlike all other States and Territories in Australia and in many countries overseas, racing on Sundays in New South Wales is currently prohibited under the provisions of the Gaming and Betting Act.

Honourable members will recall that during the 1991 budget session of Parliament, the Gaming and Betting Act was amended to allow the staging of race meetings on eight Sundays during the period 1st January, 1992 to 31st December, 1993 to enable funding to be raised for Sydney's bid to host the Year 2000 Olympic Games.

This initiative proved extremely successful and in excess of $8 million was raised towards the costs of Sydney's Olympic bid.

As a result of the success of those meetings, the question of the continuation of Sunday racing on a limited basis has been raised with representatives of the racing industry who have expressed the industry's support for the proposal.

Accordingly, Mr President, the bill before the House will allow for the conduct of race meetings on six Sundays each financial year commencing 1st July, 1994 and ceasing 30th June, 2001.

As occurred with the Sydney 2000 Olympic bid Sunday race meetings, it is envisaged that the Australian Jockey Club and the Sydney Turf Club will share the Sunday dates, with each club conducting three Sunday race meetings each year. Other New South Wales race clubs may also apply to conduct meetings on the selected Sundays in conjunction with the metropolitan clubs.

It is intended that the Sunday race meetings will also be programmed in conjunction with interstate fixtures so as to maximise revenue from the meetings.

Based on revenue generated by the Olympic bid meetings held in the previous two years, it is expected that each of the Sunday race dates will raise approximately $1 million. Accordingly, it is anticipated that some $6 million per annum will be directed to the consolidated fund to enable, subject to the usual parliamentary appropriation process, payments to be made for specific purposes and contingencies which I will outline later.

The bill includes a provision that in the event that an approved Sunday date is unable to be utilised, for example when programmed race meetings are cancelled due to inclement weather and an alternative Sunday date cannot be allocated in that same year, then the Minister may approve of an additional Sunday date in a following year, thereby ensuring that the date, and in turn revenue, is not lost.

The bill also includes a provision that Sunday meetings are to be disregarded for the purposes of limits imposed under the Act on the maximum number of days on which race meetings may be conducted on a racecourse. This provision simply alleviates the need for the Minister to obtain the Governor's approval to increase race day entitlements to accommodate the Sunday race meetings.

I should stress that the proposal does not represent a complete relaxation of current restrictions on Sunday racing as the proposed legislation limits the number of Sundays to six per financial year and empowers the Minister to determine the dates on which Sunday racing may occur, the clubs which may conduct such meetings and the racecourses on which they may be conducted.

In addition, it is worth noting that most other recreation and leisure pursuits are available on Sundays as are other avenues of gambling including poker machines, club keno and the sale of lottery tickets. The new Sydney casino will also be open on Sundays.

Mr President, it is proposed that revenue generated from the first Sunday of racing under the legislation will be allocated to bush fire relief as an agency donation.

It is then intended that revenue generated from the remaining Sunday race dates will be utilised towards costs associated with the staging of the Year 2000 Paralympic Games, the further development of elite sport in the lead up to the Sydney 2000 Olympics and as a contribution towards the costs associated with the promotion of the Sydney autumn racing carnival.

As honourable members would be aware, Sydney's successful Olympic bid carries with it the responsibility for the conduct of the Year 2000 Paralympic Games - a responsibility that this Government has accepted.

Accordingly, the Government will be looking for the costs of this commitment being largely funded from revenue derived from the proposed Sunday race meetings.

Apart from the Government's commitment to both the Year 2000 Olympic Games and Paralympic Games, it has been identified that there is a need to increase the efficiency and effectiveness of existing high performance sport programs, particularly in the lead up to the Olympic Games.

In this regard, my colleague, the Minister for Sport, Recreation and Racing is currently examining proposals to increase the efficiency and effectiveness of existing elite sport programs by re-focusing, re-packaging and enhancing these programs under a totally new identity, the New South Wales Institute of Sport. It is also intended that these costs be met from Sunday racing revenue.

Mr President, the final component of the package involves a proposal the Minister for Sport, Recreation and Racing has before him to provide financial assistance towards the promotion of the Sydney autumn racing carnival, which is currently in progress.

This initiative is a joint venture involving the five metropolitan race clubs of the three racing codes which have joined together to collectively market their high profile autumn races.

The Sydney autumn racing carnival promotional campaign has proven in this, its first year, to be highly effective and the Government believes that with a co-operative effort from the racing industry, the corporate sector and the Government, extensive gains can be achieved in tourism and the promotion of the State.



Given the support shown by the public for the Sydney Olympic bid Sunday race meetings, the Government is confident that this latest proposal will be equally successful.

I commend the bill to the House.

**The Hon. B. H. VAUGHAN** (Deputy Leader of the Opposition) [3.3]: The object of this bill is to replace section 53AA with a new section allowing up to six Sunday race-meetings to be held in each financial year between 1 July 1994 and 30 June 2001. In 1991 the Government introduced the Gaming and Betting (Amendment) Bill, designed to raise money towards the Sydney 2000 Olympics bid. Eight meetings were to be held over two years. That program was completed by 31 December 1993. On that occasion the Opposition - the alternative government - supported the bill. In excess of $8 million was raised towards the costs of Sydney's Olympic bid.

The community realises that Sunday race-meetings are extremely popular, particularly with the punting public. The present proposal will raise even more funds with the passing of this bill during this parliamentary session. It is envisaged that, as occurred with the Sydney 2000 Olympic bid race-meetings, the Australian Jockey Club and the Sydney Turf Club will share the Sunday dates, with each club conducting three race-meetings a year. Other New South Wales race clubs will also be able to apply to conduct meetings on selected Sundays in conjunction with the metropolitan race clubs. I look

forward to a meeting at Louth in the not too distant future. Mr President, you will remember that our dear friend, the Hon. J. J. Doohan, who is no longer with us in this Chamber, only shouts at Tilpa and Louth.

It is the Government's intention that its share of revenue from these race-meetings will be used for specific purposes. On these occasions it may be used for such things as bushfire relief, the staging of the Sydney 2000 Paralympic Games and the further development of elite sport in the lead-up to the Olympics in the year 2000. I hope it will also help to promote the Sydney autumn racing carnival. Based on revenue raised from the Sydney Olympic bid Sunday race-meetings, the Government expects that the Sunday meetings will raise considerable funds for the purposes I have outlined. It is believed, and it would be something to aspire to, that most of the Sunday meetings will run on days when other States and the Australian Capital Territory are holding Sunday races, as this is more attractive in making the meetings successful, certainly for punters.

I notice the successful former Minister for Sport, Recreation and Racing, the Hon. R. B. Rowland Smith, is in the Chamber this afternoon, as he usually is. The alternative government has indicated that in government it would continue limited Sunday racing and would continue the practice of using funds raised for major sports projects in various locations in Sydney and other regions. These projects have large capital costs which at present cannot be carried out under the sport and recreation capital works program for each electorate. The legislation will not prevent a Labor government carrying out that aspiration on its election to office.

**The Hon. R. B. ROWLAND SMITH** [3.7]: The objects of the bill, as reported in *Hansard*, are to amend section 53AA with a new section allowing up to six Sunday race-meetings to be held in each financial year between 1 July this year and 30 June 2001; the Minister will, as the current section 53AA provides, determine the dates and places where these Sunday race-meetings are to be held; and other related matters. This is an innovation, following the introduction in December 1991 of the Gaming and Betting (Race-meetings) Amendment Bill, to hold eight race-meetings during the period 1 January 1992 to 31 December 1993. The Minister at the time, the Hon. George Souris, stated that these eight race-meetings would be conducted to raise about $8 million which could be directed towards the Olympic bid. He said:

> In conclusion, I emphasise that the legislation in no way intends to provide for a complete relaxation of the present restrictions on Sunday racing.

Now we have a complete change of heart and we are proceeding with a long-term relaxation in relation to Sunday race-meetings from the year 1994 until the year 2001.

**The Hon. J. R. Johnson:** You did not want it when you were Minister.

**The Hon. R. B. ROWLAND SMITH:** If the Hon. J. R. Johnson will sit down and listen for a little while, I will explain it to him. During my time as Minister for Sport, Recreation and Racing I resisted attempts by the Sydney Turf Club -

**The Hon. J. R. Johnson:** You did not.

**The Hon. R. B. ROWLAND SMITH:** Yes, I did. The Hon. J. R. Johnson was in the chair then. He should know, unless he was asleep. I resisted attempts by the Sydney Turf Club for one Sunday race-meeting and I gave my reasons for such a decision. I hark back to my response to questions asked in this House, first by the Hon. J. C. J. Matthews. In response to his question concerning Sunday race-meetings, I said:

> Over the past few weeks a good deal has been written and spoken about the possible introduction of night racing and Sunday racing. Let me put people's minds at rest about this matter. So far as this Government is concerned, there will be no . . . Sunday racing . . . The only moves that have been

made for the introduction of night racing have come from one sector of the industry, and that has been the Sydney Turf Club . . . However, the industry has not provided any back-up support for this proposal. The jockeys are opposed to it.

I responded also to a question asked by Reverend the Hon. F. J. Nile in April 1989. He asked me about Sunday racing in view of church opposition to it. I responded by saying to him:

> It is a fact that about 3 500 race-meetings are held in New South Wales each year. This State has 116 galloping tracks. When one speaks of race-meetings, one includes gallopers, trotters and greyhounds. I understand that Victoria conducts about 1 400 race-meetings. Some publicity has been given to the question of introducing race-meetings in this State. The Government and I have stated unequivocally that at this time no changes will be made.

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I went on to say:

> Racing in this State has reached the stage where the market-place is rapidly becoming saturated. Already the number of meetings exceeds the combined total of Canada, France, Italy, Japan, England, New Zealand and Ireland. Race-meetings in New South Wales are conducted six days a week on more than 300 days a year.

When the original amendment was mooted in December 1991 I made my feelings very plain at a joint party meeting. I said that I did not think it was in the best interests of racing that we should move to have any Sunday race-meetings at all. However, because this was being done for an important purpose, that is, to raise money for the Olympic Games in the year 2000, I went along, as I always do, with the will of the party room and supported the legislation. I made my various points plain - points which revolved around the fact that we are now racing in New South Wales seven days a week. In the United States of America racing is held six days a week with a day off on Tuesday. In England the day off is Sunday. In other countries similar things occur. It is really asking a tremendous amount for any industry to work seven days. How would Opposition members like to get up at 4 a.m., get their horses out, put them into floats or walk them to the track, train them for about an hour, take them back to the stables and have them fed and watered?

**The Hon. Franca Arena:** A lot of women do that for their families.

**The Hon. R. B. ROWLAND SMITH:** Does the Hon. Franca Arena get up at 4 a.m?

**The Hon. Franca Arena:** No, because my family has grown up.

**The Hon. R. B. ROWLAND SMITH:** While all the things I have mentioned are occurring the lads muck out the stables and put in fresh hay for the horses. This process goes on six days a week, but Sunday is a free day - a day for catching up on sleep and relaxing. This will not happen any longer. It is all very well for a government to say that it will establish Sunday race-meetings for important purposes. I go along with important things such as bushfire relief, the Paralympics and the year 2000 Olympics, which certainly need funding. What will happen? Will this escalate? For example, next Saturday the Sydney Turf Club will be holding a meeting for Red Cross Day. Will we have a day for St Vincent de Paul and all the other charitable organisations that come to the race clubs and ask for extra race-meetings on Sundays? The Government must be careful not to kill the goose that lays the golden egg. That could happen if we continue to have more and more races on Sundays. What my successor George Souris had to say was most apposite. He said:

> I emphasise that the legislation in no way intends to provide for a complete relaxation of the present conditions on Sunday racing.

I pose the question to the Government - and the Minister in the other place, in his second reading speech, stated that the industry accepted Sunday race-meetings - how true is that? The industry comprises many thousands of people in addition to those administering the principal clubs. It includes owners, trainers, jockeys, stablehands, bookies and the Totalizator Agency Board. When I was at the TAB at Edgecliff the other day I asked the lady behind the counter, "How do you like Sunday races?" She said, "I hate it". She said, "We are open six days a week, but now we will be asked to be open for seven". One thing the Government needs to do - which I emphasised in my contribution to the Address-in-Reply debate - is to substantially reduce its take for on-course and off-course betting.

I have made these points abundantly clear in the coalition party room. Even if I feel strongly, as I do in this instance, I express dissatisfaction in the party room. If people in the party room make a clear-cut decision, as they have in this case, I go along with that decision. Party politics is a team effort - something about which members of the Australian Labor Party should be made aware. I have never gone against the will of the majority of those within the joint coalition parties. I have raised these matters today because I believe people ought to be made aware of what goes on in the industry.

I really do not believe that many people in this Chamber or in the other place fully understand the ramifications of the racing industry. I have been involved in the racing industry for over 40 years. My father was involved in it for many years before that. We have both bred horses, raced horses and backed horses. We know trainers and jockeys and we know what the industry is all about. I was pleased to hear Mr Stan Neilly, a member of the Australian Labor Party in the other place, say:

> Consideration of the blood-horse racing industry in this State in conjunction with the capacity and profitability of the clubs conducting the race-meetings must go hand in glove with the proposed legislation. The race-meetings are intended to fulfil a specific fundraising purpose, but the clubs should not be the milching cows to accomplish it. The impact of Sunday race-meetings on the industry and the people associated with the industry should be taken into account. I refer specifically to trainers, jockeys, bookmakers and all those who play a part in the conduct of race-meetings. The objective of the legislation as framed is good, but consideration should also be given to the players in the game.

I believe that to be absolutely true. As I have said, I want to make members aware of some of the problems within the industry but, because I am a loyal member of the coalition and I accept the wish of the coalition, I will support the legislation.

**Reverend the Hon. F. J. NILE** [3.18]: The Call to Australia group is totally opposed to the Gaming and Betting (Race-meetings) Amendment Bill. Honourable members would be aware that the bill was amended to change the holding of race-meetings in this State by allowing eight Sunday race-meetings between 1 January 1992 and 31 December 1993. The purpose of those additional Sunday race-meetings was to raise money for the Sydney Olympic bid. Those changes were opposed by the Call to Australia group. The fears which we expressed on that occasion must again be expressed in relation to the present bill,



which will dramatically increase the number of race-meetings to be held on Sundays. People had the impression that, if they opposed the increase in Sunday race-meetings, it could be seen as opposition to the Sydney Olympic bid and an undermining of its success because not enough revenue would have been able to be raised.

Of course, honourable members now know that bid was successful, but I would say with no thanks to the race-meetings. On that occasion the Parliament, with opposition from the Call to Australia group, agreed to the conduct of eight Sunday race-meetings between 1 January 1992 and 31 December 1993. However, this bill would virtually bring in Sunday racing as the norm because it would allow six Sunday race-meetings to be held, not only in the next 12 months, but for each financial year between 1 July 1994

and 30 June 2001 - A.D.

This House is now proposing legislation for Sunday race-meetings to be held in A.D. 2001. Who knows what governments will assume office following the elections in March 1995, and four years later in 1999? Who knows what will be happening in our State? I believe it is wrong and bad legislation for this Parliament to tie the hands of future governments until A.D. 2001. It seems to me to be setting a new precedent. I do not know whether members of the Opposition with legal knowledge can quote examples of government having its hands tied to the extent that the decision covers two prospective terms of office. That cannot be justified.

In introducing the other bill dealing with race-meetings for the period 1992 to 1994 the Government attempted to sugar-coat the bitter pill by linking it with the Sydney Olympic bid. It is attempting to do the same with this bill, by linking it with the preparation and development of elite sports programs in the lead-up to the Olympic Games in 2000, the staging of the Paralympic Games in 2000 and the promotion of the Sydney autumn racing carnival. Those who are critical of the proposal may appear to be critical of the Olympic Games. However, that is not my position; I am 100 per cent in support of the Olympic Games. I have recorded my congratulations to the Government on its success in winning that bid against tremendous odds. If one opposes this proposal one may appear to be critical of the Paralympics, but no one would want to be labelled critical of the Paralympic Games in the year 2000.

It is a clever strategy by the Government to link this bill with those worthwhile activities. There is strong opposition to this legislation. It has not been debated in the community. We already have sufficient racing days in this State. This State is almost race mad and gambling mad. It has the highest amount of gambling per person of all other States and possibly many nations. The Hon. R. B. Rowland Smith said in his excellent speech that because of his loyalty to the coalition he will not vote against the bill. On the basis of what he said he should vote against the bill because he is opposed to it.

**The Hon. R. B. Rowland Smith:** No, no.

**Reverend the Hon. F. J. NILE:** He should.

**The Hon. R. B. Rowland Smith:** Why?

**Reverend the Hon. F. J. NILE:** Because he is opposed to it.

**The Hon. R. B. Rowland Smith:** I am opposed to it but I told you why I would not vote against the bill. I am a loyal member of the coalition, and that is your coalition.

**Reverend the Hon. F. J. NILE:** I quoted that. I said that the Hon. R. B. Rowland Smith is loyal to the coalition but he should in fact be voting against the bill. The honourable member's loyalty to the coalition will prevent him from doing that because he knows that the bill is opposed by the churches. I believe it is opposed by the patrons as well, and by the racing industry. I have heard many comments, as the Hon. R. B. Rowland Smith also has, from jockeys, trainers, stablehands and bookies, saying that they do not wish to be tied up seven days a week. There should be an opportunity for them to enjoy family life and to have the opportunity of true recreation or re-creation. I agree with the comment of the Hon. R. B. Rowland Smith that racing seven days a week is unfair on the horses. For those reasons Call to Australia opposes the bill and hopes that the Opposition will oppose it. I know there are strong reservations among members of the Opposition about this legislation. But it seems that the Opposition always supports bills dealing with gambling, racing or alcohol consumption. The only real opposition to such legislation is from Call to Australia. I hope that on this occasion a vote on this bill will result in its rejection.

**The Hon. R. S. L. JONES** [3.25]: The Australian Democrats do not oppose this legislation. The Australian Democrats have received no correspondence from anyone in opposition to this bill, whether

from jockeys or trainers - none whatsoever. No one is opposed to it, apart from the Hon. R. B. Rowland Smith and - predictably - Reverend the Hon. F. J. Nile. There is not much uprising in the community against this legislation. Obviously horses are not ridden seven days a week; they have resting periods in between. Trainers carefully select horses to run and do not run them seven days a week. Some Christian denominations believe that Saturday should be a holy day and not Sunday. Other religions also believe that Saturday is a holy day. Why choose Sunday in particular? It is an archaic concept. Many other things happen on a Sunday, so why not racing as well?

**The Hon. VIRGINIA CHADWICK** (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [3.26], in reply: I thank honourable members for their worthwhile and often spirited contributions to this debate. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

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## WORKERS COMPENSATION LEGISLATION (FURTHER AMENDMENT) BILL

### In Committee

**Consideration of Legislative Assembly's message of 14 April**.

**The Hon. VIRGINIA CHADWICK** (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [3.30]: I move:

That the Committee agree to the Legislative Assembly's amendments Nos 1 to 12.

**The Hon. J. W. SHAW** [3.30]: The amendments proposed by the Legislative Assembly undoubtedly will improve the bill and make it a more beneficial regime to deal with workers' compensation in New South Wales. As the Minister in the other place said, the amendments have been negotiated with the trade union movement and other interest groups. The Opposition is pleased to support the amendments contained in the message forwarded from the Legislative Assembly.

**The Hon. ELISABETH KIRKBY** [3.31]: The Australian Democrats are pleased to support the amendments proposed. Honourable members will recall that the bill was first introduced and debated in this House late in 1992. The Democrats supported most of its provisions then but opposed clauses that would have significantly reduced weekly make-up entitlements for unemployed, partially unfit workers after the first 104 weeks. The original bill provided that during the first 104 weeks the make-up entitlement would take account of actual, rather than award level, loss of earnings. After 104 weeks the entitlement would be on the award earnings basis. This provision would have affected the most vulnerable workers, those having the greatest difficulty in finding new employment after their injuries. I am pleased that the Government has now consulted with the Labor Council and amended the bill to provide that make-up entitlements will cover the worker's actual loss of earnings due to injury throughout the period of incapacity.

Another amendment that has been introduced by the Government will provide guidance on how to assess the earning potential of partially unfit workers. This will be done by tying it to the general rules for establishing average weekly earnings under the Act. An amendment introduced by the Government also provides that retraining will not affect the make-up entitlements under section 40 when retraining increases earning potential. The make-up entitlement will be reduced only when the retrained worker unreasonably refuses a specific offer of employment in the kind of work for which he or she has been retrained. The overall package of amendments will fine-tune the amendments to which this House

previously agreed. The bill is a great improvement on the one originally introduced. Therefore the Democrats are pleased to support it.

**Legislative Assembly amendments Nos 1 to 12 agreed to.**

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

**Message**

Message sent to the Legislative Assembly advising it that the Legislative Council agrees to the Legislative Assembly's amendments Nos 1 to 12.

## LOTTERIES AND ART UNIONS (AMENDMENT) BILL

### Second Reading

**The Hon. VIRGINIA CHADWICK** (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [3.34]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

**Leave granted.**

The Lotteries and Art Unions Act 1901 regulates minor community gaming activities such as raffles, art unions and games of chance.

This bill has three general aims:

* first, it will bring the laws relating to community gaming into line with modern day practices;

* second, it will establish consistency in the regulation of the different types of activities carried on under the Act; and

* finally, it will safeguard the public interest by ensuring consistency with accountability processes and requirements provided for in other laws which regulate fundraising.

The Lotteries and Art Unions Act was initially drafted in 1901. Many of the provisions of that time remain part of the Act today. With the passage of time, various provisions of the Act no longer reflect modern community expectations and standards in regard to minor community gaming activities.

An example of this is the current prohibition in the Act on liquor being offered as a prize in a lottery, raffle or game of chance.

Most people, at one time or another, have taken part in a raffle that has offered a bottle of wine as one of the minor prizes. The motivation for taking part in such raffles is to support a charitable or non-profit organisation - it is not simply because a bottle of wine might be won.

Mr President, I would be surprised if many of the honourable members had not, at some time, supported a worthwhile community cause where this type of prize was offered.

Anecdotal evidence suggests that the prohibition on liquor prizes is openly and repeatedly ignored with

community support.

The provisions of this bill will remove the prohibition and will enable liquor to be lawfully offered as a prize, subject of course to strict controls.

Safeguards are included in the bill to restrict minors' access to liquor prizes in lotteries, raffles, or other games of chance where liquor is a prize. Specific offences are being created to cover the sale of tickets by a minor, or the collection of a liquor prize by a minor.

Mr President, another feature of the bill is the consistency it achieves between the different types of activities carried out under the Act.

One proposal relates to the controls imposed on sweeps and calcuttas.

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In 1990, this Government introduced amendments to the Lotteries and Art Unions Act to make lawful the conduct of sweeps and calcuttas on the Melbourne Cup and other approved events. Until that time, such activities were illegal, although they had been conducted for many years by public-spirited organisations to raise funds for worthwhile community purposes.

Those amendments brought the legislation into line with community practice.

The present legislation allows sweeps to be conducted with total ticket sales of $2,000 or less. No permit is required for sweeps. Sweeps cannot be lawfully conducted if their ticket sales exceed $2,000.

Calcuttas may presently be conducted without a permit if ticket sales are $2,000 or less. Calcuttas with ticket sales above $2,000 may be conducted only if a permit has been issued.

The $2,000 threshold was a conservative limit when compared with other forms of fundraising. One example is raffles, which can be conducted with maximum prize pools of $20,000 without the need for a permit. Raffles with prizes in excess of $20,000 are termed art unions, and require a permit.

The current bill raises the limit on sweeps and puts them in the same category as raffles. It will allow sweeps and calcuttas with ticket sales up to $20,000 to be conducted without a permit. Sweeps and calcuttas with ticket sales over that amount will require a permit.

The increased limit and the permit requirements are consistent with the approach taken for raffles and art unions.

Another key feature of the bill concerns the updating of the art union provisions. Over the years, there have been piece-meal changes to these provisions. This has resulted in legislation that is often difficult to read and understand, and which is out of step with modern practices.

The term "art union" is itself outmoded. But because it has some meaning to many to describe a particular form of community based lottery, no attempt has been made to alter the meaning and the term is carried forward in this amending legislation.

The bill will re-write the art union provisions of the Act in a way which recognises the modern concept of an art union. It will also make the provision much easier for those who are conducting art unions to understand their obligations.

It clarifies that non-profit organisations can conduct art unions and, at the same time, makes art union conditions consistent with the requirements for other fundraising activities in the Act.

Another proposal in the bill relates to cash as a prize where it is supplementary to a travel prize.

At the moment, a cash component can be provided with a travel prize for an art union. While a tour or journey can be offered as a prize in a raffle, there is no provision to enable cash in the form of `spending money' to be given as part of the travel prize. The bill will amend this inconsistency by allowing cash to be offered in raffles as part of a travel prize.

Given that raffles can be conducted without a permit, it is desirable for there to be some control over the amount of cash that can be offered in this way.

It is therefore proposed to prescribe a limit on the cash component of the travel prize in the regulations. It is anticipated that the cash component might be equal to roughly one quarter of the overall cost of the travel prize. However, this will be the subject of industry consultation during the drafting of the regulation.

Mr President, as I indicated earlier, another feature of the bill is the consistency it provides in regard to the accountability of those who conduct the various lotteries, art unions and games of chance dealt with by the Act. The proposed measures ensure a greater protection for the unsuspecting members of the public who enter such contests in good faith.

A broad range of non-profit and charitable organisations seek community support for a variety of worthwhile causes. It is therefore essential that those organising lotteries and games of chance are accountable for the funds generated by such activities.

The Charitable Fundraising Act 1991 includes safeguards and deterrents for those who might otherwise use unscrupulous fundraising methods for private gain. This bill introduces similar safeguards for the Lotteries and Art Unions Act.

The bill will enable the Minister to appoint inspectors under the Act, who will have appropriate powers of entry and inspection. This will allow inspectors to undertake investigations without impediment, and ensure the speedy and thorough investigation of complaints.

In addition, there have been cases where an activity regulated by the Act has been conducted in a way that was blatantly contrary to the public interest. While it would have been preferable to be able to immediately halt the suspected illegal activity, the Act has not provided for this type of action. The bill rectifies this situation by providing the Minister with standing to apply to the Supreme Court for an order to suspend the conduct of a suspected illegal lottery, game of chance or art union.

Also, where a person or organisation persistently fails to comply with the Act or permit conditions, it will be possible for the Minister to apply for an injunction to prevent the people involved from conducting minor gaming activities for a period of two years.

A further feature of the bill is the introduction of new offences and penalties for false statements. The bill also amends the overall penalty structure for offences so that maximum penalties are in line with offences under the Charitable Fundraising Act.

Finally, the bill makes a number of related and consequential amendments and administrative improvements to the law. The opportunity has also been taken to correct minor drafting errors and to remove sexist references from the Act.

Mr President, this bill provides for a consistent and balanced approach to the conduct and regulation of minor community gaming activities.

It clarifies and updates certain of the provisions of the Lotteries and Art Unions Act to ensure that the legitimate interests of those who take part are protected.

At the same time, the bill also ensures that proper minimum prudential standards are observed by the organisers of events dealt with under the Act.

I commend the bill to the House.

**The Hon. B. H. VAUGHAN** (Deputy Leader of the Opposition) [3.34]: I speak to the Lotteries and Art Unions (Amendment) Bill. The bill will amend the Act of the same name, which regulates the conduct of minor community gaming. It generally prohibits the conduct of any lottery or game of chance with some exceptions, that is to say, raffles, art unions and games of chance such as bingo and lucky envelopes; housie or bingo in registered clubs; trade competitions; and sweeps and calcuttas for social purposes or fundraising. In most cases a permit must be obtained from the charities division of the Chief Secretary's Department to run those activities, the exceptions being raffles and certain sweeps and calcuttas.

The main purpose of the proposed amendments is to modernise the provisions in the Act to achieve greater consistency in the regulation of community gaming, while at the same time protecting community

interests. The opportunity will be taken also to clarify existing requirements and to bring the Act into line with other fundraising legislation. Specifically the proposals will increase the current limit on ticket sales for sweeps and calcuttas to $20,000, in line with other fundraising activities, and change permit requirements; enable the Minister to publish an order in the *Government Gazette* listing approved events in relation to which calcuttas and sweeps may be held; clarify the art unions provisions to enable non-profit organisations to conduct art unions and to revise the conditions under which art unions may be conducted; and enable liquor to be offered as a prize in lotteries, art unions and minor games of chance, but in accordance with strict conditions to prevent minors from gaining access to liquor prizes.

The amending bill will also provide for powers of entry and investigation in relation to persons and organisations conducting lotteries, games of chance and art unions; enable the Minister to seek orders from the Supreme Court to prevent the conduct of specific lotteries, games of chance or art unions, or to prevent an organisation or person from conducting any such activities for a certain period; and enable the proportion of the gross proceeds of a lottery, game of chance or art union that can be used for administrative purposes to be prescribed by the regulations. It will update the penalties for offences under the Act so as to make them consistent with the penalties for similar offences in the Charitable Fundraising Act 1991; allow services and vouchers that are not redeemable for money to be offered as prizes in lotteries, games of chance and art unions; and make other amendments of a minor and ancillary nature. The litany of matters that I have related are issues on which the Labor Party has expressed concern, especially during the debate on the Charitable Fundraising Act, which passed through the Parliament in 1991. The Opposition finds these changes satisfactory. The alternative government supports the bill.

**The Hon. R. B. ROWLAND SMITH** [3.38]: This amending legislation is well overdue, bearing in mind that the Lotteries and Art Unions Act was established in 1901 - 93 years ago! Little has been done to alter the regulations or the Act since that time. The Lotteries and Art Unions Act of 1901 regulates the conduct of minor community gaming. It generally prohibits the conduct of any lottery or game of chance, with some exceptions, which are: raffles, art unions and games of chance such as bingo and lucky envelopes; housie or bingo in registered clubs, trade competitions, sweeps and calcuttas for social or fundraising purposes - and the Hon. J. R. Johnson will know all about that, being the bagman for the ALP and conducting his little chook raffles in pubs.

**The Hon. J. R. Johnson:** I have never raffled a chook. I am told that the honourable member won a bird.

**The Hon. R. B. ROWLAND SMITH:** Someone told me you were the big chook man anyway. In most cases a permit must be obtained to run these activities from the charities administration of the Chief Secretary's Department, the exceptions being raffles, certain sweeps and calcuttas. The main purpose of the proposals is to modernise the provisions of the Act to achieve greater consistency in the regulation of community gaming while protecting community interests. The opportunity will be taken also to clarify existing requirements and to bring the Act into line with other fundraising legislation. The proposals also amend the legislation so that it better reflects community expectations and standards.

The proposals provide specific benefits for charitable and non-profit organisations by improving their fundraising options while enhancing the law and offering greater protection for those who support fundraising organisations. The objects of the proposal are to increase the limit on ticket sales for sweeps or calcuttas in line with other fundraising activities and to change permit requirements; enable non-profit organisations to conduct art unions and revise the conditions under which art unions may be conducted; allow liquor to be offered as a prize in lotteries, art unions and minor games of chance, but in accordance with strict conditions - namely, people under the age of 18 cannot be involved in this particular aspect of the bill at all; enable the Minister to appoint inspectors under the Act and provide for powers of entry and inspection afforded to those inspectors; provide the Minister with standing to apply to the Supreme Court for an injunction to suspend the conduct of a lottery or game of chance, and enable the Minister to apply to the court for an order to prohibit the conduct of lotteries or games of chance; update the penalties imposed for offences under the Act; and make other amendments of a minor and ancillary nature.

The first main feature of the bill deals with the consistency and regulation of community gaming. One proposal will make penalties imposed under the Act consistent with penalties under fundraising legislation. Another proposal will bring the Act into line with modern investigative practices. This will enable suspected illegal fundraising activity to be dealt with quickly and will protect the public interest. A new penalty structure that has been drafted in consultation with the Attorney General's Department will ensure that the penalties for offences under the Act are consistent with penalties in other fundraising legislation.

Second, the proposals will amend the Act in line with community expectations and standards. One example is the common, but currently illegal, practice of offering liquor as a prize in raffles. The current law prohibiting the giving of liquor as a prize is openly and repeatedly ignored, with community support, and is open to selective enforcement. It is proposed to allow liquor to be given as a prize - subject to safeguards that will be built into the legislation, such as the one I have mentioned earlier to do with young people under the age of 18. It is proposed that the provisions will ensure that minors do not gain access to liquor prizes, either by selling or purchasing a ticket, or by collecting a prize on behalf of another.



At present sweeps cannot be conducted lawfully if their ticket sales exceed $2,000. Calcuttas may be conducted without a permit if ticket sales are $2,000 or less. Thus, calcuttas with ticket sales above $2,000 may be conducted only if a permit has been issued. The $2,000 threshold, which goes back many years, was a conservative limit when compared with other forms of fundraising. Raffles are an example of that and can be conducted without a permit if the maximum prize pool is $20,000. Raffles with prizes in excess of $20,000 are termed art unions and require a permit. The bill will raise the limit on sweeps and put them in the same category as raffles. It will allow sweeps and calcuttas with ticket sales of up to $20,000 to be conducted without a permit.

Another key feature of the bill concerns the updating of the art union provisions. These are set out succinctly in section 5 of the Act. An art union is described as a voluntary association formed for the purchase of any prizes to be allotted or distributed by chance or otherwise among members of the association for the aid or support of any institution or object of a genuinely charitable or public character or for a non-profit organisation. Under the section a member of a voluntary association includes a

subscriber and contributor to the association. The prize includes goods, wares, merchandise, works of art, real property, services, vouchers for goods or services that are not redeemable for money, tickets for admission to any entertainment and tickets for tours or journeys.

For many years in the State of Queensland art unions have been run for charitable organisations with prizes up to and exceeding $1 million. Those art unions have raised considerable sums of money for important charitable organisations. The bill will enable the Minister to appoint inspectors under the Act who will have appropriate powers of entry and inspection. It will allow inspectors to undertake investigations without impediment and ensure expedient, thorough investigation of complaints. In addition, there have been cases where an activity regulated by the Act has been conducted blatantly contrary to the public interest. Though it would have been preferable to halt the suspected illegal activity immediately, the Act does not provide for this type of action.

A further feature of the bill is the introduction of new offences and penalties for false statements. The bill will also amend the overall penalty structure for offences so that maximum penalties are in line with offences under the Charitable Fundraising Act. This is sound legislation and certainly will go a long way towards overcoming the anomalies that exist with the Act. It is absurd that in this day and age a sweep or calcutta cannot exceed $2,000 unless a permit is obtained from the Minister. I wonder how many calcuttas with a pool exceeding $2,000 are conducted and have been conducted for many years in the city of Sydney. A much more realistic figure is the proposed figure of $20,000, though in my view that is too low. It is high time something was done to amend the existing Act, and this legislation goes a long way towards making it more realistic for the 1990s. I support the bill.

**The Hon. J. R. JOHNSON** [3.46]: This is good legislation. For approximately 40 years I have campaigned for the deletion of the provision that prohibited the giving of alcohol as prizes in raffles. The bill seeks to amend the Lotteries and Art Unions Act 1901. Little detailed overhaul of the Act has been undertaken since that time. The term art union arose because at one time the only prize that could be offered was art. Indeed, the prize for the first legal art union in Australia is to be found in one of the Sydney Town Hall function rooms. Not too many people wish to contribute to a raffle where art is the prize, unless it is a Jackson Pollock.

I turn now to the prohibition that has existed for some years on alcohol as a prize. If the raffle prize includes an airline ticket and part of the prize is alcohol, that art union is illegal; if it includes a weekend away at a major hotel in the city, with meals and alcohol, the prize is illegal. Functions have been conducted in this very establishment. A basket of wine was donated to the wives of members of Parliament to raise money for autistic children. A Minister's wife was informed that the raffle could not be conducted because the prize was illegal. That gross stupidity has continued long enough. I have a dozen magnums of Grange Hermitage, and as soon as the regulations are gazetted -

**The Hon. J. H. Jobling:** You did not send me a ticket.

**The Hon. J. R. JOHNSON:** I know I did not send the honourable member a ticket. I have not been game to raffle the Grange Hermitage because it would have attracted too much attention. I assure all members that they will be given the opportunity to readily part with $10 or whatever the price of a ticket might be.

**The Hon. J. H. Jobling:** Where will the money go?

**The Hon. J. R. JOHNSON:** The money will go to the oldest, noblest and best political party in the world.

**The Hon. D. F. Moppett:** I did not know we were running it.

**The Hon. J. R. JOHNSON:** You blokes opposite could not run a raffle. Various provisions in the

old Act have been tidied up in the proposed legislation. I give credit to the Minister and her most efficient officers who have been prepared to listen and to concede that stupidity has existed in the past and need not exist in future. Cash cannot be offered as a primary prize on the selling of instant bingo tickets. However, cash can be offered as a prize on the same tickets during a trade promotion but not if the tickets are sold.

**The Hon. E. P. Pickering:** Why did the former Labor Government not change the law when it was in office?

**The Hon. J. R. JOHNSON:** I tried to get our Government, the Willis Government, the Askin Government, the Renshaw Government and the Cahill Government to change the law.

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**The Hon. J. P. Hannaford:** I dare say the honourable member does not exercise much influence.

**The Hon. D. F. Moppett:** But all that time he has been accumulating the Grange Hermitage.

**The Hon. J. R. JOHNSON:** I have had that Grange Hermitage for only three years. I assure honourable members it is a great drop, that tickets will be available, and that I intend to buy one and give it to the Minister. That is how highly I regard her proposed legislation. I support the bill.

**Reverend the Hon. F. J. NILE** [3.53]: I speak to the Lotteries and Art Unions (Amendment) Bill. As members are aware from previous debates, Call to Australia is positively and strongly opposed to any extension of gambling in this State. However, the bill is mainly involved with regulation of existing gambling activities. We do not envisage at this stage that the bill will lead to a dramatic increase in gambling. One of the objects of the bill is to increase the current limit on ticket sales for calcuttas and sweeps to $20,000 in line with other fundraising activities and to change permit requirements. The bill will enable the Minister to publish an order in the *Government Gazette* listing approved events in relation to which calcuttas and sweeps may be held. It will clarify the art union provisions to enable non-profit organisations to conduct art unions and to revise the conditions under which art unions may be conducted.

The bill will enable liquor to be offered as a prize in lotteries, art unions and minor games of chance but in accordance with strict conditions to prevent minors from gaining access to liquor prizes. I was surprised that the Hon. J. R. Johnson enthusiastically supported that particular provision. In the past there were restrictions on the giving of liquor or tobacco as prizes in lotteries. The honourable member, in principle and with us, should have opposed liquor being offered as a prize in lotteries even though only in limited quantities. I will be doing all I can in our Alcoholic Beverages Bill to remove provision of alcohol for prizes for anything in this State, as well as prohibit advertising of alcohol or sponsorship of sport by alcoholic beverage production companies, their wholesalers or retailers. That question still has to come before this House.

The bill provides also for power of entry and investigation of persons and organisations conducting lotteries, games of chance and art unions. The Call to Australia group is pleased that the bill provides for increased powers of entry and investigation. We believe there must be very firm regulation of gambling in this State. Some forms of gambling are minor and would not attract the attention of organised crime or criminals, but gambling does attract organised crime and criminals. For that reason there must always be strict supervision of all forms of gambling, whether it be lotteries, games of chance or art unions.

The bill will enable the Minister to seek orders from the Supreme Court to prevent the conduct of a specific lottery, game of chance or art union or to prevent an organisation or person from conducting any such activities for a certain period. We trust that that provision is aimed at those who have been shown to abuse gambling for their own benefit and at members of the public misled by advertising. It has not

been an opportunity but a straight-out rip-off. The bill will enable the proportion of the gross proceeds of a lottery, game of chance or art union that can be used for administrative expenses to be prescribed by the regulations. The measure will update penalties for offences under the Act so as to make them consistent with penalties for similar offences in the Charitable Fundraising Act 1991.

The bill will also allow services and vouchers that are not redeemable for money to be offered as prizes in lotteries, games of chance and art unions. The proposed legislation will make other minor amendments to the Act. Call to Australia will observe the operation of the legislation and monitor its impact on the amount of gambling in this State. On its surface the bill does not seem to have the purpose of reducing gambling, but if it moves in that direction we will raise the matter in Parliament and seek to bring forward amendments to the Lotteries and Art Unions Act.

**The Hon. R. S. L. JONES** [3.57]: The Australian Democrats support the proposed legislation. The bill contains many sensible amendments that are long overdue. One amendment has been overdue since 1922, when it became unlawful to offer liquor and tobacco as prizes. In those days tobacco was regarded as an acceptable drug, but today, 70-odd years later, tobacco is no longer an acceptable drug. Regrettably, some people are still addicted to tobacco but it is generally frowned on as a highly addictive drug, even though all the tobacco corporation heads stood up recently in Washington and said under oath, "No, it is not addictive, Your Honour". Now that liquor is accepted in the community as a medicinal drug and as useful in small quantities - in fact, liquor will reduce the risk of heart attack if taken in moderate quantities - it is now acceptable to offer parliamentary port as a prize for a charitable purpose. We support the proposed legislation.

**The Hon. VIRGINIA CHADWICK** (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [3.59], in reply: I thank all honourable members for their contributions.

**The Hon. J. R. Johnson:** Does the Minister want a ticket?

**The Hon. VIRGINIA CHADWICK:** No, thank you. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

**The PRESIDENT:** Order! pursuant to sessional orders, business is interrupted for the taking of questions.

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## QUESTIONS WITHOUT NOTICE

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## COMMUNITY JUSTICE CENTRES

**The Hon. B. H. VAUGHAN:** I direct my question without notice to the Attorney General. Given the apparent success of the community justice centres as detailed in the recent annual report - and the welcome news provided by the Treasurer that the State's deficit is falling - will the Attorney General advise whether there is a plan to expand the role and numbers of these centres in this State?

**The Hon. J. P. HANNAFORD:** I am pleased that the honourable member is taking an interest in community justice centres, which come within my portfolio, because he is correct: community justice

centres fulfil an important role in the community. This is recognised by the Government, by the wider justice community, by the public and, I am now pleased to say, by the Australian Labor Party. There are already six centres operating in New South Wales.

**The Hon. Franca Arena:** We set them up.

**The Hon. J. P. HANNAFORD:** Yes. I know you did. I am pleased the honourable member is continuing to take an interest in them. They are at Bankstown, Campbelltown, Penrith, Wollongong, and inner-Sydney City. I was at the opening of one last year at Newcastle. Community justice centres, in the thirteen years of their operation, have consistently recorded a success rate of between 82 and 85 per cent. Last year, 82 per cent of mediation sessions ended with agreement between the parties. The community justice centres deal with matters very speedily - 89.7 per cent of matters are finalised within less than 30 days. The community justice centres are accessible - 47.8 per cent of mediation sessions are scheduled out of hours.

The community justice centres deal with all sorts of disputes between people and organisations. These include commercial disputes, family conflict and arguments between neighbours. Many are serious disputes that would otherwise end up in the courts, or perhaps end in violence. Some disputes may appear to be small matters but they have the potential to escalate into bitter disagreements that can continue to mar people's lives and disrupt the neighbourhood and the community. The Government recognises the important role the community justice centres play as an alternative to expensive and time consuming litigation in our courts. The high quality and cost-effective service provided by community justice centres is due in large part to the care with which mediators are chosen and the thoroughness of their training. Mediators come from a broad range of backgrounds and all have completed intensive courses in mediator training.

**The Hon. Franca Arena:** Many are from non-English speaking backgrounds.

**The Hon. J. P. HANNAFORD:** Many are from non-English speaking backgrounds. There are about 200 trained and accredited mediators. The advantage of mediation is that it is voluntary and that resolution always involves the agreement of both parties. Statistical evidence shows that a mediated dispute is less likely to flare up, and community mediation pays handsome dividends in reduced conflict, stress and violence amongst the hundreds of family members, neighbours and communities that make use of it. The honourable member would be aware that last week there was a major conference in Terrigal on juvenile justice issues. At that particular conference I announced the expansion of community justice centres programs. I specifically announced the establishment of a pilot rural community justice mediation centre for the Far West. The Hon. D. F. Moppett who has a significant interest in community justice measures in the Far West welcomed that announcement.

I have indicated that that particular program will be piloted in the areas of Bourke and Walgett. At that conference - the honourable member would welcome this as I know members of the Opposition who have an interest in group conferencing programs would - I specifically targeted this particular program at Bourke because three weeks ago, when the Hon. D. F. Moppett and I were in Bourke, meeting with the community, police officers in Bourke were being trained in the group conferencing program. Consequently, the police will be better able to work with members of the community, with community groups and with young offenders, by being able to address the issues of juvenile justice and by the moderating of penalty programs under the police group conferencing program.

I have announced that we will be introducing legislation to marry police programs with a legislative program to be managed by and through the community justice centres schemes. Having the police introduce a further rural pilot program, it was appropriate that I establish the next community justice centre in Bourke so that they can start working together. It is my intention that the scheme will be extended throughout the State. The rural piloting scheme is intended to work through the clerk of the local court, rather than setting up another bureaucracy so that the local clerk of the court will become the

administrator for the scheme. It is my intention that we will move the community justice scheme through the State under the auspices of the clerk of the local court. That will be of significant benefit in that the scheme can be expanded at minimal expense. Therefore one can expect more centres.

My latest recollection is that between 3,500 and 4,000 conferences have been held. They have been conducted under the auspices of this particular scheme. I may be incorrect in that particular figure. It is my recollection of figures that I have seen. It is obviously a very successful program and one which should be encouraged. It is one that I would like members of Parliament to be aware of. Many people have come to these programs with neighbourhood

disputes. The questions is: where does one send people to try to resolve neighbourhood disputes? Often members of Parliament are asked to try to resolve those disputes.

**The Hon. J. R. Johnson:** They should be going to confession.

**The Hon. J. P. HANNAFORD:** The purpose of a mediator is a variation on exactly what the honourable member has in mind. We are trying to get people to talk to each other to try to resolve their problems face-to-face with the aid of a mediator. In this way, the disputes can be resolved and the people can continue to live with each other - hopefully in harmony. I thank the honourable member for his interest in this most important issue.

## TEACHING PROFESSION

**The Hon. D. F. MOPPETT:** My question is directed to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier. Will the Minister confirm the report that teachers have been ranked fourth in a list of the most honest and ethical occupations? What does this say about the Opposition's recent attack on the standard of our teaching profession?

**The Hon. VIRGINIA CHADWICK:** While I am sure the Morgan poll conducted for *Time* magazine gave no joy to members opposite who do nothing but carp and complain and put down the teachers and the education system in this State, I took great joy when I read the results. At long last school teachers are given proper recognition and their place in the community is acknowledged. That is something that has been a long time coming. We all know that from time to time our teachers are an easy target for people who believe that more needs to be done in the academic sense, in a behaviour sense, and in almost expecting our teachers to cure every one of society's social ills. While I certainly believe that our teachers have a very complex and demanding role that extends well beyond the academic - it involves them almost as co-parents - it is a role that at long last is being recognised by the broader community.

It will do a lot for our teachers - not just in this State because it was a national survey - as it will assure them that they are valued in the community, and that they are ranked highly in terms of their ethics and honesty, as the survey clearly shows. After we move out of what might be called the greedy 1980s those traits will be valued more and more. It is interesting to note that the survey showed that the most highly valued profession was nursing - a similar service and support mechanism.

**The Hon. Patricia Forsythe:** Where did politicians rate in the survey?

**The Hon. VIRGINIA CHADWICK:** The Hon. Patricia Forsythe, in her curiosity, wants to know where politicians were ranked in the survey. We were not very highly placed. State parliamentarians ranked seventeenth but our Federal colleagues only ranked eighteenth. For too long the Leader of the Opposition and members opposite have taken every opportunity to call our schools educational slums, to claw down our teachers, to threaten schools that have composite classes with closure. That has caused disquiet throughout the State. At last the Opposition is silent because it is so miserable about the good news which correctly places our teachers high in terms of public morale. That has been a long time

coming.

## PARLIAMENT HOUSE SWITCHBOARD SERVICES

**The Hon. R. S. L. JONES:** I direct my question to you, Mr President. Are you aware of the problems that parliamentarians from both Houses are having in attempting to make telephone calls via the parliamentary switchboard before 9 a.m.? Are you aware that a number of members have attempted to put calls through before 9 a.m. because they are caught in traffic jams, for example? Will you investigate this with Mr Speaker with the idea of opening the parliamentary switchboard at 8.30 a.m. on sitting days?

**The PRESIDENT:** Order! I was unaware of this problem, but I am informed by the Clerk that what the honourable member has requested will occur shortly.

## CASTLECRAG INFANTS SCHOOL SALE

**The Hon. M. R. EGAN:** My question is directed to the Minister for Education, Training and Youth Affairs. Has the Government contracted to sell Castlecrag infants school to Glenaen Rudolf Steiner School Limited for $825,000, when it has been independently valued at between $4 million and $5 million? Has the Government also waived stamp duty on the sale? Why was it decided to sell the property after advertising only for expressions of interest in the use of the land, not for its sale? Why was the option of leasing the land ruled out?

**The Hon. VIRGINIA CHADWICK:** The Leader of the Opposition would be well aware that the issue of Castlecrag school has been dragging on since the school was closed at the end of 1989. Squatters have been in the school since 1989. The squatters, many of whom I have met, are members of a community group. They are highly motivated, community-oriented people. It is true to say the school was closed; it is no longer a school. The community group has been agitating for the reopening of the school since its closure. It is my understanding that the previous Minister for Education, Dr Metherell, in his decision to dispose of that property, had in mind that townhouses could be built on the land or that it could be used for a number of other purposes.

The honourable member was present during debate on the Education Reform Bill when I gave an assurance that the land would be used for educational



purposes and not for townhouses. However, this debate has continued for years. The Hon. R. S. L. Jones has taken an interest in the resolution of this matter and he is aware, as are other honourable members, that on a number of occasions I attempted to encourage council to take on the property for a very low sum - basically a peppercorn consideration - so the site could be retained for community activities. Council refused to do so. Surely the Leader of the Opposition was not going to berate me for not getting the same sort of funding that I might have got -

**The Hon. Jan Burnswoods:** Answer the question.

**The Hon. VIRGINIA CHADWICK:** I am. Is the honourable member suggesting that it is Labor Party policy to put townhouses on the Castlecrag site? It is my desire to dispose of that property. Because the property has been vacant as a school since 1989 and has been occupied by the SOSCRAG group since then, I am keen to dispose of it. We may have an offer from the school in question, but I cannot confirm the figure. If the honourable member is interested in this matter I will make inquiries from the Property Services Group and from my own property section about the price involved. Because of the obstructive nature of some community based activities, which are misguided, it is difficult to conclude the contract because members of the community who have no legal interest, in the strict sense of the word,

continue to place injunctions on the completion of the sale. Therefore, it has not been formally completed. It is my intention and desire to see this matter through to resolution. I gave an assurance that I would try to ensure that Castlecrag had an educational use and that while it might not serve a useful purpose as a school for the Department of School Education, it would not be reopened as an infants school. It is a fine organisation with a fine education system and it should be used for educational purposes. It is laudable and worth while to use the Castlecrag site as a school.

## WATER BOARD CAPITAL WORKS AND EXPENDITURE PROGRAMS

**The Hon. PATRICIA FORSYTHE:** My question without notice is directed to the Minister for Planning and Minister for Housing. Were questions asked in the lower House today regarding Water Board future capital works expenditure and the backlog in implementing the sewerage programs? What can the Minister tell this House regarding these issues?

**The Hon. R. J. WEBSTER:** I express surprise that the Leader of the Opposition and his mates have not asked me the same questions that they asked my colleague, Mr Souris, who represents me in the lower House. They know as well as I do that if they had asked questions of me they might have got answers that they did not like, that did not suit the lying, snivelling press releases that they are at present trying to peddle around the press gallery. Again they are trying to tell lies to the people of New South Wales about this Government's achievements concerning the Water Board.

I had to ask one of the members of my own party to ask me a question so that we could hear the answers that members of the Labor Party are so afraid of. Again the same old negative, lying tactics are being used by members of the Australian Labor Party in another place. It is about time that the people of New South Wales were alerted to what is happening. Three pathetic questions were asked in the lower House, which demonstrates how bereft members of the Labor Party are of tactics and questions. The first question, which was asked by the Leader of the Opposition, was a totally loaded political question.

The second question, however, which I have to say was answered very adequately by the Premier in the other place yesterday, related to the fact that the submission of the Water Board to the Government Pricing Tribunal shows a shortfall in the spending of its capital works budget. The insinuation in that question is that the Water Board is not achieving the outcomes which were outlined in last year's capital works budget. This Government has actually delivered, despite criticisms that were made by members of the ALP in a censure motion of this Government last year. They criticised the Government for waste, overexpenditure and for spending too much money on consultants.

I am happy to say that, under my management and the management of Paul Broad and Chairman John McMurtrie, the Water Board has been able to deliver on all the things outlined in the capital works budget. The Government has been able to save not $140 million, which is being alleged by the ALP, but at least $121 million, and possibly more. We have been able to do that by being better managers, by being more efficient, by being able to cut staff, by using contract labour and by negotiating better contract outcomes and better deals. At the same time we have delivered on all the things referred to in the capital works program.

Let me outline a few. We are saving $56 million on the ICAATTS computer program. The new managers of the Water Board were able to scrutinise the board's proposed commitments to that computer contract and save $56 million, which is a pretty good achievement. Because of the use of contractors and other engineering solutions which deliver the same outcome we were able to save $10 million on the upgrading of Prospect reservoir. Because of the user-pays system we have been able to make savings of $12 million on proposed new water mains, which will no longer need to be built because of a reduction in demand.

Because of this Government's urban consolidation programs there is slower expansion of Sydney.

There has been a slower growth in population because of things such as the recession and the lower immigration policy, which means that our forecast expenditure on new infrastructure will be reduced by $24 million. The houses that are being
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built simply do not require that sort of infrastructure. Because of the elimination of non-core activities within the Water Board, such as the printing shop and other things that have been clearly identified in reports that have been tabled in this Parliament and referred to in submissions that were made to the joint select committee, we have achieved capital savings of more than $9 million to this point in time. That includes the non-use of day labour when contracting out. All those things were called for by the Leader of the Opposition in his censure motion last year when he accused the previous Water Board regime, rightly or wrongly, of waste, of using too many consultants and of spending too much money on non-core activities.

**The Hon. M. R. Egan:** You said he was wrong.

**The Hon. R. J. WEBSTER:** No I did not; you read the *Hansard*. We clearly outlined the measures that we would implement and that we had already implemented to improve the efficiency of the board. These savings in capital works expenditure are the result. That money will now be used on a range of new projects which have not been part of previous capital works programs but which are important to our clean waterways program. I want to outline briefly a few of those programs which should be dear to the heart of the Leader of the Opposition in this place. This Government has allocated between $50 million and $90 million of those savings for the upgrading of the Cronulla sewage treatment plant and outfalls at Cronulla. The Leader of the Opposition would be aware, once he returns to Cronulla, that there are two options involved in that environmental impact statement program. The first option is to provide an outfall and the second option is to provide a tertiary treatment plant.

Consultation with the Cronulla community is already under way. I am sure the Leader of the Opposition would welcome that initiative at Cronulla. That is where some of the savings are going. Some projects will be completed in this financial year and others will be completed in the next financial year, but that money will be spent and the northern sewer line will be upgraded. I announced on radio the other day that we are in the process of purchasing land for an interceptor sewage treatment plant so that we can reduce the load carried by the northern trunk line, which in wet weather causes unwelcome sewage overflows. Those sewage overflows on the northern sewage line have been occurring for more than 30 years. When the Labor Party was in government it did nothing about that problem, but this Government is doing something about it, just as it will do something about the sewage overflow problems throughout Sydney.

That project could cost in the region of another $50 million. I think the announcement I made concerning the upgrading of Warragamba Dam was welcomed by the Leader of the Opposition. That project was not originally budgeted for. Honourable members would remember that we were only going to upgrade the spillway, but because of advanced technology, superior knowledge and the report of the interdepartmental committee on the risk analyses of the Hawkesbury-Nepean valley, we decided to proceed with raising the wall of that dam to protect people in a way that they had never before been protected. That work required an additional $90 million, which will be funded from savings made this financial year and next financial year through the efficiency measures that the Labor Party was calling for. The Opposition cannot have it both ways; it cannot issue press releases saying that the Government is underspending its capital works program when it is achieving all the outcomes, and then say the Government should be saving money. When Opposition members had the opportunity to ask me these questions, where were they? A Government member had to ask the question.

The honourable member for Bulli in another place, Mr Ian McManus, asked about the backlog sewerage program. That program was cranked up by the Government, particularly in the Hunter Valley, which, unfortunately, is a Labor heartland. Many thousands of householders in the Hunter are grateful to this Government for providing them with sewerage services, as my colleagues here well know. The

elected representatives of the Hunter area were asked to provide that sewerage service for years and years, but they would not. I inform the House that the elected board of the Sydney Water Board recommended, late last year, that the current sewerage backlog policy continue in the 1993-94 capital works program in the areas of Woodford, Linden, Berowra, Terrey Hills, Faulconbridge, Hazelbrook, Wollongong, Unanderra Industrial Area - I am sure that is not Liberal Party heartland - Meradong Place, Helensburgh, McCarrs Creek, Wheeler Creek, Greys Point, Lugarno, Bungan Beach, Lane Cove, Prince Edward Park, Picton, Tahmoor and Thirlmere.

In addition, because of the change in the way the Water Board is funded - through a dividend which is returned to the board for non-core, but nevertheless important community service obligation, or CSO, activities - there is now another list of areas that are unsewered but will be funded under the backlog sewerage program. This program will be funded jointly by the Water Board and the CSOs that are returned to Government from Treasury.

**The Hon. Jan Burnswoods:** Boring.

**The Hon. R. J. WEBSTER:** I know honourable members opposite think this is boring and do not like to hear it, but I will give this information every day from now until the election. I will recount the achievements of the Government and the Water Board - so honourable members will have to get used to it; they should sit back and enjoy it. Areas such as Badgerys Creek, the Blue Mountains, Bulli, Camden, Cronulla, Hawkesbury, Kiama, Gerringong, Gerroa, Ku-ring-gai, Londonderry, Kenthurst, and Scotland Island in Pittwater are proposed for upgrading under the backlog sewerage program funded by the Water Board and the Government. This program will be funded from the dividends that the Water Board pays to the Government, which are returned by way of community service obligation payments.



I am sure honourable members opposite do not want to hear this but I will continue to say it, because there have been too many lies told about the record of this Government and the administration of the Water Board. I will continue to inform the House and the people of New South Wales what is happening, because the dollars are being spent and the services are being delivered. I know honourable members opposite do not like it, but I will keep saying it.

## ABORTION LEGALITY

**Reverend the Hon. F. J. NILE:** I wish to ask the Attorney General in his own capacity and representing the Premier and the Minister for Police a question without notice. Is it a fact that Dr Geoff Brodie, medical director of the so-called Australian Birth Control Services, based at 11A Howard Street, Randwick, today publicly stated in the *Sydney Morning Herald* on page 4 that his two clinics provide 5,000 abortions a year in New South Wales? Is it a fact that Dr Brodie has also acknowledged that these 5,000 abortions are mainly conducted on socioeconomic grounds following an interview with a nurse only, not with a qualified doctor as required by law? What action will the Government take to urgently investigate the operations of Dr Brodie's two abortion clinics and ensure that the necessary charges are laid under sections 83 and 84 of the Crimes Act.

**The Hon. J. P. HANNAFORD:** My recollection is that the information gathered by Reverend the Hon. F. J. Nile for the purposes of the question is contained in a newspaper article today. I did not read the article in detail. I cannot acknowledge what the facts are in relation to Dr Brodie. However, as I indicated this morning in an interview on the "AM" program, the decision this week in *CES and Anor* v. *Superclinics Australia Pty Limited and Ors* is a restatement by the Supreme Court about the law in relation to sections 83 and 85 - if my recollection of the appropriate sections concerning abortions is correct - of the Crimes Act. I am aware that some practitioners have sought to allege that the law in relation to abortion is totally dictated by socioeconomic factors. For a medical practitioner to allege that a

decision should be made based totally on socioeconomic factors is to misstate the law.

The law has been enunciated by Mr Justice Newman, and I summarise his statement by saying that it is related to the mental and physical health of the patient. The Levine decision indicated, to the best of my recollection, that in forming a decision as to the mental health of the patient, regard is had to social and economic issues; but they are not the sole determinant issues. This morning in the interview I indicated also that these are issues in respect of which reliance must be placed upon the decisions of medical practitioners, and, significantly, the ethics of those practitioners in making a legally informed decision. If practitioners are not making legally informed decisions, they are breaching the law and significantly putting at risk their right to practise as medical practitioners in this State. It is not a legal issue alone, it is also a medical professional issue. The law will be enforced where information is available to justify criminal proceedings being taken.

I acknowledge that it is not always easy to gain the information that is necessary to sustain an investigation and a prosecution. Regard must be had also to the fact that the criminal law requires a standard of proof way beyond that of the civil law and way beyond that which might justify the taking of professional disciplinary procedures. The Government has to sustain the evidence, the onus being on the prosecution to prove an offence beyond reasonable doubt. That is not always an easy onus to bear. The fact that there may not be a number of prosecutions does not mean that the police are not cognisant of the law or of their need to enforce the law. It may be a reflection only of their inability to gather the evidence to satisfy a criminal prosecution. One must not say that abortion on demand exists in New South Wales; that is not the law. People have a right to make an informed decision as to whether they wish to pursue an abortion.

That informed decision includes taking an informed position in relation to the law, which is addressed first to the physical condition of the person and also to the mental condition of the person. The Government must rely upon the integrity and advice of professional medical practitioners, who must act in accordance with their informed position of the law and their informed assessment of the mental and physical condition of the patient. It is not for us to make a judgment in that regard. That is the role of the patient and the medical practitioner. The law will be enforced when information is available to justify a criminal prosecution. That is clearly illustrated by the evidence that was brought forward in the matter that has generated the flurry of public comment this week. The medical practitioners were not able to satisfy the court on the test of medical, physical or mental harm. Had that test been satisfied, the issue would have been dealt with in a different way.

## CASTLECRAG INFANTS SCHOOL SITE REZONING

**The Hon. FRANCA ARENA:** I ask my question without notice of the Minister for Planning and Minister for Housing. Did the Department of Planning, after the closure of Castlecrag Infants Public School, rezone the land as medium density 2B, increasing its value to the range of $4 million to $5 million? Given the continued use of the land as a school, why did the Department of Planning refuse to allow Willoughby City Council to rezone the land as a special purposes school?

**The Hon. R. J. WEBSTER:** My colleague the Minister for Education has probably said all that needs to be said about this school. It is the property of the Department of School Education and it is for the department to do with it as it pleases.



## HOMEFUND RESTRUCTURE INFORMATION CENTRE

**The Hon. JENNIFER GARDINER**: I address my question without notice to the Minister for Planning and Minister for Housing. How successful has the HomeFund Restructure Information Centre been in

addressing the needs of borrowers following the announcement of the HomeFund restructure? Can the Minister say whether it is true that the Opposition spokesperson on housing refused an invitation to inspect the HomeFund Restructure Information Centre?

**The Hon. R. J. WEBSTER:** Yes, it is true that the Opposition spokeswoman on HomeFund refused an invitation to visit both of the centres. She must have observed the passage of the HomeFund restructure legislation through the Parliament last year with a sinking heart. What was then to be her political reason for being? How would she maintain her political profile? Certainly not by becoming an effective shadow minister for housing, because so far as I am aware she has not issued one housing portfolio press release relating to anything other than HomeFund since I became Minister for Housing. She must be satisfied with all of the things that I am doing within the portfolio or, as I suspect, she has simply become totally obsessed with HomeFund to the exclusion of everything else. She appears to be continuing to drag HomeFund along behind her, trying to get every inch of political mileage out of it.

**The Hon. J. R. Johnson:** She has a lot of very happy constituents.

**The Hon. R. J. WEBSTER:** I will come to that in a moment. The shadow minister is not representing HomeFund borrowers nearly as much as she is representing her own political agenda. Only recently her veil of genuine concern was lifted to reveal the face of political opportunism. Indeed that opportunism is so flagrant that, in spite of repeated requests, she has refused to give either me or the Minister for Consumer Affairs details of the borrowers she purports to represent so that we can put them in touch with the right people to help them. She also refused a recent invitation from me to inspect the HomeFund Restructure Information Centre, which she complains is not adequately dealing with the needs of borrowers. I fail to understand how she can say that if she will not even visit the place.

The invitation was extended to her and her colleagues, and a visit would have given them the opportunity to observe at first-hand the workings of the centre and then make an informed judgment - perish the thought - about the quality of service borrowers were receiving and the impartiality of the advice they were receiving. Instead she declined the invitation on the ground that it would not serve any purpose. We know that it would not serve her purpose, which is to deliberately remain uninformed so that she can continue to spread misinformation and frighten little old ladies as she has been doing. She is not above misleading hapless HomeFund borrowers. Members will recall the demonstration by genuinely concerned HomeFund borrowers that was held outside Parliament House a few weeks ago, when my colleague the Minister for Consumer Affairs and I went down to meet those people. We took our staff with us and asked them to record the names, addresses and telephone numbers of every person who was there, so that we could do something to help them.

We found when we interviewed those people that they had been on the receiving end of some fire and brimstone speeches from Deirdre Grusovin that had been deliberately designed to frighten and mislead them. She was not above telling them that the Government was going to throw them out on the streets. All honourable members will know that we guaranteed that every HomeFund borrower, regardless of the category they were in, would be housed under the restructure package. That did not prevent Mrs Grusovin from telling them otherwise. She was not above telling them that the Government was going to sell their homes out from underneath them at the cheapest possible price. Wrong again! In short, she was once more using those people for her own political gain. As I said, we took the names, addresses and telephone numbers of all 35 people. I have a list, which is confidential, of their names, the responses given to them, whether they were contacted by phone or in writing, and the assistance that was given to them.

Each of those persons was contacted individually to ensure that they would get the best possible advice. I am sorry to say that that is more than the Opposition spokesperson was prepared to do. As I reported previously, we have been waiting for her to supply a list since the Hon. John Fahey was acting Minister for Housing and asked her for details of people in trouble - I have been asking her for details and so has the Hon. Wendy Machin. Having encouraged these people to travel to Parliament House to

demonstrate against the Government, the Hon. Deirdre Grusovin, after seeing the Minister for Consumer Affairs and me talking to them, decided not to go down into the street. I understand that she did not meet them or talk with them. Those people, who had travelled from the western suburbs, were not even met by the Opposition spokesperson. I do not know whether she was embarrassed that only a handful of people turned up when she was hoping for hundreds or thousands. However, I can tell honourable members that those people were not too impressed with her attitude.

An invitation was extended to the shadow minister to visit the HomeFund Restructure Information Centre, which is now dealing with borrowers. In her letter to me declining to accept my invitation to visit the centre the honourable member levelled a number of complaints at the service. All of those complaints reflect nothing more than her ignorance of the service that is provided - a situation that could have been rectified if she had bothered to go down there. The centre is only down in Bligh Street. I issued invitations also to the Hon. Elisabeth Kirkby, the Hon. R. S. L. Jones, the Hon. Elaine Nile and Reverend the Hon. F. J. Nile, all of whom



expressed interest in visiting the centre because of their genuine interest. I have extended invitations also to the Independent members in the other place. So far as I am aware they are interested in visiting the centre. As I said before, it would not serve Deirdre Grusovin's purpose to go to the centre; so she refused. It is a pretty poor show. If she had visited the centre she would have found that it is staffed by trained operators who answer inquiries about the restructure scheme.

Quite obviously not all borrowers seeking advice on the restructure will be seeking financial or legal advice. For that they refer to the HomeFund Advisory Service. Others seeking consumer advice refer to the HomeFund Restructure Information Centre, which offers that service. I do not believe that the honourable member for Heffron understands the difference. The HomeFund 008 number is the single point of contact and borrowers are then referred to either of the two services, the restructure information centre or the advisory service, which is run by the Department of Consumer Affairs. Both those services are fulfilling their obligations to borrowers as prescribed in the HomeFund restructure legislation passed by this House.

To date the centre has handled more than 20,000 calls, with very few complaints. Some borrowers require advice rather than information. The HomeFund Restructuring Act requires that borrowers have access to impartial financial counselling and legal assistance services. For this reason the separate advisory service was established to complement the role of the information service. To ensure its independence and impartiality, the advisory service is operated and managed by the Department of Consumer Affairs, not by the Home Purchase Assistance Authority. For the convenience of borrowers, however, one toll-free number is used.

The primary reason for the two services being located in the same place with the same contact number is so that service advisers can have immediate access to both HPAA and FANMAC data and so that a single toll-free number can allow borrowers easy access. The shadow minister complains that this means the services offered are not impartial. That is incorrect. All the staff have been hired through independent agencies; most are lawyers, ex-bank managers or bank staff, highly experienced and motivated people able to offer the best possible advice. It gives me no joy to stand up and criticise the honourable member for Heffron, but when she is so blatant about her political aims and aspirations as to not even bother to visit the two services before she condemned them, I have no other choice.

## RU 486 ABORTIFACIENT TRIAL

**The Hon. ELISABETH KIRKBY:** My question without notice is directed to the Minister for Education, Training and Youth Affairs, representing the Minister for Health. In view of the question asked by Reverend the Hon. F. J. Nile about the trial of RU 486 by the Sydney Reproductive Health Research Centre, under the aegis of Dr Edith Weisberg, will the Minister confirm that the RU 486 trial is authorised

by the World Health Organization and the Federal Department of Health as part of a worldwide multicentre trial as a morning-after pill? Is it a fact that this is not an abortion trial of this drug, as wrongly alleged by Reverend the Hon. F. J. Nile?

**The Hon. VIRGINIA CHADWICK:** I thank the Hon. Elisabeth Kirkby for the courtesy of informing my office that she would be asking this question, thus enabling me to seek advice from my colleague the Minister for Health. He advises me that a clinical trial of the drug RU 486 is being conducted worldwide by the World Health Organization. The New South Wales Family Planning Association is one of 14 centres involved in this trial. In colloquial terms RU 486 is something of a morning-after pill in that it is regarded as an emergency contraceptive. Abortion is not an indication for use of RU 486 in this trial. The clinical trial of RU 486 by the Family Planning Association began two weeks ago. The association obtained approval from the relevant bodies before commencing the trial and Dr Weisberg has advised that the Family Planning Association does not perform abortions.

## DOCK STATEMENTS

**The Hon. P. F. O'GRADY:** I direct my question without notice to the Attorney General and Minister for Justice. In light of the Attorney's demand that the honourable member for Blue Mountains should be accorded a presumption of innocence, will he ensure that the abolition of unsworn statements from the dock does not take place until after any possible court appearance by the honourable member?

**The Hon. J. P. HANNAFORD:** That question gives rise to an assumption by the honourable member which is totally without foundation.

## ABORIGINAL DEATHS IN CUSTODY

**The Hon. HELEN SHAM-HO:** My question without notice is directed to the Attorney General, Minister for Justice and Vice President of the Executive Council. Is he aware that a national day of action has been called today by an Aboriginal interest group to draw attention to black deaths in custody? Will the Attorney General tell the House what the Government is doing to avert black deaths in custody in correctional centres?

**The Hon. J. P. HANNAFORD:** All honourable members would be aware that the Hon. Helen Sham-Ho was appointed by the Federal Government as a member of the Aboriginal Reconciliation Council and that she works actively on that council. The Hon. Elisabeth Kirkby also raised this issue with me in another context yesterday, as did the Hon. Dr B. P. V. Pezzutti. This issue is not being pursued actively and it would be pleasing if the Opposition took cognisance of real issues within the

community. At least honourable members on the crossbenches and members of the Government are prepared to pursue genuine issues.

The national day of action is to commemorate the number of Aborigines who have died in custody nationally during the past five years. During that period, unfortunately 12 Aborigines died while in New South Wales correctional centres. Of those 12, four are believed to have died through suicide, and the remainder from natural causes. I use the term "believed" because, as I indicated yesterday, all deaths in custody are reported to the Coroner. The Coroner pursues investigation into all such deaths and until a final report is received from the Coroner as to the actual cause of death, the department and I do not officially classify the cause of death.

Aboriginal deaths in custody represent 9.8 per cent of all deaths in custody since January 1980, and Aborigines comprise 12.5 per cent of the inmate population. It is worth noting that the Government is aware of problems that Aborigines face while in gaol and has taken extraordinary steps to try to avert

unnecessary deaths of Aborigines. Of course, the Government is concerned not only with Aborigines, but with all inmates. Specific problems facing Aborigines have been dealt with and the implementation of the Waller report, to which I made reference yesterday and which was presented to me last year, will result in the department taking initiatives to try to avert the unnecessary deaths of all inmates in the correctional system.

When Labor was in office many Aboriginal people were held in custody for relatively minor offences. That cannot be said about the present Government. Labor accuses this Government of being responsible for increasing the number of Aborigines held in gaol, but the fact remains that under the former Labor Government Aborigines were gaoled for summary offences. Very few inmates are now sentenced to imprisonment for minor offences. The majority of Aborigines in prison are serving time for serious offences such as major assault, break, enter and steal, murder and serious sexual assault. Though the number of Aborigines in gaol has increased, Aborigines are now imprisoned for serious crimes that necessarily attract a gaol sentence, not for crimes under the Summary Offences Act.

The Department of Corrective Services has done everything required of it while maintaining strict security measures to deal with the problem of Aboriginal people in custody. The Royal Commission into Aboriginal Deaths in Custody made 64 recommendations which related to the Department of Corrective Services or are the joint responsibility of that department and another group. Of those 64 recommendations, 52 have already been implemented, two are being reviewed and 10 are in the process of being implemented. The department also established the Department of Corrective Services Aboriginal task force in March 1992. That body establishes and maintains links with relevant local, regional, national and international organisations with the purpose of researching, sharing and implementing services for Aborigines. It also makes comment on issues of concern to Aboriginal inmates and on aspects of policy that have or are likely to have impact on Aboriginal inmates.

A protocol in the event of a death in custody of an Aboriginal has been developed in co-operation with the Aboriginal Legal Service, and that protocol is now part of the department's policy directorate. Last year I announced that the prisoners' private property policy has been relaxed to allow Aboriginal prisoners to wear traditional items which are of religious or spiritual significance to them. Also, the importance of kinship has been given greater recognition in the changes which have been made to classification rules and the policy which allows attendance of Aboriginal people at funerals. Negotiations to develop a program to train and accredit Aboriginal inmates to work with other younger inmates to assist them with their welfare and other needs began last year. The department has proceeded with the establishment of Aboriginal inmate committees in correctional centres which have significant Aboriginal populations.

That process has started. Those committees will strengthen the process of consultation between Aborigines and correctional centre management. Further, the Aboriginal health working group report was submitted to the Corrections Health Board. The report, which made significant recommendations on general and mental health, was prepared by task force members and the operations staff of the department. Furthermore, five positions have also been established in the department for additional Aboriginal drug and alcohol workers. As I have already mentioned, significant policies have been put in place to deal with the specific problems of Aboriginal inmates. The policies which will be implemented as a result of the Waller report should mean that everything possible will be done to protect all at-risk inmates within the New South Wales correctional system.

In view of the hour, if honourable members have any further questions, I suggest they put them on notice.

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**CRIMES LEGISLATION (UNSWORN EVIDENCE) AMENDMENT BILL**

## Second Reading

**Debate resumed from 19 April.**

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Justice, and Vice President of the Executive Council) [5.03], in reply: Last night's debate on dock statements raised issues that go to the very heart of the system of justice in New South Wales. This Government has moved to abolish the right of accused criminals to give from the dock unsworn, untested and unaccountable evidence. I thank those members of the Government who rose to speak in the interests of victims of crime in this State. I also thank Reverend the Hon. F. J. Nile for his



views. Last night members of the Opposition and of the Australian Democrats argued fiercely and in great number for the retention of the right of accused criminals to make an unsworn statement. Their remarks bore testament to the power of selective logic and the lobbying power of some but not all elements of the legal profession, including its peak associations and Labor lawyers.

The Opposition's remarks ignored entirely any consideration of the purpose of abolishing dock statements. The *Oxford Dictionary* definition of anachronism is "a thing that is out of harmony with the period in which it is placed". I cannot think of a more fitting example of an anachronism than an accused criminal's dock statement. Historically, the right of an accused to make an unsworn statement was introduced at a time when defendants had no right to give sworn evidence at their own trial and had no right to be represented by counsel. Its purpose has long since gone. Today an accused person is a fully competent witness and is fully represented in court. The position of the defendant and the protections afforded that person have changed dramatically.

It is interesting to note that the legislation which gave the accused the right - and I emphasise, the right - to give sworn evidence nearly 100 years ago, a right which now seems obviously necessary to all, was strongly opposed by some sections of the legal profession. It was opposed 100 years ago on the ground, amongst others, that making the accused a competent witness to give evidence in his own account would erode the accused person's rights with respect to privilege against self-incrimination and the presumption of innocence. One hundred years ago lawyers opposed that reform; today they still oppose reform. I hear some lawyers today, given the mouthpiece of the Opposition, again claiming that the bill will erode defendants' fundamental rights. In this context it is worth noting the comments of former Justice Lee reported in the *Australian* of 19 June 1993:

> The reason why it has taken so long in New South Wales to follow the rest of the world is because the legal profession has a very powerful influence on the Government of the day.

Today it is clear that the legal profession is not influencing the Fahey coalition Government, but it is still leading the Labor Opposition by the nose. To elevate the anachronistic, archaic dock statement to anything above the status of a historical anomaly is to distort the true position almost as cynically as is done by those accused criminals who tell lies in the dock. This Government is committed and will always be committed to preserving the fundamental rights of the accused. The dock statement is not one of them. The accused always has an option to remain silent. The effect of exercising this right is only to underline that the burden of proof is upon the prosecution. The rights of the accused with respect to the presumption of innocence, the privilege against self-incrimination, the burden of proof and the right to silence will all be preserved.

Much has also been made of the fact that this Parliament failed to abolish dock statements 20 years ago and that in 1985 the New South Wales Law Reform Commission, amongst others, recommended retention of the right. It is worth noting that 20 years ago it was the Labor Party that opposed the abolition of the dock statement, and 20 years later the Labor Opposition is still opposing the abolition of the dock statement. I must illuminate this debate by advising honourable members that the New South Wales

Law Reform Commission and the Australian Law Reform Commission, amongst others, in recommending retention of the right to make a dock statement, also made extensive recommendations about necessary reforms to place some limits on the right.

The reforms recommended in those reports go well beyond any proposals referred to last night by the Opposition as proposals for reform which would have been implemented by the Labor Opposition. The Opposition still does not have its position right in relation to this fundamental reform. It is interesting to note that a number of the members of the New South Wales Law Reform Commission that delivered its report in 1985 appear to have changed their opinions and would now favour abolition of dock statements. I quote from a letter written in 1993 to the Law Society of New South Wales by Mr Adrian Roden, formerly Mr Justice Roden, who was a member of the New South Wales Law Reform Commission of 1985 at the time of its report:

> For what it is worth, my own position has changed since 1985. While I still support the Law Reform Commission view that the right to make an unsworn statement can only sensibly remain if the prohibition on comment is removed, I believe now that the better course is to abolish the right to make the statement.

Mr Justice Roden can clearly be seen as supporting the Government's position as outlined in this bill. However, Keith Mason, who is now the New South Wales Solicitor General, was another member of the Law Reform Commission of 1985 and in a letter to Mr Roden, commenting on Mr Roden's letter to the Law Society, Mr Mason said:

> I agree entirely with the comments you make in your letter to Mr Nelson.

Mr Nelson was the President of the Law Society at that time. Mr Mason went on to say:

> As to the bottom line, as to whether my own position has changed since 1985 I think it probably has.

The Labor Opposition cannot continue to draw much comfort from the 1985 Law Reform Commission's report. I have said that the Opposition and the Australian Democrats have chosen to ignore entirely any consideration of the reasons for abolishing dock statements. The testing of evidence by cross-examination is the basis of all criminal trials in our adversarial system of law. The truth of assertions made in a dock statement cannot be tested by cross-examination. As I have said, the accused continues to have the right to remain silent. However if the accused decides to make any statement before a jury, the jury ought to be able to assess the veracity of any



information put before it. This can only be achieved if the evidence of the accused is subject to cross-examination. The Opposition's arguments had been said to be based on the views of some lawyers, particularly the New South Wales Society of Labor Lawyers. From the comments of Mr Roden and of Mr Mason quoted above, it is clear that the Opposition's arguments must also be weighed against the views of other eminent lawyers. Mr Justice Wood of the Supreme Court, in the King case in the Court of Criminal Appeal in 1993, said:

> Until the law is changed as it has in every other State and Territory, either by permitting comment or by removing the right of an accused to make an unsworn statement altogether, as Mr Justice Lee recommended in the *Greciun-King* case, this distinctly unsatisfactory position will remain. Legislative review, in my opinion, is well overdue.

Mr Justice Lee, in his remarks on sentencing in the case involving McKinney and Judge, stated:

> The question of the improper manipulation of trials by resort to the unsworn statement is a matter which must be urgently addressed by the Government if there is ever to be any reduction in the time

taken up by criminal trials or in the amount of money spent by the Legal Aid Commission on criminal trials.

Retired Supreme Court judge Mr David Yeldham spoke about the imbalance in the justice system. I quote from an article in the *Australian* of 19 June 1993 in which he said:

> The real problem with unsworn statements is that the scales of justice are unevenly balanced. They are unevenly balanced against the victim, against the community, against the Crown and in favour of the accused. I can understand why the police believe it is a licence to lie . . .
>
> Historically, it was meant to help the less articulate or less educated to present a defence without being tricked by clever prosecution lawyers, but today most people are represented by lawyers. In my opinion, there is no justification for the retention of this archaic provision. There is simply no logic in it. It makes the system of justice in New South Wales at the moment into a farce.

It is clear that the Opposition intends to retain a farce. Mr Justice Lee, who also a retired New South Wales Supreme Court judge, made some comments in relation to this particular matter. I quote from an article in the *Sydney Morning Herald* on 5 June 1992 in which he said:

> The Government and the community should be aware of the extent to which the trial process can be manipulated by accused persons with no bona fide defence.

An article of 5 June in the *Daily Telegraph Mirror* quoted him as follows:

> The fact that an accused person may make an unsworn statement accounts for the conscious and deliberate manipulation of the trial process and is a significant factor in prolonging trials and in casting an enormous financial burden on the community.

In the *Australian* of 19 June and the *Daily Telegraph Mirror* of 5 June he is quoted as saying:

> Justice has indeed become lopsided (when) . . . criminals can malign police . . . through their counsel . . . without fear of a single question being directed to them by a Crown prosecutor.

**The Hon. Elisabeth Kirkby:** The police can malign the accused.

**The Hon. J. P. HANNAFORD:** The Hon. Elisabeth Kirkby has just interjected by saying that the police can malign the accused. Let us make it clear, in terms of the balance of interest, that if police go into the witness box, they are subject to cross-examination. Every single, solitary word can be challenged and can be cross-examined. But if the accused stands in the dock and makes the same comment - and I will refer to some of those during this response, where malicious comments have been made about people who cannot protect themselves - there is no way that those people can be protected by having the accused cross-examined. There is no fairness. There is no balance in the system which the Hon. Elisabeth Kirkby is seeking to protect. I will quote further because members of the Opposition sought to take comments from some members of the legal profession. I will keep quoting from members of the judiciary, people who have to listen to court proceedings day by day. In an unreported decision of 15 April in the case of *Regina* v. *Darwin*, Mr Justice Carruthers said:

> The trial judge was obliged by law to warn the jury that it was dangerous to act upon the sworn evidence of the two police officers . . . the accused on the other hand, was entitled to make an unsworn statement and remain immune from cross-examination or any comment by the judge or Crown Prosecutor . . . This is yet another example of the necessity for the legislature to reconsider the provisions of the Crimes Act to bring the law with regard to the unsworn statement in New South Wales in line with that in other States and Territories.

I can say to Mr Justice Carruthers: the Government is introducing legislation to bring New South Wales into line with other States and Territories, but the Labor Opposition continues to oppose this reform today as it did 20 years ago. Mr Kevin Waller, the former State Coroner, has made certain comments in relation to these reforms. I will quote from comments made by him in the *Sydney Morning Herald* of 1 June 1993 in which he said:

> The criminal justice system is burdened by hangovers from the 19th century . . . The right to make an unsworn statement from the dock should be abolished. While victims of crime are subjected to prolonged, often hostile cross-examination, the person they see as the criminal may say what he likes without the risk of being exposed as a liar.

Honourable members are aware of Kevin Waller's experience in the judicial system in New South Wales and the respect with which he is held. Judge Johnston, a District Court judge, said:

> I do not believe the community can meet the expense and loss of court time in trials of this nature . . . the State cannot afford the luxury of this system as it stands.

Many eminent members of the judiciary, who work with the system day after day and have to administer the system of justice day by day, advocate this reform. Some comment has been made about conviction rates and the accountability of the legal system. The Opposition has placed extensive reliance on research conducted by Miss Janice Sposi, a solicitor with the Office of the Director of Public



Prosecutions, for her master's degree, and on comment in the Australian Law Reform Commission's report on evidence - the fact that making a dock statement does not affect the conviction rate. Opposition members have drawn the conclusion that unsworn statements do not allow the guilty to go free.

Yesterday in a press release the New South Wales Society of Labor Lawyers claimed that Miss Sposi's research has "disproved claims that dock statements cause unjustified acquittals". Miss Sposi has advised that her research cannot - I emphasise cannot - support these claims. Miss Sposi's research and the research reported by the Australian Law Reform Commission on the Victorian and the South Australian experiences have not attempted to isolate the impact of dock statements from other factors which may affect conviction rates. The figures may have been affected by an increase, or even a decrease, in the number of offences being tried which usually have high conviction rates. The results also may be confounded by a correlation between the making of a dock statement and the strength of the other evidence against the accused.

However, reliance on this kind of analysis misses the point. The bill is not about numbers or percentage rates; it is about the impact of the system on human beings. Abolishing dock statements will remove the existing unchecked process whereby the accused can make unchallenged allegations and attacks on the character of witnesses and victims and can freely implicate other persons in the crime. This issue is about reinforcing community confidence in the system of justice. The Opposition has shown astonishing neglect for the plight of victims in this State. This Government will not allow that neglect to continue.

I therefore challenge members of the Opposition to ask themselves how they would feel if they were the victims or members of a victim's family in cases such as those mentioned by Reverend the Hon. F. J. Nile. I am referring to the rights of victims and families of victims, the extent to which they are exposed to the justice system, and their confidence in the justice system. What confidence can they have in a situation such as occurred in the Church case? Mr Church was accused of sexually assaulting his stepson systematically over five years. He pleaded not guilty to those sexual assaults and the stepson, then aged 13, had to give evidence in the witness box for two days. He was subjected to significant vilification. He and his mother were accused, in cross-examination, of making up allegations to be used in a custody case.

In his dock statement Mr Church again attacked the child and the mother. He was convicted by the jury. He later admitted, in interviews with a psychiatrist and a psychologist who were preparing a pre-sentence report for the court, that he had lied in his dock statement. I ask members of the Opposition to put themselves in the place of the mother in this case. She was accused of lying and only after the accused was found guilty did he say, "Mea culpa, I am sorry, I really did do it". Members of the Opposition expect victims and families of victims to have confidence in a system of justice which allows dock statements to be used in such a way.

**The Hon. Elisabeth Kirkby:** That is one example.

**The Hon. J. P. HANNAFORD:** The Hon. Elisabeth Kirkby says that is only one example. I will refer to another example, the Lowe case. Mr Lowe murdered 16-year-old Gregory Thompson in 1989. In his unsworn dock statement he accused three other boys of committing that murder. Not only did the family of the murdered person have to sit through the trial but the families of three other boys who had been accused of a murder faced lengthy cross-examination in court. The jury, sensibly, convicted Mr Lowe. When he was sentenced Mr Lowe admitted he had killed Gregory Thompson by ramming his head against a telephone pole during a fight.

The Opposition and the Democrats support the retention of these abuses of the justice system and expect the public to have confidence in the system. I say, and the Government says, that if a person stands before a jury he or she must be prepared to be cross-examined. The jury should be entitled to determine who is telling the truth. I could go through numerous examples. Abolition of dock statements will make our system of justice more accountable, more transparent and, importantly, more honest. The community will be able to see that people are dealt with equally before the law.

The Opposition has mentioned a number of interest groups which have expressed the view that dock statements should be retained. I have received considerably more support for the abolition of dock statements. The House should be aware of the vast variety of groups that support what the Government is doing in this Chamber. Honourable members referred to the support of the Law Society of New South Wales, the Bar Association and the New South Wales Society of Labor Lawyers and gave an indication that the legal profession was totally behind their position. The Hunter Community Legal Centre Inc. is not behind their position. In a letter to me it stated:

> The historical context of the Dock Statement identifies its use at a time when the accused had no right to present a defence. This is no longer the case. In the present context, the Dock Statement amounts to an unfair practice.
>
> We support your proposal to bring New South Wales into step with reform in this country and overseas.

In debate yesterday some members referred to reports in yesterday's press, particularly the advertisement from the legal profession and a letter from Mr Ian Barker. Comments that I have received since then include a letter from Wilsons, a firm of solicitors, as follows:

> I am compelled to write expressing my complete support for the proposals for the abolition of dock statements in jury trials.

**The Hon. I. M. Macdonald:** Where is this firm based?



**The Hon. J. P. HANNAFORD:** Erina, in one of your Labor-held seats. The letter continues:

I personally supported the proposals when first mooted, however, I have been stimulated into expressing my support in light of the advertisement placed by the Bar Association and Law Society today, and also by the letter to the editor (SMH) by Ian Barker QC, President of the Criminal Bar Association.

The letter continues:

I have from personal experience witnessed an accused run off the rails in a dock statement and make irrelevant, inadmissible and prejudicial statements from the dock. Despite the protestations to the contrary there is no way counsel or his solicitor can control what an accused says in a dock statement.

The alternatives that the judge faces are: 1. to discharge the jury or 2. give directions to the jury to disregard those matters raised (which only again highlights them). In a trial of some length 1. usually is not invoked. The damage is then done and the concept of justice being done in relation to the victim, the accused and the community is diminished.

The letter continues:

Ian Barker states "What people tend to forget is that one day they may themselves be on trial - but what he forgets is that they may also be a victim.

I received another letter from R. J. Benjamin and Company, solicitors in Hurstville, which states:

I have been watching with interest the debate in relation to dock statements in criminal trials.

I applaud your initiative in taking steps to rid the criminal justice system of this archaic procedure.

I note that the Law Society of New South Wales is opposing the change. The Law Society does not speak on behalf of all of its members.

Other interesting people support the Government's proposals. The Uniting Church in Australia, the Uniting Church Fellowship and the New South Wales Synod wrote to me and made the following comment:

It seems to us most unjust that a victim, particularly a young child, can be cross examined concerning his or her evidence while the accused is able to avail himself of this loophole in the law.

Yesterday Reverend the Hon. F. J. Nile referred to representations he had received from the Catholic Women's League. I, too, have received representations from the Catholic Women's League. I have received similar representations from the general secretary of the Country Women's Association of New South Wales, who wrote to me following a general meeting of that association to pass on its views. The general secretary said in a letter to me:

We are very concerned that the accused is able to make an unsworn statement, whereas the victim, and particularly a young child, can be cross-examined and yet the accused cannot be cross-examined.

The Victims Advisory Council passed a motion supporting the announced proposals. The Child Protection Council wrote to me supporting the proposals. The New South Wales Child Protection Association has written supporting the abolition proposals, and I should like to refer to an important comment in a letter from that association, which states:

If the accused wishes to remain silent, that must be their right and choice. However, if they seek

to present to the court and the jury their version of the events, they should, like the victim, be subject to the scrutiny of cross-examination.

I have received representations from the New South Wales Sexual Assault Committee supporting the proposals. Interestingly, I have also received support from such diverse groups as the Sexual Assault Team of the Sexual Assault Unit of the Royal North Shore Hospital, the Sexual Assault Team of the Sexual Assault Unit of the Campbelltown Health Service, the Sexual Assault Centre of the Central Coast Area Health Service, the Hunter Region Sexual Assault Service of the Hunter Area Health Service, and the Dympna House Management Committee, which is involved in sexual assault matters. I have received advice and support from the Council of Women Victims of Sexual Assault and the Reclaim the Night committee - and I believe Opposition members marched in support of that organisation when it wrote supporting this reform.

Letters keep coming in from other independent members of the community supporting this reform. It is universally supported by groups that work with victims in this State. They all clearly acknowledge that the Government is committed to addressing the needs of victims and ensuring that they are properly treated within the system while the Labor Opposition is not. I noted also in my second reading speech that the vast majority of accused persons are represented by lawyers whose advocacy is designed to overcome their communication handicaps. It is also the duty of the trial judge to ensure that accused persons have a fair trial and that there is no miscarriage of justice. In some serious criminal trials this duty may extend to staying proceedings until legal representation is obtained.

Under present law intellectually disabled people are not able to give sworn evidence unless they satisfy the initial tests of fitness to plead and competency as witnesses. If they are competent witnesses, they will be placed in a situation no different from that of any other witness - a category that includes child victims and disabled victims. Before anyone turns to more general issues regarding cross-examination let us have as our starting point a situation where all witnesses are equal before the court. Critically, under this bill, accused persons will not be placed in a position that permits them to fabricate evidence without being subject to cross-examination.

It has been said before, but it bears repeating, that the right to give unsworn evidence has been abolished in every other State and in the Northern Territory. A bill to abolish unsworn statements is before the Australian Capital Territory Parliament. I hope that in the Australian Capital Territory the voice of the victim is heard as strongly as it is in New

South Wales. Members of the Opposition cited selectively from the Western Australian experience following abolition. The select committee reviewing that experience also received a report from the Attorney General of Western Australia in the following terms:

> No instance has arisen where it has ever been suggested that an accused person suffered an injustice by reason of his having had to elect between maintaining his silence in the dock and getting into the witness box to give evidence on oath.

Members of the Opposition have made it clear that they would prefer to retain dock statements and permit comment by the judge and the prosecution. Introducing the right of a judge or the prosecution to comment on the accused's failure to give sworn evidence would not ensure that fabrications by the accused are accorded appropriate weight when the evidence is assessed by the jury. The best method of testing evidence known to our judicial system is cross-examination. Cross-examination permits the accused's assertions to be tested and enables the prosecution to bring out in minute detail the circumstances from which the truth will emerge. Cross-examination brings out the truth and only increases the risk of conviction when the evidence clearly establishes the guilt of an accused person. It will not increase the risk of conviction of the innocent.

As members of the Opposition have pointed out, cross-examination is not always a comfortable

experience. Even those lawyers who support the dock statement will concede that it is never an especially comfortable process for any witness. The Opposition has passionately argued for a situation where accused criminals can give evidence yet be relieved from this procedure. There has been no such passionate argument for the cause of the victim. Honourable members would have observed that the Evidence Bill 1994 will introduce valuable reforms, some but not all of which have been mentioned in debate. However, I have already advised the House on a number of occasions that progress of the Evidence Bill will be delayed pending the outcome of the Senate committee hearing on the uniform Commonwealth Evidence Bill. That delay ought not to delay the passage of this bill, which specifically addresses a fundamental and single issue.

I have said before, and I will say it again, that this issue goes to the very heart of the justice system. Members of the Labor Opposition, Labor lawyers and some other lawyers, in their obsession with preserving an anachronistic abuse, have completely forgotten those who do not choose by their acts to be drawn into the system, who do not ask to be attacked whether by criminal violence or the violence of slander from the dock, and who for so long have been ignored by the system itself. How much longer, therefore, can we go on talking about victims of crime before action is taken to do something to help them? This bill answers that question. The Government is prepared to help them; the Opposition is not. I commend the bill to the House.

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

**The House divided.**

**Ayes, 16**

| | |
|---|---|
| Mrs Arena | Mr Manson |
| Dr Burgmann | Mr O'Grady |
| Mr Dyer | Mr Shaw |
| Mr Egan | Mrs Symonds |
| Mr Enderbury | Mr Vaughan |
| Mrs Isaksen | |
| Mr Johnson | *Tellers*, |
| Mrs Kite | Ms Burnswoods |
| Mr Macdonald | Mr Kaldis |

**Noes, 20**

| | |
|---|---|
| Mr Bull | Revd F. J. Nile |
| Mrs Forsythe | Mr Pickering |
| Miss Gardiner | Mr Ryan |
| Mr Gay | Mr Samios |
| Dr Goldsmith | Mrs Sham-Ho |
| Mr Hannaford | Mr Rowland Smith |
| Mr Jobling | Mr Webster |
| Mr Jones | |
| Miss Kirkby | *Tellers*, |
| Mr Moppett | Mr Coleman |
| Mr Mutch | Dr Pezzutti |

**Pairs**

| | |
|---|---|
| Mr Obeid | Mrs Chadwick |
| Mrs Walker | Mrs Evans |

**Question so resolved in the negative.**

**Amendment negatived.**

**Question - That this bill be now read a second time - put.**

**The House divided.**

**Ayes, 18**

| | |
|---|---|
| Mr Bull | Revd F. J. Nile |
| Mr Coleman | Dr Pezzutti |
| Mrs Forsythe | Mr Pickering |
| Miss Gardiner | Mr Samios |
| Mr Gay | Mr Rowland Smith |
| Dr Goldsmith | Mr Webster |
| Mr Hannaford | |
| Mr Jobling | *Tellers*, |
| Mr Moppett | Mr Ryan |
| Mr Mutch | Mrs Sham-Ho |

**Noes, 2**

*Tellers*,
Mr Jones
Miss Kirkby

**Question so resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

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## REGULATION REVIEW COMMITTEE

### Twenty-seventh Report

**The Hon. S. B. Mutch,** on behalf of the Chairman, brought up the Twenty-seventh Report of the Regulation Review Committee entitled "Further Report on Non-Compliance with the Provisions of the Subordinate Legislation Act in Connection with the Local Government (Approvals) Regulation 1993", dated April 1994.

**Ordered to be printed.**

## SUPREME COURT (AMENDMENT) BILL

## CRIMINAL APPEAL (AMENDMENT) BILL

### Second Reading

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Justice, and Vice President of the

Executive Council) [5.55]: I move:

That these bills be now read a second time.

I seek the leave of the House to have my second reading speech incorporated in *Hansard*.

**Leave granted.**

The bills are the Supreme Court (Amendment) Bill and the Criminal Appeal (Amendment) Bill. As their prime purpose is to deal with related matters concerning the Court of Appeal and Court of Criminal Appeal they are being introduced together as cognate bills. The bills deal with three matters. The first involves the amendment of section 5AA(3) of the Criminal Appeal Act 1912. Section 5AA of the Criminal Appeal Act permits appeals to the Court of Criminal Appeal from convictions or orders as to costs made by the Supreme Court in its summary jurisdiction.

Currently subsection (3) does two things: it provides that such appeals shall be by way of rehearing as distinct from a hearing de novo, and that they shall proceed on the evidence given before the Supreme Court in its summary jurisdiction and on any evidence presented at the appeal either in addition to or in substitution for evidence given before the Supreme Court in its summary jurisdiction. Subsection (3) also applies to appeals to the Court of Criminal Appeal from the Land and Environment Court exercising its summary jurisdiction, the court of coal mines regulation in its summary jurisdiction, and convictions for offences in the Supreme Court or District Court exercising their jurisdiction under part 10 of the Criminal Procedure Act 1986, which deals with the determination of summary offences related to indictable offences.

The amendments do not alter the first of these functions. The second is altered by the insertion of a new subsection (3A) which provides that the Court of Criminal Appeal may grant leave to adduce fresh, additional or substituted evidence only if the court is satisfied that there are special grounds for doing so. So far as its second function is concerned, subsection (3) in its current form represents a departure both from the general law position and that applicable to appeals in the Court of Appeal, which are also by way of rehearing.

At common law a verdict regularly obtained was not to be disturbed in the absence of some insistent demand of justice. In the context of fresh evidence this required the fulfilment of two conditions: first, that reasonable diligence must have been exercised to procure the evidence which the defeated party failed to adduce at the trial; and second, it must be reasonably clear that if the evidence had been available at the trial an opposite result would have been produced: *Wollongong Corporation* v. *Cowan* (1954) 93 Commonwealth Law Reports 435 at 444.

The common law rests on at least three considerations: that cases coming before courts ought to be properly prepared; that there ought to be a finality to litigation; and that a correct understanding of the role of appellate courts is the identification and correction of error in courts below. Although the context is slightly different, similar considerations apply where there is an application for a new trial on the ground of fresh evidence following the conviction of an accused after a trial on indictment. The authority for this is *Gallagher* v. *The Queen* (1985-86) 160 Commonwealth Law Reports 392 at 395, 400, and 409-10.

So far as appeals to the Court of Appeal are concerned, the common law approach is reflected in section 75A(8) of the Supreme Court Act, which provides that where an appeal to the Court of Appeal is from a judgment after a trial or hearing on the merits, the Court of Appeal shall not receive further evidence except on special grounds. It will be seen that in its current form section 5AA(3) of the Criminal Appeal Act is anomalous in two respects. First, it creates a different test for the adducing of fresh evidence as between the Court of Appeal and Court of Criminal Appeal. Second, it is anomalous that the criterion governing the adducing of fresh evidence in the Court of Criminal Appeal from a

conviction in the Supreme Court should differ according to whether the conviction followed a summary hearing or a trial by jury.

It is the purpose of the amendment to section 5AA to remove this anomaly and to introduce greater uniformity. It has the support of the Chief Justice. The second purpose of the amendments is to insert section 22A into the Criminal Appeal Act 1912 and section 45A into the Supreme Court Act 1970. The provisions are in substantially the same terms, and are designed to streamline the procedure for delivery of reserved judgments in the Court of Appeal and the Court of Criminal Appeal. Where judgments of the Court of Criminal Appeal or Court of Appeal are reserved, the judges' reasons are normally reduced to writing and are published formally by a bench comprising three judges of appeal, at least one of whom participated in the hearing of the appeal; or three Supreme Court judges comprising the Court of Criminal Appeal, at least one of whom participated in the hearing of the appeal.

The current procedure is somewhat cumbersome, and the amendments are designed to permit the publication of reserved judgments by a bench comprising one judge alone, who need not have participated in the original hearing of the appeal before the Court of Appeal or Court of Criminal Appeal. As the procedure for publishing reasons for judgment at the appellate level is largely formal, it is not necessary that a bench of three judges be convened for the purpose. Albeit in a minor way, the amendments will contribute to a more efficient use of judicial resources, and may shorten, again albeit briefly, the period during which litigants have to wait for appellate judgments. The provisions are very similar in their terms to section 42 of the Supreme Court of Queensland Act 1991. Among other things, that Act established a permanent Court of Appeal in Queensland similar to that established in this State in 1965. Again, the proposal has the support of the Chief Justice.

The third group of amendments is more significant. Currently, appeals to the Court of Criminal Appeal and Court of Appeal are heard by benches comprising three judges. The amendments which would add section 6AA to the Criminal Appeal Act 1912 and section 46A to the Supreme Court Act 1970 propose that in certain circumstances the Chief Justice may direct that appeals to the Court of Appeal or Court of Criminal Appeal may be heard and determined by benches comprising two judges only. In respect of the Court of Criminal Appeal the power will be limited to appeals on the severity of sentence and in the case of the Court of Appeal the power will be limited to appeals concerning the quantum of damages in cases arising out of death or personal injury. In either case, the sections make it clear that the power shall only be exercisable in cases where it appears that no disputed question of principle arises. In the event that there is a division of opinion



between the two judges comprising the bench for a quantum or severity appeal as to how that appeal should be determined, the matter shall be reheard before a bench of three judges. Should there be a difference of opinion on matters which do not go to the determination of the appeal itself, the view of the senior judge present will prevail.

The use of two-judge benches at the appellate level is not unusual, and they have existed in the United Kingdom for some years. It is convenient to note here that the current proposals for two-judge benches to deal with severity and quantum appeals are supported by the Chief Justice. The introduction of two-judge benches to hear severity and quantum appeals will not only benefit litigants in the Court of Criminal Appeal and Court of Appeal, but will also lead to a more efficient use of judicial resources. The Court of Appeal normally sits in two divisions, that is, two benches of three judges throughout the 46-week law term. Since 1992 the court has maintained a separate general damages list into which quantum appeals are entered, and has conducted damages appeals lists to dispose of quantum appeals. Currently there are two benches of three judges available to hear such appeals.

The amendments proposed by the Supreme Court (Amendment) Bill will allow there to be three benches of two judges to deal with such appeals. The implications for the disposition of quantum appeals, and benefits for parties to such appeals, are clear. It may also be that increased disposition rates of quantum appeals may make available more judicial time for the hearing of other appeals which

will still be required to be heard by three-judge benches. Again, this should have benefits for parties to such appeals. As I have said, each bill provides that in the event that a two-judge bench hearing a severity or quantum appeal is unable to agree as to how that appeal should be determined, the appeal is to be reheard before a bench of three judges with, if practicable, the original two judges comprising part of the three-judge bench.

It is anticipated that it will only be infrequently that a two-judge bench will be unable to agree as to how a severity or quantum appeal should be determined. Accordingly, it is anticipated that rehearings before benches of three judges will be rare. However, to the extent that there may be disagreement between judges comprising a two-judge bench, it is acknowledged that litigants may incur additional costs by reason of the inability of such judges to agree. This has been anticipated by provisions in these bills and an amendment to section 6A of the Suitors' Fund Act 1951. That section currently provides that in circumstances in which, as a result of no act, neglect or default on the part of parties to civil or criminal proceedings a trial is rendered abortive and a new trial results, such parties are entitled to claim on the fund in respect of the abortive trial.

The effect of the proposed amendments is to deem a hearing before a two-judge bench unable to agree to be an abortive hearing within the meaning of section 6A of the Suitors' Fund Act, and the subsequent re-hearing before a bench of three judges to be a new trial within the meaning of that section. The intention is that, to the extent that parties may incur additional expenses in an appeal as a result of the inability of members of a two-judge bench hearing a severity of quantum appeal to agree, they would be able to apply to have such additional costs paid from the fund. The system of two-judge benches hearing severity and quantum appeals provided for by these bills will operate for an initial trial period of two years. During that period its administrative success and demands on the Suitors' Fund will be monitored.

As part of the monitoring process, the registrars of the Court of Appeal and Court of Criminal Appeal will collect, on a monthly basis, statistics as to the number of matters dealt with by two-judge benches; the proportional relationship between matters dealt with by two-judge benches and three-judge benches; the number of times there is a disagreement between members of a two-judge bench; and the additional time taken to dispose of a severity or quantum appeal where a two-judge bench has been unable to agree. Statistics, once collected, will be reported to the court's principal registrar and chief executive officer who will report to the Chief Justice and the Department of Courts Administration. The statistics will assist in showing whether the scheme is achieving its aim of expediting the disposition of severity and quantum appeals without increasing court resources. I commend the bills to the House.

**The Hon. J. W. SHAW** [5.56]: I shall mention briefly three aspects of the law with which the bills deal. First, they effect a change in the rules governing the admission of evidence before the Court of Criminal Appeal. There appears to be an anomaly in the present statutory scheme whereby, in relation to appeals in criminal cases dealt with by the Supreme Court in its summary jurisdiction, in accordance with section 5AA of the Criminal Appeal Act 1912, the court is bound to admit any additional evidence that might be tendered by the parties to the appeal. Section 5AA(3) provides that any such appeal shall be by way of rehearing on the evidence, if any, given in the proceedings before the Supreme Court in its summary jurisdiction and on any evidence in addition to or in substitution for the evidence so given.

Ordinary appeals, that is, appeals that are not appeals from the Supreme Court in its summary jurisdiction, are governed by section 6 of the Criminal Appeal Act 1912. In those instances the court has a discretion to admit or to reject the fresh evidence. On the face of things it does seem to be a discrepancy that different rules are applicable to the admission of fresh evidence on appeal depending upon whether a matter is an appeal from the summary jurisdiction of the court or an appeal from the decision of a jury. One of the things that these bills do is to bring those two sets of rules into alignment. I cannot see any objection to that course. It is appropriate for a court of criminal appeal to fairly readily admit fresh material that might cast doubt upon the appropriateness of a conviction. The experiences in

England are all too apparent. Injustices have been done in criminal trials where fresh evidence demonstrates the injustice and ought to be listened to by an appellate court to ensure that the legal system is not brought into disrepute.

The second aspect of the bills is completely non-contentious. If enacted, the bills will allow appeal court judgments to be delivered by a single member of the bench, without the necessity to assemble the whole of the appellate bench. That practice is well established already in the Federal Court, where judges come from different States, and is entirely appropriate for New South Wales courts where the practice has developed of having appellate judgments in written form which are simply handed down or published as a formality, and there is no reason to assemble a full court to perform an essentially mechanical task. That is a potential cost saving measure and ought to be supported.

The final aspect of the bills is one about which, I must confess, I have doubts, and that is, the notion that appeals in certain classes of matters might be dealt with by only two judges. Conventionally an appeal court, whether the New South Wales Court of

Appeal or the High Court, consists of a court of an uneven number of judges, so that one can have a clear majority decision in the event of disagreement. These bills will allow certain relatively pedestrian appeals - particularly appeals about the quantum of damages in personal injury cases - to be dealt with by a bench of two judges. That is obviously designed to eliminate the backlog of appeals and to make better use of the court time available to judges.

Of course, the difficulty is the possibility that the two judges will not reach agreement. If they cannot, the matter has to be reheard. According to the scheme embodied in these bills, it has to be reheard at public expense, and no doubt to the irritation and disadvantage of the litigants concerned. It would certainly be an untoward effect if it became in any way a regular occurrence that two-person appellate benches fail to reach agreement and matters had to be reheard before a fully constituted three-person bench. One can only hope that will not eventuate and that there will generally be agreement by benches consisting of only two persons.

If that proves not to be the case, it will obviously be appropriate for the Government and the Parliament to review the matter, perhaps after a year or so of experience under this new system. The Attorney General assures honourable members that the system is supported by the Chief Justice, and the Chief Justice is a most persuasive individual. Given that, the Opposition is certainly prepared to acquiesce in the proposal and to allow the initiative to have a fair trial. However, it should be monitored so that it does not impose excessive burdens on litigants where appeals have to be reheard. They are the three aspects of the bills that effect alterations in the criminal appeal system and in the appeal system generally in New South Wales. As I have explained, they are matters which have the support of the Opposition.

**The Hon. S. B. MUTCH** [6.1]: I support the Supreme Court (Amendment) Bill and the Criminal Appeal (Amendment) Bill. On behalf of the Government I appreciate the support given by my learned and noble colleague opposite. The effect of the bills is to enable two judges, instead of three, to hear appeals relating to the quantum of damages awarded in cases involving death or personal injury with respect to the Court of Criminal Appeal; and for two judges instead of three to hear appeals relating to the severity of sentence with respect to the Court of Criminal Appeal - in both instances where there is no disputed issue of principle.

The proposed amendments arise out of comments made in the Supreme Court annual reviews for 1991 and 1992. We hope that the measure pleases the Chief Justice. The aim is to expedite the hearing of these appeals and, consequently, to reduce backlogs. In the event of a deadlock between two judges - though it is expected that this would be unusual - the matter is to be referred to a bench comprising three judges. Parties incurring additional costs may claim costs against the Suitors' Fund. However, the proposal is for a trial period of two years and the registrars of the respective courts will be

asked to collect statistics to determine the efficacy of the new system.

The amendments will introduce a new test, that of special grounds, for the adducing of fresh evidence in appeals to the Court of Criminal Appeal from convictions or orders as to costs made in the Supreme Court in its summary jurisdiction. In addition, the amendments will bring the test for adducing fresh evidence into line with that operating in appeals to the Court of Appeal, and appeals to the Court of Criminal Appeal following conviction on trial on indictment. To that extent they remove an existing statutory anomaly. Also, the bills will streamline the procedure for the publishing of reserved judgments of the Court of Appeal and the Court of Criminal Appeal. These are modelled on a provision enacted in Queensland in 1991, when a permanent Court of Appeal was established in that State. It is expected that these amendments will lead to a more efficient use of judicial resources. I support the bills.

**The Hon. ELISABETH KIRKBY** [6.4]: The Australian Democrats support the Supreme Court (Amendment) Bill and the Criminal Appeal (Amendment) Bill, which make a number of amendments relating to the hearing of appeals. The first aim of the bills is to amend section 5AA(3) of the Criminal Appeal Act 1912. Section 5AA(3) of the Act currently provides that an appeal will be by way of rehearing, and that it proceeds on evidence given before the Supreme Court in its summary jurisdiction, and on evidence presented at the appeal, either in addition to or as a substitute for evidence given before the Supreme Court in its summary jurisdiction.

The amendment in the Criminal Appeal (Amendment) Bill will give the Court of Criminal Appeal the authority to grant leave to bring in fresh, additional or substituted information only if the court is satisfied that there are special grounds for doing so. The amendment will bring the practice into line with the common law position in the Court of Appeal. The second major aim of the bills is to insert new section 22A into the Criminal Appeal Act 1912 and new section 45A into the Supreme Court Act 1970. This will streamline procedure for the delivery of reserved judgments in the Court of Appeal and the Court of Criminal Appeal. At present, reasons must be published by at least one of the three judges who participated in the hearing of an appeal.

However, it is now proposed to allow publication of reserved judgments by one judge, who need not have participated in the original hearing of the appeal. It is argued that as the procedure for publishing reasons for judgment at the appellate level is largely formal, it is not necessary that a bench constituting three judges be convened for the purpose. The third aim is that the bills will insert new section 6AA into the Criminal Appeal Act 1912 and new section 46A in the Supreme Court Act 1970 so that the Chief Justice may direct that appeals to the Court of Appeal or the Court of Criminal Appeal may be heard and

determined by benches comprising two judges instead of three. This power in the Court of Criminal Appeal will be limited to appeals on the severity of sentence, and in the Court of Appeal to appeals concerning the quantum of damages in cases arising out of death or personal injury, only where no disputed question of principle arises.

If there is disagreement on a determination, the matter will be reheard before a bench of three judges. If there is a disagreement on matters that do not go to the determination of the appeal, the view of the senior judge will prevail. This proposal will enable three benches of two judges to sit. The point should be made that with a bench of three, a majority of two is needed anyway. However, there is the possibility that this measure may lead to additional costs through appeals being reheard, and I ask the Minister to address this matter in his reply. I trust that the department will monitor the situation during the two-year trial. People who have to have appeals reheard will be eligible to claim under section 6A of the Suitors' Fund 1951.

The Australian Democrats do not have any major concerns with these three proposals; there are safeguards in place. However, the New South Wales Law Society referred to an inequity that may be caused by allowing a party's costs on aborted proceedings to be paid from the Suitors' Fund. The Law Society points out that in most cases one party to the appeal will be an insurance company or some other

corporation. Section 6A(2)(b) of the Suitors' Fund Act excludes corporations with a paid up capital of $200,000 or more. Section 6(A)(2) excludes any corporation with a lesser paid up share capital which is related to such a corporation. While the present provisions of 6A(1) of the Suitors' Fund Act cater for situations which occur occasionally, the proposed amendments may change that position. There may be a considerable number of decisions where the two appellate judges differ, and it may well be unfair to penalise corporations for the resulting situation. I ask the Minister to provide a response to the concern I have raised. However, with that concern, and my call for the need for monitoring, the Australian Democrats support the amending bills.

**Reverend the Hon. F. J. NILE** [6.11]: The Call to Australia group is pleased to support the Supreme Court (Amendment) Bill and the Criminal Appeal (Amendment) Bill. These bills relate to matters concerning the Court of Appeal and the Court of Criminal Appeal and are introduced into this House as cognate bills. I note that these proposals have the support of the Chief Justice, and that is an important element in our support of the bills. The measure will improve the efficiency of justice and will enable cases to be expedited, thereby freeing up time for cases that require lengthy hearings. The proposal to allow two judges to hear appeals, be it in the Court of Appeal or in the Criminal Court of Appeal, releases a judge and allows for one more panel of two judges to be available to hear appeals.

I note that there are still limits on the operation of cases being heard by two judges. If the two judges cannot agree, the matter will be reheard by a bench comprising three judges. It has been asserted that this will result in further legal expense for the appellants, and the Government has made provision for that. The Supreme Court (Amendment) Bill will amend the Suitors' Fund Act 1951 to enable a party to proceedings that are required to be reheard, as referred to in the Act, to be paid the party's costs on the aborted proceedings out of the Suitors' Fund established under that Act.

That process will provide justice for those whose appeals cannot be determined by two judges and have to be heard before three judges, thus attracting extra cost. Similar provisions are made in the Criminal Appeal (Amendment) Bill, in the Supreme Court (Amendment) Bill 1994, which will amend the Suitors' Fund Act 1951, and so on. That provision would seem to provide sufficient security for those whose appeals have not been determined before two judges and have to be reheard before three judges. I am sure the Attorney General will continue to monitor the operation of this new system. If adjustment is required, it can be dealt with by this House. For those reasons Call to Australia is very pleased to support the two bills.

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Justice, and Vice President of the Executive Council) [6.13], in reply: I thank all honourable members for their support of the bills. This important legislation will enable a large number of cases before the Court of Appeal to be dealt with. It will significantly assist efforts by me in the ensuing period to deal with the case backlog that has resulted mainly from efforts to deal with the District Court case backlog. The Hon. Elisabeth Kirkby raised a couple of matters to which I shall address comment. First, I advise that the Chief Justice will be closely monitoring the nature of cases before the court and will be carefully assessing each case referred to the court to make sure it does not involve controversies of law as opposed to controversies of fact. I have every faith in the ability of the Chief Justice to so manage his court, and I do not expect any significant problems in that regard.

As I stated in my second reading speech, this program will be in place for two years. If there are any problems with it, I would expect the Chief Justice to immediately discontinue it. The honourable member also asked about the use of the Suitors' Fund Act, a matter that has also been raised with me by the Law Society. I have responded to the society's concerns and I shall make available to the House the same response I gave to the society. The Law Society was concerned about corporations, especially insurance companies with a paid-up capital of more than $200,000, being able to claim under section 6A of the Suitors' Fund Act, and that they may be affected by inequitable results in cases where, as the result of a two-judge bench being unable to agree on a quantum appeal, a re-hearing before a three-judge bench is necessary.

However, such corporations would be unable to recoup from the Suitors' Fund the costs of hearings before a two-judge bench. Although insurance companies are frequently involved in litigation about claims for damages, usually they are not litigants. I emphasise that the provision will apply only where a corporation is a party to proceedings. An insurance company may stand behind a defendant who may be the respondent on appeal, but if a two-judge bench is not able to agree, the litigants, not the insurers behind them, may make application to the Suitors' Fund. The fund applies to the litigants, not to the insurance company behind them. That provision will significantly overcome the problem raised by the honourable member.

For the purposes of section 6A of the Suitors' Fund Act, it is the paid-up capital of the litigants, not the insurance companies standing behind them, that will be relevant. More significantly, section 6A was introduced into the Suitors' Fund Act in 1959. That provision embodies a policy that sizeable corporations should not be able to claim on the fund where, in civil proceedings, a new trial is rendered necessary as a result of factors outside the control of litigants unrelated to their conduct or that of their legal representatives. The intent was that the limited resources of the fund should be available for those with greatest need, and on whom the inability to recoup costs would have greatest impact.

The proposals of the Law Society strike at that policy part of the Act. It is true that the $200,000 figure has not been increased since 1959. Although the effluxion of time has rendered revision of this figure necessary, it is not appropriate that such revision be dealt with in this bill. But I can assure the honourable member that it is an issue to which I am addressing consideration. I assure him also that I will be monitoring the way in which the legislation is being applied. If an anomaly arises, I will look at ways in which I can fully address it. I thank honourable members for their support of the proposed legislation, and I commend it to the House.

**Motion agreed to.**

**Bills read a second time and passed through remaining stages.**

## JUDGES' PENSIONS (AMENDMENT) BILL

### Second Reading

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Justice, and Vice President of the Executive Council) [6.20]: I move:

That this bill be now read a second time.

I seek the leave of the House to have my second reading speech incorporated into *Hansard*.

**Leave granted.**

The Judges' Pensions (Amendment) Bill 1994 will amend the Judges' Pensions Act 1953 to provide for the continuation of a widow's or widower's pension entitlement should such a person remarry. At present, if a judge's widowed spouse remarries, the pension entitlement ceases.

The primary objectives of the Judges' Pensions Act are to provide for judges' pension rates and to provide judges' widowed spouses with pensions. The proposed amendments to the Act are in keeping with these objectives.

In 1992 the Commonwealth amended its Judges' Pensions Act, repealing provisions which provided for the cessation of any pension paid to a widow or widower of a judge or retired judge upon remarrying. Accordingly, it is proposed that the similar restraint on pension entitlements of widowed spouses under the New South Wales Act be removed to allow such a person to maintain their pension entitlement on remarriage.

Consistency between jurisdictions of remuneration and pension entitlements for judges is seen as an important element in ensuring flexibility and mobility of judges between jurisdictions. As most movement of judges takes place between Federal and State jurisdictions, it is important that the New South Wales provisions are comparable with the Commonwealth's.

In keeping with the recent amendments to the Commonwealth Judges' Pension Act 1968, section 7 of the bill provides for the restoration of a widow's or widower's pension, where that person remarried prior to the passing of this amendment, and thereby lost their pension entitlement. Such a person may apply to the Attorney General to have the pension restored on the basis that the person is in need, or the restoration of the person's pension is otherwise justified.

Proposed new section 7(6) requires the Attorney General to give reasons for his decision not to restore a pension.

It is anticipated that this amendment will have only a minor revenue impact as pensions which would have ceased to be payable will now be payable. It is expected that the number of additional pensions payable will be very small. The Department of Courts Administration is only aware of one possible case at present where additional monies may become payable. I commend the bill to the House.

**The Hon. J. W. SHAW** [6.21]: This bill will provide that a pension paid to a widow or widower of a judge or a former judge does not cease on the remarriage of the widow or widower. I think perhaps the main argument in favour of the proposition is that it conforms with the Commonwealth scheme for judges, and in an era where there is some movement by members of the judiciary from Federal to State jurisdictions, uniformity seems desirable. The Opposition will support the bill.

**The Hon. ELISABETH KIRKBY** [6.22]: The Australian Democrats support the Judges' Pension (Amendment) Bill, which will provide that a pension paid to the widow or widower of a judge or former judge does not cease on remarriage. This legislation has been introduced to follow closely on section 8A of the Judges' Pension Act 1968 of the Commonwealth, as inserted by the Law and Justice Legislation Amendment Act (No. 2) 1992 No. 23 of the Commonwealth. It is obviously a very reasonable and sensible piece of legislation. It seems to me to be grossly unfair that if widows or widowers of judges or former judges wish to remarry - and obviously they will be of a certain age - they would lose the pension that their first spouse had earned throughout their service on the bench.

Certainly at that age it would probably be very difficult to enter into remarriage. Unless they were exceptionally lucky to meet a very wealthy new partner the loss of the pension might inflict personal

hardship. Therefore I think it is perfectly proper that they should be allowed to keep the pension. I am delighted to see that the bill also provides that although the amendments do not apply to pensions that have ceased to be payable because of remarriage, the widow or widower can now apply for a pension to be restored. I hope that this will be made known among those people to whom it applies and that the Attorney General will be in a position to direct the restoration of the pension if - as it says in the explanatory note of the bill - he is satisfied that the applicant is in need, or that restoration is otherwise justified. I think that is fair for all concerned, and I support the bill.

**Reverend the Hon. F. J. NILE** [6.24]: The Call to Australia group supports the Judges' Pensions (Amendment) Bill. The object of the bill is to provide that a pension paid to the widow or widower of a

judge or former judge does not cease on remarriage. As we know, this legislation is designed to make our State laws consistent with the Commonwealth's Judges' Pensions Act 1968, as inserted by the Law and Justice Legislation Amendment Act (No. 2) 1992 No. 23 of the Commonwealth so that judges' widows or widowers in both the Federal and the State sphere will now be on the same basis. Schedule 1(1) removes references to remarriage, the result being that a pension payable to the widow or widower of a judge or former judge will continue until death; and schedule 1(2) provides for restoration of a widow's or widower's pension - if lost due to remarriage - by the making of an application to the Attorney General. We believe that this is a just bill that will provide justice for judges' better halves.

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Justice, and Vice President of the Executive Council) [6.25], in reply: I thank honourable members for their support of this most considerate and compassionate piece of legislation, which I commend to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

[*The Deputy-President (The Hon. D. J. Gay) left the chair at 6.26 p.m. The House resumed at 8.30 p.m.*]

## POLICE SERVICE (COMPLAINTS) AMENDMENT BILL

### Second Reading

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Justice, and Vice President of the Executive Council) [8.30]: I move:

That this bill be now read a second time.

I seek leave of the House to incorporate my second reading speech in *Hansard*.

**Leave granted.**

This bill deals with the accountability of police, and more particularly the public perception of how effectively the conduct of police officers can be scrutinised by the Ombudsman in his role as external watchdog.

While it is a very important bill, it is not groundbreaking. In fact, it does not alter the substance of the present provisions relating to police complaints in any way.

The significance of this bill lies in the fact that it clarifies the intended operation of the existing police complaints scheme, and it does this in order to make absolutely crystal clear just how answerable for their conduct police officers are expected to be if they wish to serve in the New South Wales Police Service.

Mr President, you will recall that in May last year this Parliament passed the Police Service (Complaints, Discipline, and Appeals) Amendment Act 1933. Honourable members will remember that the Act also dealt with police accountability and the police complaints system. It was, however, a more proactive bill than that currently before the House.

The 1993 bill implemented many recommendations of the joint parliamentary committee on the Ombudsman. As a result the Ombudsman was in a better position than ever before to oversight the investigation of complaints against police.

One of the other reforms brought about by the 1993 Act was to draft the Act in such a manner that the parameters of the complaint procedures in part 8A of the Police Service Act could be ascertained from the Act itself.

Honourable members will recall that under earlier legislation a complicated and convoluted path through the Police Regulation (Allegations of Misconduct) Act and the Ombudsman's Act had to be followed in order to ascertain which complaints were caught in the police complaints net, and which were not.

In contrast section 121 provided a much simpler method of determining what matters could be investigated under the provisions of part 8A of the Act. It provided a succinct, self contained guide to the type of conduct that might be the subject of complaint, and it did so using a term that was familiar because it was already in use in schedule 1 of the Ombudsman's Act.

Mr President, section 121 states that all complaints concerning any alleged action or inaction of a police officer when acting as a constable fall within the police complaints system.

Requiring a complaint to relate to the action of a person "when acting as a constable" means that conduct has no connection with the fact that a person who is a police officer can no longer be subject to investigation under the police complaints system.

Consequently police officers are able to consider their private lives as personal matters, and not subject to the uncompromising scrutiny attached to their professional conduct as police officers.

Mr President, use of the terminology "when acting as a constable" was never intended to oust the jurisdiction of the Ombudsman to investigate matters in which it is alleged that police officers have acted outside the proper execution of their duties or to prevent scrutiny of officers alleged to have acted criminally by, for example, assaulting a member of the public.

However, as a result of two recent reports to Parliament by the Ombudsman, all members of this House will be aware that attempts have subsequently been made to limit the meaning of the words of section 121 in a way that this Parliament would never have intended.

Mr President, it was never in the contemplation of the Government nor, I would venture, any individual member of this Parliament, that the police complaints legislation should be limited to situations in which a police officer was attempting to properly execute a legitimate function of a constable of police.

The very idea is absurd and makes a nonsense of many of the other provisions of part 8A of the Police Service Act.

Nevertheless, that is an interpretation that has been placed on the words of section 121 in some quarters.



Mr President, the Government is satisfied that the words of section 121 are effective and achieve what they were intended to achieve.

The Government rejects the argument that there is any legitimate alternative interpretation that can be placed on section 121 and it is supported in this view by the opinion of the two most senior Crown law officers: the Solicitor General and the Crown Advocate.

But Mr President, in the final analysis, the correct legal interpretation of section 121 is not the most important issue here. What is the most pressing issue is maintaining public confidence in the

accountability of the Police Service.

The Government is concerned that without some intervention there will continue to be debate surrounding the scope of the police complaint system.

Mr President, public debate on any issue is generally healthy and in the public interest. In this case, however, such debate can only be counterproductive, with a very detrimental effect on the level of public confidence in the accountability of the Police Service.

It is quite clearly not in the public interest for any perception to develop that the Ombudsman is in some way shackled in his ability to oversight the conduct of members of the Police Service. For the community to have any doubt in this area is simply not acceptable.

Mr President, it is this concern that discernible damage may be done to public confidence in the accountability of police through the complaints system, that has prompted the Government to bring forward this bill.

The bill restates section 121 without using the words "when acting as a constable". However, the original intention of the section remains unchanged. The section is to give a succinct statement of what matters may be made the subject of a complaint under the Police Service Act.

The bill lays to rest once and for all any notion that a complaint cannot be made if it:

- concerns the conduct of an off duty officer but is nonetheless something done in furtherance of a responsibility as a sworn police officer;

- alleges that an officer has done something illegal; or

- involves conduct that is not a legitimate or intended function of a police officer.

Added to this is a new section - section 141A - which takes up the concept previously encapsulated in the words "when acting as a constable", by providing that the Ombudsman is not to permit an investigation under part 8A of the Police Service Act to be conducted if a complaint concerns conduct that is unrelated to the fact that a person is a police officer.

In other words, section 141A preserves the position that complaints relating to the private behaviour of police officers are to have no place in the formal police complaints system.

Mr President, as I have already indicated the wording of section 121 was borrowed from an existing provision in the Ombudsman's Act. It is therefore to be expected that the difficulty of interpretation and application that has occurred under the Police Service Act will sooner or later also occur in relation to the phrase "when acting as a constable" in the context of the Ombudsman's Act.

For that reason, and to ensure that the provisions of the Ombudsman's Act and the Police Service Act are properly aligned, two changes have been made to the Ombudsman's Act.

The overall result is to give the Ombudsman power under his own Act to investigate complaints that relate to matters of police administration, but not operational matters relating to crime and peace keeping activities.

This power is then complemented by specific jurisdiction under the Police Service Act to deal with the operational type of complaints that are excluded from review under the Ombudsman's Act.

Mr President, the Ombudsman called for urgent amendment to section 121 of the Police Service Act,

and this bill addresses that call.

More importantly however, the bill ensures that the community is left in no doubt that police officers are accountable for all behaviour connected to their work.

The bill sends a vital message to the whole community - police, lawyers and citizens alike - that there are no "loopholes" that can be exploited to exclude the jurisdiction of the Ombudsman to scrutinise the standard of conduct of police officers under part 8A of the Police Service Act.

I commend the bill to the House.

**The Hon. R. D. DYER** [8.31]: The Opposition supports the Police Service (Complaints) Amendment Bill.

**The Hon. Dr B. P. V. Pezzutti:** Hear! Hear!

**The Hon. R. D. DYER:** I know that commencing in that way always pleases the Hon. Dr B. P. V. Pezzutti. I cannot always facilitate the honourable member's pleasure by being so supportive. On this occasion I am happy to indicate that the Opposition has no objection whatever to this measure. The purpose of this legislation is to amend, in the main, the Police Service Act 1990 and also consequentially the Ombudsman Act 1974 to place beyond any doubt the power of both the Ombudsman and the Commissioner of Police to deal with a complaint concerning the conduct of a police officer that involves the commission of a criminal offence or other conduct outside the usual functions of a police officer.

The Ombudsman has had cause to report to Parliament on two occasions concerning this matter which has become of great concern to him. The brief background is that an Ombudsman's investigation into a case where a complainant alleged that off-duty police had assaulted and robbed him, was the subject of a legal challenge by police. Essentially the legal argument put before the court by police was that the police officers who were the subject of a complaint were not "acting as constables". Consequently it was argued that the Ombudsman had no jurisdiction to investigate the matter. The Ombudsman reported to Parliament on two occasions, the last being on 17 March in a report entitled, "Urgent Amendment to Section 121 of the Police Service Act". On that occasion the Ombudsman said:

> Section 121 of the Police Service Act, in limiting the conduct which the Ombudsman may investigate, has created substantial and real problems. If the original intention was to exclude the Ombudsman from investigating complaints about "private" police conduct, then that intention has gone hopelessly astray.

This legislation cures the difficulties thrown up by the legal challenge of the police to which I have referred and which is referred to also in the two reports that the Ombudsman made to Parliament. In summary form the bill will enable complaints to be dealt with in relation to the conduct of a police officer in categories where that conduct occurs while the police officer is not officially on duty, or in a situation that involves the commission of an offence, or that is otherwise outside the usual functions of a police officer. No



member of the House would regard it as appropriate that a police officer could escape the complaints system or discipline in regard to conduct that is committed by him or her arising out of his or her office, so to speak, as a police officer, although that police officer happens not to be on duty at the time that particular conduct, or more properly misconduct, might have occurred.

The bill will preserve the position that complaints relating to the truly private behaviour of police officers are to have no place in the formal police complaints system. The only criticism I record in regard to the Government is that the Ombudsman has been seeking clarification of this matter since July 1993. After the matter received extensive media coverage the Government finally addressed the issue.

However, the issue has been addressed effectively and the Opposition is happy to support this measure.

**The Hon. S. B. MUTCH** [8.36]: I thank the Hon. R. D. Dyer for his support in this matter. It is a little churlish that the Opposition criticises the Government for delay in a matter where advice was sought from a number of different sources. I suppose in the nature of these things differing advice was received. By way of background, on 1 July 1993 amendments to the Police Service Act, brought about through the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993, came into effect. These amendments primarily gave effect to the recommendations of the Committee on the Office of the Ombudsman. That was an extensive report conducted under the chairmanship of Andrew Tink, the honourable member for Eastwood in the other place. As a result of these amendments the Police Regulation (Allegations of Misconduct) Act was repealed and part 8A of the Police Service Act became the statutory basis for dealing with complaints against police.

Section 121 of the Police Service Act states that part 8A applies to complaints concerning "any action or inaction, or alleged action or inaction, of a police officer when acting as a constable". In November 1993 the Ombudsman obtained legal advice to the effect that the wording, "when acting as a constable" in section 121 of the Police Service Act precluded any examination of complaints in which it could be said that an officer was not acting within the legitimate scope of his or her office. However our advice was to the effect that the only conduct of a police officer excluded from scrutiny is conduct of a personal or private nature which has no bearing on or relation to the fact that the person against whom the complaint is made is a sworn police officer.

However the Ombudsman made a special report to Parliament calling for urgent amendment to the legislation. I believe that was basically done to put the matter beyond doubt in his mind. Lest it be said that this Government does not bend over backwards to do the right thing in relation to the requirements of the Ombudsman, the Government has introduced this legislation, which is now supported by the Opposition, to put the matter beyond any doubt. That is the effect of the legislation. It is churlish in the extreme for Opposition members to complain about delay.

**The Hon. Dr B. P. V. Pezzutti:** My colleague the Hon. R. D. Dyer would not be churlish.

**The Hon. S. B. MUTCH:** He is probably being the mouthpiece for his master in the other place. I am pleased that the Hon. R. D. Dyer is a member of this place. The last I read was that some vicious elements of the right-wing of the Labor Party want to replace him with Michael Easson. I have served on a number of committees with the Hon. R. D. Dyer. He has support from members on both sides of this House. If through some flight of fancy I ever found myself in the Labor Party, I would have a comrade in the Hon. R. D. Dyer. He is a good man. It is an amazing fact of life that he has such a blind spot about his politics. As I said, he is a good man and should be a member of the Liberal Party. I hope I have not done any damage to his career by saying that. He has a great deal of respect among members on both sides of the House. Whenever he is churlish he is under marching orders. That is the way the Labor Party operates. I support the legislation.

**The Hon. ELISABETH KIRKBY** [8.41]: The Australian Democrats support the Police Service (Complaints) Amendment Bill. I am aware of the public concern and controversy surrounding the bill. The bill as originally drafted did not fully satisfy the recommendations contained in the special report to Parliament by the Office of the New South Wales Ombudsman on the urgent amendment to section 121 of the Police Service Act. There were concerns not only in the Office of the Ombudsman but also among members of the public. Representations were then made to the Government to make sure that if the Police Service (Complaints, Discipline and Appeals) Act was to be amended, the amendments should meet the needs of the Ombudsman and follow the recommendations contained in his special report to Parliament.

As has been said already, the object of the bill is to amend the Police Service Act 1990 so as to put beyond any doubt the power of the Commissioner of Police and the Ombudsman to deal with a complaint

about the conduct of a police officer that involves the commission of a criminal offence or other conduct that would be outside the usual functions of a police officer. In the explanatory note to the bill it is said that the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 had repealed the previous legislation on complaints about police conduct. That Act implemented recommendations in the report of a parliamentary joint committee of April 1992 on the role of the Ombudsman investigating complaints against the police. That report included recommendation 28 at page 152:

> Complaints regarding off-duty conduct should continue to be notified to the Ombudsman and dealt with in the same manner as any other allegation of misconduct, provided that the Ombudsman shall take no action where off-duty conduct bears no relationship to an officer's status as a member of the Police Service.



In his special report to Parliament on 1 December 1993 the Ombudsman drew attention to advice he had received from counsel that the effect of the amending Act of 1992 was to put him in a position where it was not possible for him to investigate complaints that a police officer had committed a crime, if the allegation was one which accused the police officer of conduct that would not have been an honest attempt to exercise his or her powers and duties as a constable. Crown law officers advised that any complaint against a Police Service officer may be investigated, so long as it has some connection with the fact that the person is a police officer. That was the point that the Ombudsman wished to make crystal clear by way of amendment to the Act. Therefore this bill has been brought before the House.

In a further report to Parliament in 1993 the Ombudsman indicated that the changes sought would be not only those he had requested in his reports to the Parliament but should be consistent also with the recommendation of the joint parliamentary committee that complaints about off duty police continue to be notified, and declined when they are trivial or do not relate to police duties. The result of the recommendations of the Ombudsman and the joint parliamentary committee have resulted in the proposed legislation that is now before the House. I was aware of previous concerns that the first draft of the bill did not meet the needs of the joint parliamentary committee or satisfy the recommendations contained in the Ombudsman's report, and therefore I sought to clarify the situation this afternoon with the Ombudsman, Mr David Landa, so that I could be fully assured that the bill met his concerns - and I assume therefore that they would meet the concerns of the joint parliamentary committee. The Ombudsman gave me that assurance and said that the legislation was now in line with his recommendations. Therefore, I have great pleasure in supporting the bill.

**The Hon. Dr MEREDITH BURGMANN** [8.48]: I shall speak briefly to this bill and shall not go into detail about the problems that occurred in the case that has been cited by a number of honourable members. It was clear that the wording of the original bill was the cause of tremendous problems. The words "when acting as a constable", inserted as they were without consultation, meant that any police officer who began to commit a crime was considered no longer to be acting as a constable and therefore his actions could no longer be referred to the Ombudsman. Clearly that was a ridiculous situation that needed to be changed.

**The Hon. D. J. Gay:** Where did it happen?

**The Hon. Dr MEREDITH BURGMANN:** Where did what happen?

**The Hon. D. J. Gay:** The example of the problem.

**The Hon. Dr MEREDITH BURGMANN:** When one has a situation in which a police officer is going about his job and begins to commit a crime and is then considered not to be acting as a constable -

**The Hon. D. J. Gay:** Where did it happen?

**The Hon. Dr MEREDITH BURGMANN:** In the instances to do with the Vietnamese gentleman where the Office of the Ombudsman was not allowed to investigate the situation because these officers, because they were committing a crime, were no longer acting as constables and, therefore, were not subject to the Ombudsman's jurisdiction.

**The Hon. D. J. Gay:** The Crown Solicitor's advice was to the opposite.

**The Hon. Dr MEREDITH BURGMANN:** There was Queen's Counsel advice to say differently, and the Ombudsman was not able to investigate that particular case. That created the ludicrous situation that as long as a policeman was committing a crime he could not be investigated by the Ombudsman because he was not acting as a constable. That anomaly needed to be rectified and it is sad that it has taken six months for the position to be clarified. It is still a fact that a policeman's private behaviour cannot be referred to the Ombudsman. This appears to be preserving the private rights of the citizen, but a policeman has at all times the implied power of being a policeman. Unfortunately a policeman is in the same situation as a bishop. There are no off duty bishops.

**The Hon. D. J. Gay:** Can one have off duty actresses?

**The Hon. Dr MEREDITH BURGMANN:** One might find an off duty actress, but a bishop cannot behave in a poor manner and then explain to his flock, "Oh, but I was off duty at the time", in the same way that a policeman is not able -

**The DEPUTY-PRESIDENT (The Hon. Franca Arena):** Order! The honourable member will address the Chair. The Hon. D. J. Gay should stop interjecting. He will have his chance to speak in the debate.

**The Hon. Dr MEREDITH BURGMANN:** A policeman always has the implied power of being a police officer. It is all very well to say that a policeman should be able to have a neighbourhood dispute and not have the behaviour liable to come under the jurisdiction of the Ombudsman. But when a police officer has such a dispute, the neighbour is perfectly aware that the police officer has the power to issue a parking ticket the next day, to issue a defect notice on the neighbour's car or to report the neighbour for noisy parties. There is always that implied power of being a police officer.

The Committee on the Office of the Ombudsman conducted public hearings on the way in which complaints against police officers are handled. There was ample evidence to demonstrate a need for off duty police officers to come under the jurisdiction of the Ombudsman. This was most evident in the area of domestic violence. When a police officer is alleged to be the offender in a domestic violence case, the victim will often call the police, who would arrive and would then leave without the police officer involved



in the domestic violence being charged. In some cases women allege they have been threatened by the police officer and it is always in the back of a woman's mind that the officer's service revolver is upstairs; there is always that implied threat. The police officer may have been off duty, but he had that implied power.

The *Police Service Weekly* dated 9 July 1993 highlighted the fact that no longer would off duty police officers be within the jurisdiction of the Ombudsman. That it was considered worthy of comment demonstrates that many police expect to be able to continue belligerent behaviour in their so-called off duty civilian life and believe that their behaviour should not be subject to the jurisdiction of the Ombudsman. Having listened to all the evidence given in the public inquiry, I no longer believe this.

**The Hon. D. J. GAY** [8.55]: I rise reluctantly to support the Police Service (Complaints) Amendment Bill. Frankly, I cannot see any reason why this bill should be debated in the House. I have considered the definitions given by the Solicitor General, the Attorney General and the Minister of their

understanding of the meaning of section 121 of the Act. After all, this clarification bill relates to that issue. I believe it is a waste of time pursuing a parliamentary amendment on something that has already been dealt with. Having said that, I note that the original measure resulted from a review undertaken by the Joint Select Committee on the Office of the Ombudsman, chaired by the very able honourable member for Eastwood, who happens to be in the gallery. He is a fine member. He is called Bulldog Tink because of his determination to get on with the job.

**The Hon. Dr Meredith Burgmann:** It has not put him in the ministry yet.

**The Hon. D. J. GAY:** It will. He is one of those fellows who will become a Minister, based on sheer talent. He is a great man.

**The Hon. B. H. Vaughan:** But that is not a criterion.

**The Hon. D. J. GAY:** It might not be a criterion of the Labor Party. The Hon. R. D. Dyer - perhaps its best performer - is to be forced out.

**The Hon. R. D. Dyer:** No, I am not. That is not right.

**The Hon. D. J. GAY:** He is a man with talent; I heard the Hon. S. B. Mutch say as much earlier. The Hon. R. D. Dyer, for all his talent - and, as the Hon. S. B. Mutch said, he supported this in a churlish way - certainly is not a pedant. I believe that the bringing on of this measure was the act of a pedant. Though I have a lot of respect for the Ombudsman and personally like the fellow and believe he does a good job, in this particular instance he would have been better devoting his time to something else. I know my friend the Ombudsman will be reading this debate and I reiterate that in this instance he is being pedantic.

**Reverend the Hon. F. J. NILE** [8.58]: The Call to Australia group supports the Police Service (Complaints) Amendment Bill. The object of the bill is to amend the Police Service Act 1990 so as to put beyond any doubt the power of the Commissioner of Police and the Ombudsman to deal with a complaint about the conduct of a police officer that involves the commission of a criminal offence or other conduct outside the usual functions of a police officer. It has been made clear that the Ombudsman found problems with the previous amendment. Section 121 provides that all complaints concerning any alleged action or inaction of a police officer when acting as a constable fall within the police complaints system. Other members have mentioned allegations about off duty police officers acting as criminals, not constables. A technical question arose whether their actions could be investigated because they were not acting as constables. The object of the bill is to clarify that question.

Schedule 1(1) to the bill substitutes the definition of conduct of a police officer in part 8A of the principal Act. The substituted definition deletes the words "when acting as a constable" and expressly puts beyond any doubt the power of the Commissioner of Police and the Ombudsman to deal with complaints about the conduct of a police officer that occurs while the police officer is not officially on duty; or that involves the commission of an offence; or that is otherwise outside the usual functions of a police officer. As the bill is intended to make that situation crystal clear, the Call to Australia groups supports it.

While the Hon. Dr Meredith Burgmann was making her contribution I could not help thinking how one-sided her comments and those of people with similar views were. The honourable member seems to have a blind spot. She seems able to think only of off duty police officers, acting in their civilian capacity, being a threat to their neighbours because they are police officers. The honourable member implied that a constable, the day after being off duty, could use his position as a police officer to carry out illegal actions in falsely charging or booking his neighbour. During the honourable member's contribution I thought of the number of complaints I have received from police officers who are finding it extremely difficult in the current social climate to live their lives in private. Police officers receive threats not so much from their neighbours but from others in the community.

A young police officer on duty in a country town booked a man who was under the influence of alcohol and driving dangerously through the centre of town. The officer was told he had made a mistake in booking the man. Local people were aware of the man's noisy and belligerent behaviour and steered clear of him. But the young police officer booked him. When the officer returned home from duty the following night, he found that the man had placed his truck across the driveway and would not let the policeman enter his home. When the police officer asked him to move the man produced an axe and threatened him, saying, "You are never going to book me again as you did the other day". That story

reminds me that many police officers, especially younger officers, find their lives extremely difficult these days.

Honourable members have heard criticism of the so-called police culture in which police stick together. However, often police find it difficult to have normal friendships with people outside the police force. They are attracted to having a social life with other police officers because in many ways they find it difficult to engage in normal social activity. Police officers find that people abuse them or make remarks about them at social events because they are police officers. Such remarks are made not by their friends but by strangers who discover they are police officers. It is good that members of this Parliament are able to see two sides of the coin and do not always view police as villains threatening their neighbours. We should have a little thought and concern for police officers, who often face threats that seriously affect their social life, their non-police life and their families. That is one of the prices police officers pay in the current social climate in seeking to serve the community. I support the bill.

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Justice, and Vice President of the Executive Council) [9.3], in reply: I thank all honourable members for their support of this important amendment to the Police Service Act. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## VICTIMS COMPENSATION (AMENDMENT) BILL

### Second reading.

**Debate resumed from 14 April.**

**The Hon. R. D. DYER** [9.5]: The Opposition is not opposed to the Victims Compensation (Amendment) Bill, though it has major concerns about various aspects of the bill and will support some amendments to be moved in this place by the Australian Democrats. It is entirely possible that the Opposition will develop and move further amendments in another place depending on the Government's response to the concerns I shall articulate here. The Victims Compensation Act 1987 was enacted under the previous Labor Government. The Attorney General at the time the legislation became law was the Hon. Terry Sheahan. At the time he said that the main purpose of the legislation was to increase greatly the benefits available to victims of violent crime and to place the award of criminal injuries compensation in the hands of an independent tribunal. That tribunal is, and was then, the Victims Compensation Tribunal.

The Parliamentary Library has prepared a valuable briefing note about the background to the proposed legislation. That briefing note mentions that Dr Elms, the present chairperson of the Victims Compensation Tribunal, explained when he delivered a paper entitled "Applications to the Victims Compensation Tribunal", which was presented to the New South Wales Young Lawyers on 28 April 1993, that the concept of injury is the crux of the compensation scheme. Dr Elms went on to say,

"Compensation is awarded not for the criminal act or event that produced the trauma but for the injury which is consequent upon it". That statement by Dr Elms is crucial to matters to which I shall refer later, given the course the Government is embarking upon in paring back the various compensation benefits available to victims of criminal acts.

Late this afternoon the Attorney General, when responding to contributions to debate on the second reading of the proposed legislation to abolish unsworn statements from the dock, castigated the Opposition for what he regarded as its anti-victim attitude. He made the point that, in contradistinction to that attitude, the Government was pro-victim. This is not the time or place to revisit the arguments regarding dock statements - far from it - but the Attorney General's remarks earlier today take on more than a tinge of cynicism when one considers what is happening by virtue of the bill before the House. If the Government is concerned about the rights of victims in connection with unsworn statements from the dock, as it claims to be, why is it abandoning those rights in large measure in the bill? That point needs to be clarified by the Government. When one considers the main aspects of the bill one can have no doubt that the rights of persons approaching the tribunal for compensation as a result of criminal acts are being not only pared back but cut back significantly.

On previous occasions Ministers in the present Government have acknowledged the valuable purposes and objects of the legislation - that is, the principal Act and the scheme that was intended to help victims of crime. It has been acknowledged also that the co-operation and assistance of crime victims is absolutely crucial to both law enforcement and the maintenance of successful criminal prosecutions. Also on previous occasions Ministers, on behalf of the Government, have made it clear that the provision of compensation to victims encourages participation and involvement in bringing offenders to justice. It also enables the effective functioning of the criminal justice system. In other words, to the extent that victims are seen to be and are compensated for injuries flowing from criminal acts their participation as witnesses and otherwise in the criminal justice system is thereby encouraged. A former Attorney General, the Hon. John Dowd, speaking in another place on 25 July 1989, said:

> I am sure that all honourable members will agree that without the co-operation and assistance of these individuals the effectiveness of the criminal justice system would be greatly diminished.

Mr Dowd was referring to the assistance of individual victims of crime. In addition, on 6 December 1989 the Hon. E. P. Pickering, the Minister for Police and Emergency Services, speaking in this House said:

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> Victims of crime play a key role in the criminal justice system. Without the co-operation and assistance of these individuals, law enforcement and criminal prosecutions would be much more difficult processes. It is important to recognise that just as we place demands and expectations on victims, so victims have expectations and demands that we must recognise and meet.

Mr Pickering went on to say:

> Any measure that improves community satisfaction with the working of the criminal justice system as this bill will do -

Mr Pickering was speaking on that occasion to an amendment to the principal Act.

> - benefits the State by encouraging future participation and involvement in bringing offenders to justice. Without this participation and involvement, the criminal justice system cannot hope to function effectively.

In speaking to this bill tonight I want to concentrate on four major key issues. Many things in the context of this bill could be discussed, but my contribution would assume undue length if I sought to deal with

each and every matter in the bill.

**The Hon. Jan Burnswoods:** We do not mind. We are happy for you to speak.

**The Hon. R. D. DYER:** The Hon. Jan Burnswoods is happy for me to speak at inordinate length. However, not every member of the House may share that opinion. It is important that I should concentrate on four prime issues: the increase in thresholds for compensation; the abolition of common law principles of compensation; the matter of the District Court appeals; and the topic of multiple awards. In regard to the question of thresholds, I would like to know why the Government is acting in the way it is. That matter might attract further attention by the Opposition in another place. The Minister, in his second reading speech, referred to this particular matter by stating that provision is made in the bill for a new threshold of $4,000, or such other amount as may, from time to time, be fixed by proclamation.

It is interesting to note that the current threshold for claims made under the principal Act is $200. Therefore, the Government is raising the threshold for a claim to be maintained before the Victims Compensation Commission to $4,000 from the present level of $200. The $200 threshold was set by the previous Labor Government in 1987 when the Act was first introduced. The Government cannot maintain that that is an indexation increase, because clearly it is not. It is a massive increase to a figure of $4,000 above the present level of $200. The Minister, in seeking to justify that increased threshold, said that many small claims are made by claimants to the tribunal and that in some cases claimants seek compensation that is not available under the workers' compensation regime because of the operation of higher threshold claims or they seek compensation in order to supplement awards made under the workers' compensation legislation.

The Minister also used another argument, that there is also much greater scope for dishonest claims at the small end of the spectrum. He said that smaller - and what he termed trivial - claims occupy a disproportionate amount of the administrative time and cost of the Victims Compensation Tribunal to the disadvantage of those with serious injuries caused by acts of violence. The Opposition takes the view that the onus is very much on the Government to justify the massive increase in this threshold from $200 to $4,000, which will put the tribunal out of the reach of many people with more modest claims. Nonetheless, the claims are made by people who have been the subject of criminal events and who - one would think - are entitled, if the Government believes in the rights of victims of crime, to receive a degree of compensation.

Particular concern has been expressed to the Opposition by the combined community legal centres about the increase in the threshold for receipt of criminal injuries compensation. The community legal centres make the point that under the current system more than half the awards made by the tribunal are for sums of less than $6,000. They go on to argue that the combination of this increase in the threshold, with the move to awards of compensation on a consolation basis - which is another matter I shall come to shortly - will mean that a majority of assault victims will not be eligible to apply for compensation. The community legal centres give a simple case study of what might be termed a smaller claim, falling below the proposed new threshold of $4,000.

The case study is this: an age pensioner living in a boarding house in the inner city is bashed and robbed at a railway station. He is badly shaken and bruised and one of his teeth is knocked out. Under the proposed amendments, that person's claim is likely to be refused as it would in all probability and almost certainly be under $4,000. The pensioner would be unable to recover any compensation to pay for the dental work that he needs. That seems to the Opposition to be a matter of great concern. The Opposition concedes that the new threshold of $4,000 will take into account the more serious criminal assaults and injuries flowing from those assaults.

I hark back to what Dr Elms said. The purpose of the compensation regime is to compensate for injuries rather than to compensate for crime. The Government seems to be departing from that concept in seeking to introduce the solatium concept rather than the common law damages concept. The

Opposition concedes that compensation for bone fractures, for example, would exceed the $4,000 limit, but there are many circumstances in which ordinary citizens going about their daily lives or business can be seriously assaulted. Elderly, infirm or young people may lose a tooth or teeth or suffer other serious injuries, including bruising, lacerations, et cetera. Criminals do not choose people on a fair basis; they tend to be cowards.

The Opposition firmly suggests to the Government that it might not be appropriate to increase the threshold so greatly from the low level of $200 set by the previous Labor Government to the new threshold of $4,000. I hope I have made that

point clear, because the Attorney made a great song and dance earlier about the respective attitudes of the Government and the Opposition to the rights of victims of crime. If the Attorney is concerned about that, he should be concerned in a practical way and allow victims to be a party to the event rather than, as he said earlier, not be a party to the criminal trial.

The second matter with which I want to deal is the application of common law principles to criminal injuries compensation and the proposed substitution by the Government of the new principle of solatium - a payment that will give the victim solace rather than a payment to compensate the victim for the injury received. The bill proposes to abolish common law principles and levels of damages. The bill proposes the replacement of the current victim compensation regime by the solatium or consolation principle. The Opposition is firmly of the view that this will lead to substantially reduced levels of compensation for the majority of innocent and genuine victims of crime. The Opposition believes that is unacceptable to the community and will serve to thwart the purposes of victims' compensation.

Solatium, as a form of victims' compensation in particular and in a more general sense, is without precedent in this State. There is no superior court guidance whereby Victims Compensation Tribunal magistrates could be supervised in regard to the introduction of the new principle by the Government. The Bar Association of New South Wales has expressed strong concern to the Opposition about the abolition of the common law principle.

**The Hon. Dr B. P. V. Pezzutti:** Your brothers at the bar?

**The Hon. R. D. DYER:** My brothers and sisters at the bar have expressed concern - my brothers-in-law, one might say. I am not a member of the bar, but I am a solicitor and I have a fraternal feeling for the concerns the bar is expressing. It is not only the bar that has expressed concern about the abandonment of the common law principles and their replacement by the solatium concept. The community legal centres are also upset. They have pointed out that, without established principles to guide the magistrates of the Victims Compensation Tribunal, awards made by them will become highly subjective and discretionary. The community legal centres argue that it is important for community confidence in the system of victims' compensation that awards of compensation be consistent and be awarded in accordance with known and established principles of the common law.

**The Hon. Dr B. P. V. Pezzutti:** You mean no whiteboards?

**The Hon. R. D. DYER:** No, no whiteboards at all. The community legal centres give a case study to illustrate their view that awards of compensation are often inadequate and they seek to highlight the injustice of reducing awards even further. The facts of the case were that "T" was raped by a friend of her father's when she was 13 years old. She was frightened and confused and did not tell anyone about the rape. The offender sexually assaulted "T" on another two occasions. After the first assault "T" began having problems at school and at home. She eventually told her sister about the sexual assaults and they were reported to the police.

"T"'s behaviour became increasingly disturbed. She attempted suicide several times; she tried to mutilate herself with knives and matches; she carried a knife with her at all times and would not go

anywhere by herself. She left school and had no schooling at all for several years. She received treatment and counselling from child psychologists, sexual assault counsellors and the Department of Community Services. She is now 19 years old and although she is now more stable, she is still affected by the assaults to which I have referred. After an appeal was made to the District Court under the legislation as it now stands, "T" received the maximum amount of compensation of $40,000.

The community legal centres argue - and I agree with them - that although that is a substantial sum of money in general terms, it is not a large amount for the pain and suffering and the experience that that young person went through. It is clear that under the proposed legislation, if it passes this House and another place, that person would not receive $40,000 but considerably less than that because the legislation clearly points out that common law principles of compensation will no longer apply. The payment made, in effect by the Government by revenue, is to be paid merely by way of solace or solatium to the person rather than to compensate for the trauma.

I would like all honourable members to think about that factual situation and ask themselves whether it is just, right and appropriate that the Government should be doing this to victims of crime. I am sorry to return to this time and again, but the Attorney said very forcibly earlier this evening that the Government is on the side of victims of crime. The Opposition, according to the Attorney, is not. I ask the Government: where does its concern for victims of crime fit in with what it is doing under this legislation both in regard to raising the threshold and in regard to the abolition of common law principles and their replacement by the solatium principle?

**The Hon. Dr B. P. V. Pezzutti:** You recognise that the $40,000 did not fully compensate the young woman and that under the common law the amount would have been greater?

**The Hon. R. D. DYER:** The existing legislation fixes an upper limit of $40,000. But I am arguing that the amount is fixed by the application of the common law principles of compensation. If the Hon. Dr B. P. V. Pezzutti refers to the bill he will see that those common law principles are overthrown by the bill and replaced by this solatium principle. That is the concern I have. I am not arguing that the award that can be made at the moment is unlimited; it is not. But at least the amount is substantial and it is fixed by reference to the application of common law principles. The Opposition is concerned that those principles are being set aside by the bill.



The fourth matter I want to refer to is appeals to the District Court. This is a matter of great concern, particularly to the Bar Association of New South Wales. It is also a matter of concern to community legal centres and the Opposition. The community legal centres point out that the amendment will have the effect of extending the time for lodging an appeal with the District Court, but that it also purports to remove the discretion of the court to allow an extension of time to lodge an appeal. The community legal centres believe that the discretion of a District Court should not be fettered in that way so that potential appellants who are ill or overseas at the time the award is made are not prevented from having their cases considered.

The community legal centres also state that appeals against a decision of the tribunal not to allow an application for compensation to be lodged out of time are to be abolished. The centres believe that this has the potential to cause great injustice, as the vast majority of appeals such as these that go to the District Court are successful. In what is commonly known as Goldsmith's case, the Court of Appeal held that appeals from the tribunal to the District Court are appeals de novo, that is, appeals afresh on the facts and the law at the time of their lodging. It is interesting to note that part 6 of division 7 of the District Court rules provide for individually tailored cost penalties in circumstances where on an appeal evidence is adduced that could have been adduced before the Victims Compensation Tribunal. A cost penalty can be applied in that circumstance.

One of the Opposition's major concerns is that it simply will not be permissible, under this legislation, for evidence given before the District Court to be updated before the appeal court as of right. The Opposition regards that as very unjust. I point out that we are dealing with victims of crime and, in some cases, people who have been seriously injured as a result of an assault upon them. I will tell honourable members how the Victims Compensation Tribunal works. It has three call-overs each year at four-monthly intervals. To take a particular case, one might wait for months for a call-over to have a hearing date fixed before the tribunal.

I was advised by a member of the bar today that he has been instructed in four out of five of the appeals dealing with the matter I raised a few weeks ago with the Attorney General, where the Victims Compensation Tribunal made quite extraordinary decisions to deny awards to young persons who had been the subject of sexual assault, on the basis that it would be inappropriate for them to be reminded of the trauma they had been through when they turned 18, that is, when the award was paid to them on attaining their legal majority. The Attorney General, to his credit, gave a sympathetic response to that question.

**The Hon. J. P. Hannaford:** I am a very sympathetic Minister.

**The Hon. R. D. DYER:** On this occasion the Minister was sympathetic. He indicated that, if the worst came to the worst, he would appear himself, or presumably via the Solicitor General as amicus curae to argue on behalf of the Crown why the decision of the Victims Compensation Tribunal in these matters was unjust and unfair. To return to what I was told by the barrister appearing for four of the five young people in question, there was a four-month wait before the matter was called over at the tribunal; and four of the five matters have been fixed for hearing on 16 September this year. So if we add six months to four months we see that there has already been a 10-month delay.

It should be readily apparent that changes in medical condition can occur, particularly the medical condition of a young person who has been traumatised by sexual abuse. I would be very distressed if, because of these amendments, fresh evidence were not able to be adduced on appeal to the District Court. I ask the Attorney General to deal with that matter when he replies to this debate. The Opposition argues also that the complete abolition of appeals against refusal of leave to apply for compensation after the two-year limitation period is without justification. I am advised that the success rate in regard to such appeals, that is, appeals to commence a matter out of time, was no less than 80 per cent in 1991-92 and 1992-93 - a very high success rate.

**The Hon. Dr B. P. V. Pezzutti:** It is too high.

**The Hon. R. D. DYER:** I do not think it is too high. If the Hon. Dr B. P. V. Pezzutti were humane and acted in the interests of the victims of crime he would not think it inappropriate that people should be able to approach the court about maintaining an appeal out of time. I point out, however, that the number of appeals to the District Court from the tribunal has dropped sharply from 888 in 1991-92 to 413 in 1992-93. The Opposition argues that there is no need for the change contemplated by the Government in these amendments. There is a great deal of safety in the tribunal being supervised by the District Court. I would argue on the basis of common experience that most magistrates are not terribly happy or comfortable with civil matters. Generally speaking, they do not have a background of hearing civil matters in the Local Court.

There is a great deal of safety in an appeal mechanism being available and readily accessible, and for a supervisory jurisdiction to be exercised by the court. The Opposition also argues that it is very important that the present position should continue where the District Court appeal is in the nature of an appeal de novo, and that fresh evidence arising since the hearing before the tribunal should be able to be adduced during the appeal proceedings, to take into account circumstances such as I have mentioned regarding young people who have been sexually abused. This will allow appropriate medical evidence to be put before the appeal court regarding the changed medical condition of that young person.

The final matter I refer to is multiple awards. The community legal centres regard this as an important matter and I agree with them. The centres point out that the amendments in the bill restrict

awards of compensation for related acts. If acts of violence are considered to be related, the victim is entitled only to one award of compensation unless further related acts occurred after the original application was lodged with the tribunal. The definition of a related act is that both acts were committed against the same person and happened at the same time, or in the course of a continuing relationship, or where there was some other connecting factor.

The community legal centres argue - and in my view this is a persuasive argument - that the amendments in regard to this particular aspect are gender biased. They have the effect of reducing amounts of compensation to victims who suffer multiple or sexual assaults as a result of either domestic violence or incest. It hardly needs pointing out that the overwhelming number of such victims are women. The effect of the amendment will be that multiple assaults in the home will be treated less seriously and those victims will be entitled to less compensation than if multiple assaults occurred outside the context of such relationships. The community legal centres are concerned also that the effect of the amendment will be that a victim who happens to be attacked by a number of assailants, such as in a gang rape, will not be able to lodge more than one claim.

To illustrate, a 40-year-old woman was the victim of ongoing assaults by her husband. On one occasion she sustained a broken jaw. On another occasion she suffered considerable facial damage and a broken arm. While staying with a friend two months later she was also sexually assaulted by her husband. Separate criminal charges are laid in regard to each of these assaults. But under the proposed amendments this woman may only be compensated as though one single act of violence occurred, because they occurred in the context of an ongoing relationship; a domestic relationship. This shows clear discrimination against victims of domestic violence and victims of child sexual assault where there is also a continuing relationship.

**The Hon. D. F. Moppett:** Surely that is logical where you are talking about State funded compensation, rather than the perpetrator's money.

**The Hon. R. D. DYER:** I do not think it is logical at all. If the Government is concerned about the rights of victims of crime it ought to be concerned about the situation I am referring to. I am talking about vulnerable women and children who are subject to multiple assaults.

**The Hon. D. F. Moppett:** You do not think there should be any limit on the number of times compensation is paid?

**The Hon. R. D. DYER:** That is something that the House needs to direct its attention to. There are a lot of aspects of this legislation that I simply cannot support. I have grave doubts about the increase in the threshold from $200 to $4,000. I have even greater doubts about the substitution of the solatium principle for the common law principles. I object to the restriction on the nature of appeals to the District Court, and I have grave doubts about the restriction of the capacity to make a multiple award. In some cases there might be a cost problem. I direct the attention of the House to this serious problem, which in my view needs the consideration of this Legislature before this amending legislation becomes law.

I have addressed the House at considerable length and confined myself to four topics. I reiterate that at the Committee stage the Opposition will support certain amendments that I understand will come before the House. Those amendments will not deal with all the matters I have dealt with during my second reading speech. They will deal with the common law principle as against the solatium issue, and they will deal with appeals to the District Court. As to the other matters, the multiple awards and the threshold being increased to $4,000, they might well receive the attention of the Opposition and the non-aligned Independents in another place. The Opposition implores the Government to put its money

where its mouth is regarding the victims of crime.

It is all very well to talk about the interests of victims of crime in a trial situation in the context of unsworn statements from the dock. It will not cost the Government anything to abolish unsworn statements. That might be seen to be to the benefit of the victims of crime. The Government cannot logically say that on the one hand and on the other hand sweep away, virtually across the board, these existing vested statutory rights of victims of crime in the various categories that I have described this evening. I ask the Government to think seriously about that. I indicate that the Opposition does not oppose the bill as such but that it has grave concerns about the matters I have identified. The Opposition will support some amendments and may well develop further amendments in another place.

**The Hon. JENNIFER GARDINER** [9.46]: I support the amendments to the Victims Compensation Act 1987. The amendments aim to update and clarify the law in seven or eight different ways. First, the amendments clarify the definition of an act of violence. Second, they clarify that payment is to be by way of solatium - that is, consolation - and that determination of compensation is not based on common law principles. Third, they clarify the appeal process. Fourth, they provide for administrative assessment of awards for non-contentious claims. Fifth, they limit claims by close relatives on the death of a victim to those who are dependent on the primary victim. Sixth, they provide a threshold for claims to the Victims Compensation Tribunal of $4,000. They also provide for a number of other administrative changes.

The thrust of the amendments is that compensating a victim of violence serves first as a formal acknowledgment of the injury and suffering occasioned as a result of the crime; as a formal acknowledgment on behalf of the community that the injury and suffering were unjustly inflicted; and as an



expression of support and concern by the community and government authorities. The aim of the Victims Compensation Act is to formally acknowledge on behalf of the community the injury and suffering unjustly occasioned by violent crime; that compensation is by way of solatium and represents an expression of support and concern by the community and government authorities for the victim.

These amendments make it clear that for the purpose of the Act, compensation is made by way of an act of grace payment. The amendments also clarify the definition of an act of violence. Section 3 of the Act as it now stands defines an act of violence as meaning an act or series of related acts, whether committed by one or more persons, that has apparently occurred in the course of the commission of an offence and has resulted in injury or death to one or more persons. That current definition is in broad terms and has been interpreted broadly by the tribunal and the District Court. However, this approach has meant that claims have been received and compensation awarded in circumstances involving death or injury that were not envisaged in the original scope of this Act. For example, an award for compensation has been made in a case where an applicant was injured by a passenger who was alighting from a moving train.

That type of incident was not within the scope of the legislation when it first passed through the Parliament in 1987. At the time the Victims Compensation Bill was introduced into Parliament in 1987 its main purpose was expressed to be to increase greatly the benefits available to victims of violent crime. These amendments extend the definition of an act of violence. Also, it was not intended that the original legislation should exclude non-physical violence from the provisions of the Act. The review by Mr Cecil Brahe makes clear that it was not intended to exclude from the definition of an act of violence the following: acts of sexual assault, incidents of sexual assault not accompanied by physical violence such as may occur in child sexual assault cases, cases involving non-violent threats of blackmail, or assault committed by persons in authority. Those acts were not expressly encompassed in the definition of an act of violence.

The specific amendments proposed to section 3A of the Act redefine acts of violence to clear up this important matter. An act of violence is defined as one that apparently has occurred in the course of the

commission of an offence; that has involved violent or offensive conduct against one or more persons; and has resulted in injury or death to one of those persons. The amendment makes clear that conduct is offensive if it involves the commission of an act of indecency against a person; sexual intercourse without consent or with consent obtained by means of a non-violent threat; and sexual intercourse with a minor or intellectually disabled person. It also protects children involved in acts of child prostitution or children being used for pornographic purposes. The definition also includes intimidation or stalking of a person within the meaning of the Crimes Act. They are important extensions of the definition of acts of violence.

Proposed section 3(3) provides that an act is related to another act if both of the acts were committed against the same person; and if in the opinion of the tribunal both of the acts were committed at the same time or were for any other reason related to each other. The review conducted by Mr Brahe recommended clarification of the term "related acts", so that where more than one offence has occurred during the course of a continuing relationship between the victim and the offender, the victim will be eligible to make only one claim. In such circumstances it would be expected that the claim for compensation would be in the category of a major injury and that a sizeable award of compensation would be made.

Mr Brahe suggested further that the majority of applications are non-contentious and therefore could be determined administratively, subject to a right of appeal from that determination. It is proposed that senior assessors would deal with applications in which no hearing was sought; where the act of violence itself was not in issue; where section 20 issues were not a consideration - for example, possible contributory negligence on the part of the victim - with regard to the failure of the victim to assist police in the investigation of the alleged crime; and where the award was not likely to exceed $7,000. The amendments provide also that appeals from a determination of the tribunal are by way of rehearing. It is proposed that the Director-General of the Attorney General's Department be given standing in appeals through the Victims Compensation Fund Corporation.

The amendments also clarify the definition of a determination under the Act to exclude appeals against leave to make an application out of time, and allow the tribunal limited power to review its decision so as to permit it to re-open a case for reconsideration without the complainant necessarily having to proceed by way of appeal. The bill provides a scale of costs for appeals to the District Court to be included in a schedule to the Act, and limits to three months the time in which to lodge an appeal, although that period can be extended in exceptional circumstances. The amendments also clarify the circumstances in which the tribunal will consider an application out of time. The Act specifies the categories of claimants eligible for compensation, and excludes persons who are entitled to make a claim under the Motor Accidents Act - irrespective of whether the threshold under the Act is reached - from claiming under the Victims Compensation Act. That is a perfectly reasonable provision. The bill will increase to $4,000 the threshold below which compensation is not payable, and clarifies the operation of section 20 of the Act in relation to whether a victim has reported an incident to the police, bearing in mind that there may be many circumstances in which a victim might not report immediately to the police that an incident has occurred.

The amending bill provides for the calculation of loss of earnings in accordance with the Workers Compensation Act, and for the payment of legal costs



in excess of the tribunal's scale, in certain circumstances. It gives a discretion to disallow excessive medical claims, and applies the District Court scale to such claims. The amendments will allow the tribunal to complain to professional bodies in respect of the cost of reports placed before it. The amendments will change the provisions that allow the tribunal to make an order for recovery at the same time as an award is made, and allows 28 days in which a defendant may object to the order. The provisions of the bill will increase the compensation levy that may be imposed upon an offender in respect of certain offences, and provides that juvenile offenders be exempted from paying that levy. The bill makes a number of other minor miscellaneous amendments of an administrative nature. Notwithstanding anything that has been said by Opposition members, I believe that these are well

considered and desirable amendments.

**Debate adjourned on motion by the Hon. Jennifer Gardiner.**

## ADJOURNMENT

**The Hon. J. P. HANNAFORD** (Attorney General, Minister for Justice, and Vice President of the Executive Council) [9.57]: I move:

That this House do now adjourn.

## AUSTRALIANS AGAINST FURTHER IMMIGRATION PARTY

**The Hon. FRANCA ARENA** [9.57]: As this Parliament will soon be facing one or two by-elections, and as by-elections have become a fact of life at State and Federal levels, I should bring to the attention of the House my concern about a political party, the Australians Against Further Immigration Party, which was registered in 1990 under that name. The postal address of the party in Victoria is PO Box 24, Armadale, Victoria, phone number (03) 509.6073, and in New South Wales the postal address is PO Box 500, West Ryde, phone number 427.6837. The registered officer of the party is Mr Rodney Alan Spencer of 22 Armadale Street, Armadale, Victoria. Apparently Mr Spencer is a general practitioner. His party ran candidates at the last Federal election and in recent by-elections for the electorates of Werriwa, Bonython, Mackellar and Warringah. The vote for the party ranged from 4.2 per cent in Werriwa to 13.49 per cent in Warringah. It is not my intention to give these people more publicity than they deserve, but I feel compelled to alert the community - especially the ethnic communities - to the danger these people represent. The vote they obtained must be considered having regard to the fact that these were by-elections. It must be noted also that in some cases the party's candidates were at the top of the tickets and therefore received the donkey votes.

I am concerned that the anti-immigration party is portraying itself as a respectable mainstream political organisation which has at heart the welfare of Australia and the environment. Its policy is to state that everything about immigration is negative; that there are no pluses for Australia in bringing people here from other countries; and that immigration contributes considerably to the national debt. As I have only five minutes in this adjournment debate, I shall not refute those arguments in detail. The advantages of immigration in the short term, and especially in the long term, have been well documented in economic and social studies. The record speaks for itself. Perhaps it will suffice to refer to the various studies undertaken by the Bureau of Immigration and Population Research in this regard.

What concerns people in the community and should concern members of this House are the links between AAFI and extreme right-wing elements, well documented by Andrew Silberberg, a journalist with the *Australian Israel Review*. He states that the AAFI has close links with the notorious and dangerous League of Rights, which has been described as the most influential, effective, best organised and most substantially financed racist organisation in Australia. The League of Rights is well known for its racist, anti-Semitic views and now we find a connection between that organisation and the AAFI. Denis McCormack, one of AAFI's candidates, is on record as saying that, "continued mass migration is a crime against the nation". Another candidate for the Federal seat of Throsby is on record as saying to the Illawarra Ethnic Community Council as follows:

> My policy on refugees and illegals is to reopen the second Yallah meatworks, creating up to 500 local jobs, and convert them to blood and bone.

I think that says it all. I alert honourable members and all fair-minded Australians to pay special attention to this new organisation, AAFI, which I am sure will prove to be nothing but a wolf in sheep's clothing. I

believe it is another front for the League of Rights. The fact that the Federal Labor member for Kalgoorlie, Graeme Campbell, should campaign on its behalf only confirms my suspicions that we should all be on guard and monitor closely this new political party.

## CERVICAL CANCER

**The Hon. ELISABETH KIRKBY** [10.1]: Today I received a letter from the Cancer Council of New South Wales which I believe should be placed on the public record. The letter states:

Dear Ms Kirkby,

As you may be aware, few cancers are preventible. However, cervical cancer is an exception where pre cancerous lesions can be detected and treated, thereby preventing cancer from occurring. It has been estimated that the majority of cases of cervical cancer could be prevented by adequate screening using the Pap test.

However, for the potential of the screening program to be realised, it is essential that a systematic approach to ensuring the quality of the screening pathway be adopted.



In recognition of this, the Commonwealth and State Governments are funding the Organised Approach to Prevention of Cancer of the Cervix. Central to the Organised Approach is the establishment of a Pap Test Register and in New South Wales legislation is required to enable this to happen. This legislation will shortly be debated as part of the Health Legislation (Miscellaneous Amendments) Bill 1994.

Several years ago, the Commonwealth funded the Victorian Cytology Service to establish a pilot project to determine the acceptability of a Pap Test Register to women and service providers and to establish the potential of a Register as a public health tool. The Register in Victoria has been operating successful for over three years and almost all women screened during this period are enrolled on the Register. The Register has been well received by all groups and its potential in improving screening for cervical cancer clearly demonstrated. Registers have since been established in other states and similar positive experiences reported.

There are considerable advantages for women in being enrolled in the Register. An enrolled woman will:

* receive a personalised reminder if her Pap test is overdue

* be contacted if she has an abnormal Pap test which is not followed up with further tests or treatment

* be sure that her test is being interpreted as accurately as possible because the results of her screening history will be available to assist in reading her most recent test

* be confident that both the Pathology Laboratory and the person taking her Pap test have information about their performance in screening for cervical cancer.

The NSW Program has consulted with pathology laboratories, general practitioners and women about the proposed Register in New South Wales. There has been a very positive response from all groups. The major concern among professional groups is the delay experienced in establishing it.

I hope that when the Health Legislation (Miscellaneous Amendments) Bill is received in this House, it will have the support of all honourable members and that, in particular, the women members of this Chamber will do as much as they possibly can to persuade women in New South Wales to take advantage of this new program and become registered on the pap test register.

**Motion agreed to.**

**House adjourned at 10.4 p.m.**