

LEGISLATIVE COUNCIL

Tuesday, 3 May 1994

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

The President offered the Prayers.

ASSENT TO BILLS

Royal assent to the following bills reported:

Coal and Oil Shale Mine Workers (Superannuation) Amendment Bill
Health Administration (Medicare) Amendment Bill
Maritime Services (Offshore Boating) Amendment Bill
Mine Subsidence Compensation (Amendment) Bill
Occupational Health and Safety Legislation (Amendment) Bill
Workers Compensation Legislation (Miscellaneous Amendments) Bill
Trade Measurement (Amendment) Bill
Traffic (Parking) Amendment Bill

HEALTH LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL

Bill received and read a first time.

Suspension of certain standing orders agreed to.

BILL RETURNED

The following bill was returned from the Legislative Assembly without amendment:

University Legislation (Amendment) Bill

PETITIONS

Southern Ocean Circumpolar Whale Sanctuary

Petition praying that the House petition the Governments of Japan and Norway to vote in favour of the proposed Southern Ocean Circumpolar Whale Sanctuary and oppose any efforts to recommence commercial whaling, received from the **Hon. R. S. L. Jones**.

Anti-Discrimination (Homosexual Vilification) Legislation

Petitions praying that because the homosexual vilification amendments to the Anti-Discrimination Act

cancel criticism of homosexuals, they be repealed, received from **Reverend the Hon. F. J. Nile**.

BOARD OF STUDIES INQUIRY REPORT

Ministerial Statement

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [2.38]: Members of the House will recall my undertaking in March to make the report of the independent review of the Board of Studies a public document. I am pleased to be able to table this report today. The report was completed under section 48 of the Public Sector Management Act 1988 and deals with a review of the administrative structure supporting the New South Wales Board of Studies. The terms of reference of the inquiry take into account the resolution of the Legislative Assembly of 10 March.

I should like to place on record my appreciation of the hard work of all those involved in this review, namely, Mr Harry Eagleton, Professor Michael Birt and consultants Cullen, Egan and Dell. The thoroughness and timeliness of the report is to be commended. I thank equally the more than 33 groups and individuals who provided either oral or written submissions to the review. I have the utmost respect and regard for the New South Wales Board of Studies. The excellent work carried out by the board since its establishment in 1989 is without question. My concerns, which led to the need for this review, were with the administrative structure and support mechanisms offered to the board. These concerns have been validated in this report.

Important issues, such as the viability of commercial activities, syllabus issues, including syllabus consultation, curriculum development, finalisation of the K-6 English syllabus, budgetary matters, the range and number of committees, and duplication of effort are all matters adversely commented upon in the review. The review lists 23 recommendations, all of which will be acted upon. Specifically, all recommendations will be accepted in principle with further advice sought from the board on the implementation of recommendations 3, 4, 5, 9, 18, 19, 20, 21 and 23. I will seek advice also from teacher and parent groups regarding recommendation 6 and advice from the President of the Board of Studies regarding recommendations 7 and 12.

The main thrust of the recommendations is to make the support and administrative structures of the board more effective and efficient. These recommendations are too numerous to list in detail in this ministerial statement, but suffice it to say they are about improvement to resource utilisation, performance of support services and breaking down what is perceived to be an excessively hierarchical organisation structure of the Board of Studies. The main recommendations of the review are that a new position of general manager will be established to manage the professional and operational support structures to the board and that the board will continue to be chaired by a president appointed by the Governor. However, the president's primary responsibility will be to chair the board and its

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committees, to provide educational leadership consistent with the Education Reform Act 1990 and to present recommendations of the board to the responsible Minister.

Recommendations 3, 4, 5 and 6 relate to the issue of structures and procedures around curriculum development. Recommendation 6 specifically proposes the formation of a task force to consider urgently ways of overcoming "the inefficient, excessively costly and time-consuming nature of the current processes" and to ensure that stakeholders can make an expert contribution to syllabus development. This work is a necessary prerequisite to recommendation 3, which proposes that the curriculum branch be reformed and managed on project lines derived from a strategic plan to be established as a matter of priority so that the relevant and highly important curriculum needs can be developed appropriately.

Additionally, a joint working party will be formed with representatives from the Board of Studies,

TAFE and the Department of School Education to review and make recommendations before the end of the year on ways to improve links between secondary curriculum and assessment and vocational education and training. In accepting the thrust of these recommendations, any changes will proceed in an ordered and consultative way. The core activities of the Board of Studies, namely, the higher school certificate and the school certificate, will be unchanged. No action will be taken that will affect the efficient and effective conduct of the 1994 school certificate or the HSC. The development of curriculum and support documents will be enhanced because of this review, further providing the students in New South Wales with a first-rate education.

No person at the Board of Studies will be made redundant as a result of the review. Any changes recommended by the board will occur over time and in a rational way through the expiry of the current system of secondments and by attrition. I cannot spell that out any more clearly. This review has been about making sure that the support and administrative structures of the Board of Studies are working effectively and efficiently. Honourable members should be aware that the review notes the powers held by a Minister of the Crown under section 42Q of the Public Sector Management Act 1988 to terminate the contract of a chief executive officer or senior statutory officeholder in whom they have lost confidence. The report states:

The review formed the opinion that the Minister for Education, Training and Youth Affairs, lost confidence in Mr John Lambert, President of the Board of Studies, due to irreconcilable differences . . . The simple fact is that a Minister of the Crown is entitled to have the full support of chief executives and very senior statutory office holders in whom they have confidence and whose advice they respect. To have any other arrangement would be absurd.

Today I wish to table also the Crown Solicitor's review of higher school certificate malpractice procedures. This review was sought by the Board of Studies following the Ombudsman's report on the Christopher Barnes case. The recommendations of this review will be considered by the Board of Studies at its next meeting later this month. The review found:

The procedures presently being followed by the Board are inherently quite adequate. It is the application of these procedures which appears to have given rise to difficulties in investigating and reporting allegations of malpractice.

The main recommendation of the review is a need for training for all relevant board staff in investigative techniques, including interviewing people, collection of evidence and report writing. Further, the review recommends updating the presiding officer's handbook so that all relevant officers are well aware of their rights and responsibilities in regard to malpractice cases in the HSC. The review also recommends a separate board meeting to deal with malpractice cases. Once the Board of Studies has considered the recommendations of the review, any changes implemented will happen well before the 1994 HSC examinations. As I said, that is listed for consideration at its meeting this month.

I believe that both reviews tabled today will further enhance the quality of education we are providing for people in New South Wales. This Government has an unequalled record in education, and one on which I certainly stand proud. If we are to continue to serve the students, teachers and parents in New South Wales effectively we must review our work. In this way we can assure school communities in New South Wales that education in our classrooms and at our board is of world class standard.

The Hon. M. R. EGAN (Leader of the Opposition) [2.47]: The Opposition will be carefully examining the report and will respond to it in detail later today. Suffice it to say at this stage that the manner in which the inquiry has been conducted fills Opposition members with some disquiet. The inquiry was intended to clear the air over the Board of Studies and to restore public confidence in that body. Instead, hearings were held in camera. The public has no idea what concerns or views were put before the inquiry. This clearly means that whatever the report says about Mr Lambert, the operation of the Board of Studies, or the role of the Minister in sacking Mr Lambert, it will be difficult, if not impossible, for the

public to know what was said on both sides of the debate.

Once it became clear that the inquiry would not be held in public, the shadow minister for education, Mr John Aquilina, called for the inquiry to be opened to the public. These calls were ignored by the Minister for Education, Training and Youth Affairs and by the Government. The inquiry has also been surrounded by rumour. It has been reported by various witnesses before the inquiry that members of the inquiry had made up their minds, particularly on the issue of curriculum. If, on further examination, these reports are borne out, it will clearly cast a doubt over the whole process of the inquiry.

I note also that the Minister claimed that all the recommendations of the report will be acted upon. It is important to note exactly what she said. She did not say that all the recommendations would be
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implemented; indeed, she quite specifically pointed out that all the recommendations had been accepted on principle, but she made very little commitment to the implementation of those recommendations. The Opposition has not yet seen the report. Therefore, it is in no position to comment on the recommendations in the report. However, I should have thought that the Minister, having had access to the report before it was tabled in the Parliament today, would have been in a position to tell the House and the public precisely which recommendations would or would not be implemented.

Reverend the Hon. F. J. NILE [2.50]: Call to Australia, like the Opposition, has not had access to the report and therefore is not in a position to comment on its details. When we are able to study the report we will be able to make a thoughtful response. However, we put on record that we have always had confidence in Mr Lambert as the Chairman of the Board of Studies. The Minister set up the inquiry following Mr Lambert's sacking and other problems with the Board of Studies. We are concerned that he may have become a scapegoat in relation to problems with the Board of Studies and neglect in some areas, which may not have been Mr Lambert's personal responsibility, although we know that usually the buck stops with the person at the top of the organisation.

The Hon. ELISABETH KIRKBY [2.51]: I hope that there will be an opportunity before the winter recess to debate the recommendations of the report.

CRIMES LEGISLATION (DANGEROUS ARTICLES) AMENDMENT BILL

Second Reading

Debate resumed from 21 April.

The Hon. J. W. SHAW [2.53]: The effect of the passage of the bill would be to amend the Crimes Act to provide a defence in relation to the possession of certain dangerous articles, and to amend the Prohibited Weapons Act to provide that possession or use of certain prohibited weapons is no longer to be an offence. The Opposition has considered the bill and is prepared to support it in the Parliament. No one, certainly not the Attorney General, would contend that this issue is simple or easy; it is quite vexed. It was injected into public debate by the judgment of the Court of Criminal Appeal in the Taikato case of 6 April. In a sense, but for the decision of the court in that case, it might never have arisen as a contentious public issue, and I will return to the judgment in a moment. It ought to be recorded that the Opposition took a position soon after the announcement of the judgment that the decision exposed a defect or problem in the law; and the introduction of this bill vindicates the Opposition's stance. In other words, the Opposition was correct in suggesting that a legislative adjustment of the legal position exposed by the Taikato case was needed.

The Leader of the Opposition in the Legislative Assembly introduced into that Chamber a bill that, in effect, would have made it legal for a person to carry certain substances or items for the purposes of self-defence - although that notion was qualified by the proposition that the items or substances could not

be lethal or capable of maiming or otherwise causing permanent or significant harm. It seems clear that in a real sense the Government's bill is responsive to the initiative taken by the Opposition. At first the Attorney General attacked the Opposition for proposing a legislative adjustment. He did this in his press release of 7 April. By necessary implication, the press release seems to indicate that the state of the law as developed or exposed by the courts did not need legislative change: it certainly did not suggest the need for a change. But by 21 April the Government was announcing that it would move in the Parliament to change the law in this respect.

I return shortly to the judgment of the Court of Criminal Appeal. In many ways, and with all due respect to the court, it has taken a somewhat narrow and pedantic approach to the construction of the Crimes Act. It has adopted an approach which could be rightly characterised as narrow and completely legalistic. The person charged with the offence in that case relied upon the defence under section 545E(2) of the Crimes Act, which provided that a person is not guilty of an offence under this section for possessing anything referred to in subsection (1) if the person satisfies the court that he or she had a reasonable excuse for possessing it or possessed it for a lawful purpose. So the critical concept is reasonable excuse and lawful purpose. The court found the appellant's argument extremely attractive. This was stated in the judgment of Mr Justice Meagher, which was supported by the other members of the court. However, the court seemed to find itself compelled to apply a 1984 judgment of the English Court of Appeal which said that the phrase "lawful object" ought to be construed as containing the notion of a reasonable apprehension of an imminent attack. It was this adjectival qualification of the word imminent which led to the result in the case.

There was, with respect, really no need for the court to apply a middle level English judgment of a decade ago in construing a New South Wales Act of Parliament. The New South Wales courts are free to apply or not apply judgments of the Court of Criminal Appeal. That court referred to the English case as being applied by other Australian courts with some distaste. Mr Justice Meagher said that he was reluctant to apply the English case "both because it seems to me to be an absurd result in terms of practical effect" and based on what he thought was an unwarranted interpretation of the language of the statute. Again with respect, one might observe that it would be not inappropriate for the courts to give effect to the language of New South Wales statutes and that they need not feel impelled to follow English cases which lead to an unwarranted interpretation of those statutes. Be that as it may, the court, for two reasons - first, for reasons of comity with the

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development of the English law and, second, because the facts of the case were trivial - felt that it should apply the English decision.

The Hon. D. J. Gay: Are you practising for when you give your seat to Peter and go to the bench? This is not a political speech; it is a barrister's speech.

The Hon. J. W. SHAW: I would hope that it is a barrister's speech. I take that as a compliment, and I am sure the honourable member means it. If more speeches on legal topics in this Parliament were the speeches of barristers there would be a higher level of debate. We are faced with a dilemma arising from this judgment of the Court of Criminal Appeal, which, as I have said, led to an unsatisfactory conclusion in terms of the state of the law. The Government is attempting to redress that dilemma, as was the Opposition. Politically, it is clear that the Government's criticism of the Opposition was always unwarranted because - as everyone now accepts - it is necessary to correct the position. The Government is now endeavouring to do that, and under those circumstances, the Opposition supports the bill.

The Hon. JENNIFER GARDINER [3.0]: I support the Crimes Legislation (Dangerous Articles) Amendment Bill. It is pleasing to note that the Opposition has changed its mind; obviously its members must have been thinking about a few topics other than Sussex Street in the past few days.

The Hon. J. R. Johnson: You have put off your nominations for the upper House.

The Hon. JENNIFER GARDINER: I am a member of the National Party. It is a sad commentary upon society that this legislation is thought necessary. But it is a fact that many people, particularly in larger urban areas and especially women, feel that they need to carry devices on their person to use in self-defence in the case of an attack. The trigger, so to speak, was the much-publicised recent case of *Taikato v. The Queen*, in which the Court of Criminal Appeal held, following precedent, that the Crimes Act defence of carrying a dangerous article did not apply because the defendant was unable to satisfy the court that the possession of the article was motivated by "a reasonable apprehension of imminent attack or imminent danger".

The defendant had carried a spraycan containing an irritant liquid chemical because of her fears about safety, which had been engendered by a previous burglary at her home several years earlier; and it was held that the word "imminent" was not relevant to her defence. Justice Meagher said that he made his judgment, following precedent, with some reluctance. But he went further than that, saying:

It seems to me to be an absurd result in terms of practical effect and it is based on what seems to me to be an unwarranted interpretation of the language of the statute.

The Government believes that this interpretation of self-defence places women and other vulnerable people at risk of physical attack, and is therefore moving quickly to widen the chances of women and others being able to protect themselves. In the framing of this bill the Victorian legislation has been followed. Under that legislation the courts, in considering the defence of self-defence, must have regard to the reasonableness of the defence in all of the circumstances surrounding a particular case, including the immediacy of the perceived threat to the person charged; the circumstances, such as the time and location of the incident; the type of dangerous article that was being carried and used; and the age and the experience of the person so charged.

The bill will provide our courts with guidelines that are similar to those contained in the Victorian legislation, including guidelines to be used in determining whether it was reasonable to possess such an item for the purpose of self-defence. The bill also brings the Prohibited Weapons Act into line with the amended Crimes Act. At present the Prohibited Weapons Act does not allow a specific defence of lawful purpose or reasonable excuse. Following the passage of this legislation, the law relating to the possession of irritant sprays will be contained in one clear provision, in the Crimes Act. Consequently, no longer will the courts be constrained to allowing self-defence as a defence only when there is an imminent fear of attack. The courts will have greater flexibility, and women will have less fear of being prosecuted for carrying articles such as irritant sprays for self-defence.

The bill represents a prompt, reasonable and proper response by the Attorney General and the Government to the shortcomings in the law as it applies to vulnerable people, particularly women. It complements a whole range of measures intended to make New South Wales a safer place in which to live and work. I am pleased that I do not have to proceed to seek to neutralise arguments foreshadowed by the Australian Labor Party, but not put. Obviously its members have taken note of their error.

The Hon. J. R. Johnson: On a point of order: having in mind rulings of some of your illustrious predecessors and the sensitivities of certain members on the crossbenches, is it appropriate for the former Deputy Leader of the Government and Minister for Sport, Recreation and Tourism to be reading a punters' guide?

The PRESIDENT: Order! It would behove the conduct of the House if honourable members paid attention to the debate and were not waylaid by other pursuits.

The Hon. Dr MEREDITH BURGMANN [3.8]: The Crimes Legislation (Dangerous Articles) Amendment Bill is worthy of note for several reasons. First, it represents yet another Government backflip. Second, it is totally contradictory. The Government was aware that the recent judgment

highlighted a problem in the present law, but this bill presents an even greater problem. Under the bill, a person found in possession of a spray could put forward the defence of reasonableness in all the circumstances of the case if it could be proved that the spray was being carried

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for defence. The real problem with the legislation is that under the Prohibited Weapons Act one cannot carry anything in the form of a spray that is non-harmful or non-injurious. Under this bill women will be forced to resort to oven cleaners and other extremely harmful sprays that they have used in the past. It is ridiculous to think that the House could include in the Crimes Act the notion of reasonableness and the notion of defence purposes without also amending the Prohibited Weapons Act.

The Hon. J. F. Ryan: It is to expand the number of weapons that can be used.

The Hon. Dr MEREDITH BURGMANN: I shall come to that argument. The real problem is that at the moment the Prohibited Weapons Act does not allow the purchase of harmless sprays. So how on earth will people be able to carry sprays for defence purposes if they are not allowed to purchase harmless sprays?

The Hon. Patricia Forsythe: The bill does not seem to mention that.

The Hon. Dr MEREDITH BURGMANN: The honourable member should read the legislation. The bill appears to be a quick government response to community outrage. It is also, as with much government legislation these days, a capitulation to the lowest common denominator. The Attorney General was quoted in the *Sydney Morning Herald* as asking how it can be determined whether sprays are carried in self-defence and how it can be ensured that hoodlums and louts do not take advantage of the new laws. Are oven sprays only to be bought by women? Are people in the cleaning sections of supermarkets meant to work out who is a hoodlum and a lout? The whole debate about carrying offensive weapons is serious and complex. To extend the legislation in any way is to extend debate on the ownership of weapons. The final example of this is ownership of guns, to the point that in America women expect to put in their purses not sprays but a small pearl-handled pistol. Debate on this legislation is exactly the same as debate about guns - guns are still prohibited weapons, as are sprays.

It is important to point out that we are not America; we do not want to be an armed society. It is important to note that overseas experience has shown that people have been killed by various sprays; and that asthma sufferers can be killed by so-called harmless sprays. The Government has rushed into this measure without conducting sufficient research. Once it is accepted that these sprays are available for legitimate use, it will be impossible to stop their purchase for illegitimate use. Women should not be responsible for protecting themselves; it is for the government of the day to make certain that the environment is safe for women to walk the streets.

I am not one who believes that we are rushing headfirst into the sort of violent, unequal society that exists in America. Thank goodness we are not falling into the trap of allowing the rich to get richer and the poor to get poorer as would have happened under a Hewson government. Rather than allowing women to arm themselves, the Government should make certain that they are protected by providing good street lighting, guards on trains, attendants at railway stations, proper bus shelters - all of which, unfortunately under this Government, have been allowed to fall by the way. Numerous announcements have been made by the Minister for the Status of Women about how these solutions will be found, but we have had very few practical infrastructure changes to make the streets of New South Wales safer for women.

The Hon. ELISABETH KIRKBY [3.13]: The Australian Democrats support the Crimes Legislation (Dangerous Articles) Amendment Bill. As has been pointed out by other speakers, the bill addresses the recent Court of Criminal Appeal decision in *Taikato v. The Queen*, in which Ms Janet Taikato was charged under section 545E of the Crimes Act with the possession of a can of formaldehyde, though it was carried for self-defence. The common law position followed by the Court of Criminal Appeal is that

self-defence is not an acceptable motive unless there is a reasonable apprehension of an imminent attack or imminent danger. Though Ms Taikato had begun carrying the spray only after an incident some years ago when she and her husband returned home to find someone breaking into her house, the court did not hold that this was sufficient justification for her to continue carrying a can of spray in her handbag.

Clearly, therefore, the common law position is inadequate in terms of the ability of women to protect themselves against attack. It is unlawful to carry an article solely for the purpose of personal protection, but it is lawful to carry the same article if it is actually used in the event of an attack. This seems to be a ridiculous situation, and it certainly has to be rectified. The bill widens and lists the criteria under which a dangerous weapon or dangerous article may be carried reasonably for the purpose of self-defence. The criteria are: the immediacy of the perceived threat; the circumstances in which the thing was possessed; the type of thing possessed; and the age, characteristics and experiences of the person charged.

I assume that these criteria rule out the carrying of such sprays by young hooligans; that they would not be considered to be carrying them reasonably, possibly because of age, behaviour and prior experiences. If it could be ascertained by the police that a young person was carrying that type of article to terrorise other members of the public, for example, it would be classed as a dangerous weapon, and that would constitute an offence. It is further proposed to amend the Prohibited Weapons Act so that anything designed or intended as a self-defence spray capable of discharging irritant matter will be exempted under that Act. However, having said that, I support some of the remarks by the Hon. Dr Meredith Burgmann because I believe the onus is on the Government to pressure the industry to develop sprays that can be used in self-defence but which are not as highly toxic and dangerous as, say, an oven cleaner spray.

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A recent program on the ABC showed people who had been seriously burned when using an oven cleaner on a barbecue grill and getting some of the cleaner on their skin. If serious burns can result from oven cleaner coming into contact with skin, the notion of a propellant being sprayed into someone's face and possibly affecting the eyes causes me a great deal of concern. At the time of the Court of Criminal Appeal decision much publicity was given to the possibility of using a capsicum spray which would deter a would-be attacker but would not be as highly toxic and dangerous as formaldehyde, for example. I hope that with the passing of this legislation members of the public who believe that it is necessary to purchase such sprays will have the right to do so.

Certainly some insect repellents and oven cleaners are much too dangerous to be used in self-defence in the way suggested by Ms Janet Taikato. I am pleased that the Government has acted to change the law on this matter, and that is why I am prepared to support the bill at this time. There are inherent dangers in many dangerous substances now available in spraycans, including hair spray, and this may cause even greater problems in the future in deciding the legality of articles used in self-defence. However, I am happy to support the bill.

Reverend the Hon. F. J. NILE [3.20]: The Call to Australia group supports the Crimes Legislation (Dangerous Articles) Amendment Bill. The objects of the bill are to amend the Crimes Act 1900 to provide a defence of self-defence for the possession of certain dangerous articles, and to amend the Prohibited Weapons Act 1989 to provide that the possession or use of certain prohibited weapons is no longer to be an offence. This legislation has resulted from a recent court case involving a woman found guilty of carrying an irritant spray. Clause 3 of the bill provides that a person - I refer particularly to women, but the legislation is gender neutral - who satisfies the court that he or she possessed the substance for the purpose of self-defence, and that it was reasonable in the circumstances to possess it for that purpose, is not guilty of a crime. That should be adequate protection for women who carry an irritant spray for genuine reasons. It should also have the effect of separating women who are fearful of being attacked on the streets from others who may have a criminal intent in carrying a spray, such as using it to assist in an attack on a woman.

I agree with other honourable members that it is a tragedy in modern society that it is necessary for women to resort to what is in a sense a primitive form of protection. It may have some value in that a woman who carries such a substance may consider that she has some means of protecting herself, and may therefore feel free to move around the streets at night. Honourable members would agree that it is still a fairly fragile type of defence. It would be very difficult for a woman attacked from behind to get such a spray out of her purse - especially if it is a gang attack, as occurred in recent years, for example, in the case of Anita Cobby and others. A spray would be of very little value to a woman facing more than one person intent on a violent attack. As we know, in modern society one of the realities we have to face is that, even though there has been considerable focus on domestic violence and violence within the home, there is still a large percentage of rapes or assaults by strangers and, therefore, our streets need to be made safe for all, particularly for women.

This legislation highlights the reality that women are often in very vulnerable situations, especially when seeking to move around at night in the city streets or car parks. In fact, some attacks have occurred in car parks adjacent to railway stations at night. There is a strong challenge to the Government to look beyond what is a fragile form of defence. It may be that a personal alarm would be more effective. I understand that a woman does not need to remove such an alarm from her purse, but simply has to press a button to start the alarm. That may have some value in attracting the attention of passers-by or frightening the potential rapist or violent person, causing that person to flee from the scene. I urge the Government, as other speakers have done, to see this legislation as a minor step, perhaps a banded step. Women need to live in a society where they feel free to move around cities both during the day and at night.

Other honourable members have referred to the need for safety on trains, for example - as I have suggested before - women-only railway carriages and guards at railway stations. Women are vulnerable at those railway stations that are not staffed at night. I believe that we cannot escape the strong influence of material that is being made available - what I call rape manuals or rape videos - that incites attacks on vulnerable women. There must be a crack-down on that type of material. I am concerned about what I hear from people; namely, that despite the emphasis on the need for and Government support for police on the beat, there are not many beat police on duty at night. In fact, rosters are fairly light at night. I know of the problems involved with rostering police officers who have families and other responsibilities, but it is important that the police numbers are maintained at night when women may be at risk. I urge the Government to take those wider concerns on board when formulating future policies.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [3.25], in reply: I thank honourable members for their support for the legislation. As the Hon. J. W. Shaw indicated, the drafting of this legislation was not without its difficulties in order to maintain a proper balance in the development of the law. This bill will achieve that balance. I was critical of the proposals of the Leader of the Opposition for reform of the law because, in fact, they would have achieved the outcomes which were of concern to the Hon. Dr Meredith Burgmann - that is, they would have allowed products to be placed on the market and freely available to those in the community who wished to use them as a means of attack.

I emphasise that the bill does not allow dangerous articles to be carried. The Government's bill acknowledges that the Taikato decision confirms an extremely narrow interpretation of self-defence as

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a lawful purpose under section 545E of the Crimes Act. The bill broadens the definition of self-defence; that is the aim of the bill. I wish to emphasise that the possession of irritant sprays is still an offence under section 545E of the Crimes Act. The Government is not legalising dangerous articles such as irritant sprays. The Crimes Legislation (Dangerous Articles) Amendment Bill does not provide that it will now be legal to carry defence sprays. Rather, the bill serves to give courts greater flexibility in determining when an irritant spray may be legally carried.

It will require courts to examine each case individually and to take into consideration a variety of factors when assessing the claim of self-defence in a particular case. No longer will courts be confined to allowing self-defence only where there is an imminent fear of attack. The age, characteristics and experiences of the person, and the circumstances of the incident, will be among those factors that may be taken into consideration by the courts. The matters to be considered are not exhaustive and so allow for unique circumstances. The Government's bill is important in streamlining the criminal law. Under the present law, possession of an irritant spray is an offence under two separate New South Wales Acts: section 5 of the Prohibited Weapons Act 1989 and section 545E of the Crimes Act 1900.

Unlike section 545E of the Crimes Act, section 5 of the Prohibited Weapons Act does not allow a specific defence of lawful purpose or reasonable excuse. This is not a satisfactory situation and is contrary to the Government's desire to streamline the criminal law and make it more accessible to the community. To ensure clarity in the criminal law, the offence of possession of irritant sprays will now be contained in one clear provision: section 545E of the Crimes Act. Accordingly, the provisions in the Prohibited Weapons Act dealing with the possession of irritant sprays will be repealed. This is achieved by repealing item (40) of schedule 1 to the Prohibited Weapons Act for the purposes of section 5 of that Act. Schedule 1 to the Prohibited Weapons Act lists prohibited weapons, the possession of which is an offence under section 5 of the Act. Item (40) includes in this list anything designed or intended as a defence or anti-personnel spray that is capable of discharging by any means any irritant matter in liquid, powder, gas or chemical form.

The remaining provisions of the Prohibited Weapons Act 1989, other than the offence under section 5, continue to apply to irritant matter as defined by item (40) of schedule 1 to that Act. Therefore, the bill addresses the concerns that have been raised by honourable members. The products to which the bill relates will not be generally available for use as weapons against people, but women and the elderly will be able to defend themselves more adequately if they are assaulted. I therefore commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

TIMBER INDUSTRY (INTERIM PROTECTION) AMENDMENT BILL

Bill received and read a first time.

Suspension of certain standing orders agreed to.

HEALTH LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL

Second Reading

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [3.32]: I move:

That this bill be now read a second time.

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

Leave granted.

Mr President

The Health Legislation (Miscellaneous Amendments) Bill 1994 introduces a range of important reforms to health legislation and will provide significant benefits to the community as a whole as well as enhancing the health status of particular groups.

Proposed amendments to the Public Health Act in relation to the reporting of pap smear test results will provide better health outcomes for women in this State. For the first time women will have the opportunity to participate in a comprehensive approach to cervical cancer screening through the establishment of a NSW cervical cytology register. The register is an important step in the fight against cervical cancer. There will be considerable advantages to women in agreeing to participate in the register. Among other things the register will enable reminders to be sent to women that their next pap test is overdue and ensure that women who have abnormal smears receive appropriate management and follow-up. Mechanisms established through this program will also ensure that cervical cytology services in NSW are consistently of a high standard.

It is clearly important that legislative provisions are in place to protect the rights and dignity of HIV infected people and people with AIDS as it is with other members of the public. Not only is there a need to avoid discriminatory action against and stigmatisation of HIV infected people essential from a civil liberty point of view but it is only through assuring such basic human rights that the success of AIDS prevention and control programs may be assured.

These amendments to the Public Health Act relate to the confidentiality of HIV and AIDS information and the administration of public health orders. They will provide a more effective mechanism to protect people with HIV and AIDS against inappropriate disclosure of personal information and the possible abuse of public health orders. I am confident that these reforms will significantly address concerns of discrimination in the health system against HIV infected people and those with AIDS.

The AIDS Council of NSW has drawn attention to specific concerns surrounding incidences of inappropriate disclosure of HIV information, particularly in youth refuges. It would appear that such incidences may be a result of ignorance of the current laws in this area. The address this concern an education program will be conducted specifically targeting youth refuges to ensure that all employees of these facilities are aware that a person's infectious state is strictly

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confidential. These provisions do not, of course, diminish the need to protect the public from behaviour that may spread HIV or AIDS. It is accepted that in situations where information is required in connection with providing care, treatment or counselling or where there is a genuine public risk, information must be made available to enable appropriate action to be taken.

The community can be confident that provisions are in place to ensure that appropriate and prompt action can be taken where a person is exposed to HIV or AIDS or where there is a risk of such exposure.

The community can also have confidence that all appropriate steps are being taken to ensure safety against HIV infection during operations. The amendments to the Medical Practice Act, Dentists Act and Dental Technicians Registration Act will provide for strict standards of infection control to be applied in the treatment of patients in doctors' and dentists' private rooms and by dental prosthetists.

The amendments to Physiotherapists Registration Act, Psychologists Act and Podiatrists Act will improve the effectiveness and efficiency of the disciplinary and registration processes for these professional groups and will promote the maintenance of appropriate standards of practice.

Further amendments to the Dentists Act, Optical Dispensers Act and Physiotherapists Registration Act will provide that the boards are consulted during the development of a new regulation. However, the boards' views will not be able to override broader considerations which the Minister may consider to be in the community's interest.

Mr President, I am confident that these amendments will provide considerable benefits to the community and I commend them to the House.

The Hon. J. W. SHAW [3.33]: The Opposition is happy to support the bill, which makes certain changes to the administration of health care. The bill deals with six matters. I do not need to deal with them in detail, but will refer briefly to them. The Opposition has considered carefully all of the changes, and they all seem appropriate. First, the bill provides for adjustments to disclosure provisions in relation to persons with HIV-AIDS. The present disclosure provisions are restricted, and the information may be disclosed only if it is required in connection with providing care, treatment and the like. Second, the bill refines public health orders. When making such orders, medical practitioners will need to take into account guidelines approved by the director-general, and also the principle that the order should only impose a requirement restricting the liberty of the person concerned if that is the only way to ensure that the health of the public is not endangered.

Third, the bill changes the reporting provisions in relation to cervical cytology. It provides for a report to be made to the director-general, without the name of the patient being disclosed, irrespective of whether the pap test is positive or negative. Fourth, the bill provides for changes to infection control procedures and, fifth, for changes in relation to the registration of allied health professionals, thus bringing disciplinary processes and regulation-making powers into more general alignment. Sixth, the bill provides for a technical change in relation to enterprise agreements that the Health Administration Corporation may wish to enter into. The corporation will be able to enter into industrial agreements under a simpler legislative prescription. As I said at the outset, those six changes are sensible and the Opposition supports them.

The Hon. Dr B. P. V. PEZZUTTI [3.15]: I support the bill. I draw the attention of honourable members to the clear explanation of the bill in the second reading speech of the Hon. Virginia Chadwick, which she incorporated in *Hansard*. All honourable members will have had an opportunity to read that speech and will understand, as the Hon. J. W. Shaw has, that the bill clarifies and updates a broad range of health measures. I should like to draw the attention of honourable members to one or two matters in the bill. The first is the provision for the notification of test results, with particular reference to cervical cytology. It is enormously important that the Cancer Council, as custodian of the list, be able to notify women that they have perhaps forgotten to have pap tests, that their test results are positive, or that follow-up action has not been taken on cytology investigations to ensure that women receive quality results. If, for example, the results of a particular cytology test are not quite right, the patient's general practitioner will be notified fairly quickly and the matter can then be dealt with by review.

My wife, who is in general practice, has drawn to my attention that asking the patient for permission and explaining to the patient what it all means will take a little time. In general practice time is money, and therefore I ask the Cancer Council, in its negotiations with the Commonwealth on the management of these matters, and the Commonwealth to review the fee paid to general practitioners and others who take pap smears. Unless the fee reasonably covers the investigation, there will be a disincentive for high-quality services in this preventive area. I draw that matter to the attention of the Federal Minister for Health. I hope that the Cancer Council will take up this matter with the Commonwealth to ensure a better and more certain screening process. That is a step in the right direction and will ensure that everyone involved in the screening process, including the patient, is aware of what is happening. The bill will ensure that the monitoring of the Cancer Council is all I hope it will be. The result will be better outcomes for women suffering from cervical dysplasia or cervical cancer.

All honourable members will have received letters from Mr Reg Scott, O.A.M., the President of the Dental Technicians Association of New South Wales. Mr Scott also wears several other hats, but he has written to honourable members in that capacity. He is concerned about the risk to the public caused by dental technicians not using appropriate infection control procedures. The bill is careful to ensure that dental technicians, dental prosthetists and dentists are required to undertake proper sterilisation

procedures to ensure that the public is not put at risk. Amendments to the Dental Technicians Registration Act
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Act and the Dentists Act will ensure that any material sent from a dental surgery or a prosthetist's premises to a technician will be sterilised properly and should, therefore, not represent a risk to anyone handling that material; but, more important, that anything sent from a technician that is to be inserted into a patient's mouth will be sterilised and, therefore, represent no risk to the patient.

The Hon. Franca Arena: Does it need to be sterilised in the autoclave?

The Hon. Dr B. P. V. PEZZUTTI: The bill will allow the Government to make regulations to require autoclaving of material. The issue, therefore, is not patient care or the possibility of transmission of disease to patients but what might happen in the workplace of a dental technician, which is covered by WorkCover and the provisions of the Occupational Health and Safety Act. Section 35(2)(f) of the Dental Technicians Registration Act 1975 provides:

(f) standards of hygiene to be observed by and protective clothing to be worn by dental technicians and persons employed in and about premises used for or in connection with technical work;

In other words, if it were deemed necessary, the Government could introduce regulations under the existing Act to cover a perceived problem. That covers the concerns raised by Mr Scott, and I thank him for bringing those matters to the attention of the House. The Government is approaching this matter in the correct way; that is, allowing regulations to be made under the Dentists Act and the Dental Technicians Registration Act. I should like to comment also on the updating of a number of other Acts and the disclosure of HIV-AIDS related information. The Government has taken this further step forward, with advice, to strengthen the previous arrangements. The Health Legislation (Miscellaneous Amendments) Bill provides that information about a patient's HIV status may be disclosed to a person involved in providing care to the patient, but only if the information is required in connection with providing such care, treatment or counselling.

A general practitioner in referring a patient to a surgeon may be aware that the patient is HIV positive. Because of the nature of HIV or AIDS the patient's immunological system may be depressed and therefore the risks of infection following surgery may need to be discussed with the patient. The treating surgeon cannot know the patient's HIV status unless it is properly disclosed. Counselling can then take place. Precautions are necessary not so much to protect the surgeon - although that is important - but to make the patient aware of the risks involved in undergoing surgery with an immunological system that is not fully competent. The bill provides for the disclosure of such information to the Director-General of the Department of Health or to any person involved in the care of such a patient. Penalties for misuse of the information already exist and are fairly well covered.

The amendment regarding public health orders covered under this provision require an authorised medical officer, when making a public health order, to take into account the guidelines already approved by the director-general, as well as the principles that the order should only restrict the liberty of the person if that is the only way to ensure that the health of the public is not to be endangered. The bill contains important information and will make important changes. Given the previous debate and the Minister's second reading speech, which was very clear, I strongly support the proposed legislation, with the proviso that the Commonwealth consider the important issue of a rebate for pap smears carried out by general practitioners or health care staff generally.

The Hon. ELISABETH KIRKBY [3.46]: Until about 12.30 p.m. to 1 p.m. today I was very happy to support the Health Legislation (Miscellaneous Amendments) Bill without reservation. However, by way of fax and letter delivered to me late this morning, the concerns of the Association of Dental Prosthetists Incorporated and the Dental Laboratories and Dental Prosthetists Association of New South Wales were brought to my attention. The Hon. Dr B. P. V. Pezzutti remarked that the bill will enable regulations to be

made for or with respect to the infection control standards to be followed by dentists, dental prosthetists and medical practitioners. However, it does not provide the regulation-making power for dental technicians. Earlier today advisers of the Minister for Health pointed out to me that those regulation-making powers were not necessary. However, I have since taken further advice and I believe it is proper that I read into the record the concerns of the Association of Dental Prosthetists Incorporated. The president of the association said:

The Bill omits any reference to infection control procedures to apply to dental technicians. The Association urges the Government to rectify this serious omission and recognise that the dangers of cross infection in the dental technicians laboratory are high because:-

- * blood and saliva containing harmful bacteria have the ability to enter a patient's blood stream after being introduced to the mouth by way of impression trays made in the laboratory
- * patients are often unaware of potentially serious diseases, not always evident at oral examinations, and through cross infection at the many stages of laboratory production, can in turn be passed on to other patients and to the dental technician.

...

Take for example the dental technician who works in a laboratory with several other dental technicians and carries out work for twenty or more dentists. What guarantees does that dental technician have that the models, impressions etc sent to him are not infected with HIV if the laboratory for which he works does not carry out any infection control procedures if it does not have to?

Whilst the Hon. Dr B. P. V. Pezzutti was making his remarks about sterilisation procedures, the Hon. Franca Arena queried whether he was referring to autoclaving. Honourable members are aware of the tragic incident in which the human immunodeficiency virus was transmitted through what were assumed to be inadequately sterilised dental instruments. It is well known that not all dentists in New South Wales have autoclave facilities, and as yet they are not forced to by law. The National Health and Medical
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Research Council guidelines may make it imperative that all dentists use autoclaves, but that is not the case at present. When I received this letter from the Association of Dental Prosthetists, I raised the matter with the advisers of the Minister for Health. I was given a copy of a letter that the Minister has had prepared for the Chairperson of the Dental Technicians Registration Board. The letter states in part:

The current amendments -

That is, the amendments to the legislation before the House:

- provide specific regulation making powers in respect of standards of infection control to be followed by doctors, dentists and dental prosthetists. As a similar specific power already exists for dental technicians under section 35(2)(f) of the Dental Technicians Registration Act it is not necessary to include dental technicians in the current proposals.

The next paragraph of the letter is disturbing. It states:

As you are aware, dental technicians do not provide their services directly to the public and are not involved in the actual clinical treatment of patients -

Which I dispute, from my experience. The letter continues:

- but rather provide laboratory fabricated appliances to dentists and dental prosthetists.

The dental technicians are frequently present in the surgery when the prosthesis is fitted. The letter continues:

While infection control by dental technicians in laboratories is clearly important, particularly in view of cross infection risks to practitioners this is an occupational health issue which is more appropriately addressed under codes of practice by Workcover and Worksafe Australia, and Occupational Health and Safety Legislation. Additionally, professional associations representing dental technicians may wish to consider their role in developing appropriate standards for the profession and ensuring their members are adequately informed and educated in such matters.

I received further advising from the Minister's advisers at approximately 2.15 today. I had to leave that briefing in order to attend the Chamber at 2.30, as is my duty. The briefing received by my office from the Department of Health suggests that dental technicians are already covered under section 35(2)(f) of the Dental Technicians Registration Act 1940, which states:

(f) standards of hygiene to be observed by and protective clothing to be worn by dental technicians and persons employed in and about premises used for or in connection with technical work;

The Minister's departmental advisers have been busy assuring me that the phrase standards of hygiene is equivalent to the phrase infection control standards, that it is merely a question of updated drafting, and that dental technicians are already adequately covered. I am sorry, but I do not accept that standards of hygiene are the same as infection control standards. They are certainly no longer regarded as the same thing by the National Health and Medical Research Council, for it is drafting new infection control guidelines. In my opinion there is a difference. The infection control standards that will be established for dental prosthetists and for dentists refer to the infection control guidelines that are now being developed by the National Health and Medical Research Council. Hygiene is too general a term. It refers only to general environmental matters; it is quite distinct from infection control.

The main point is that if the section in relation to hygiene is sufficient to cover infection control, why is the very same section of the Act being amended to provide specific infection control standards to be followed by dental prosthetists? Why are powers being given for infection control standards to be developed for dental prosthetists and for dentists? Why are they not being given for dental technicians? The argument being put forward by the Department of Health that the amendments contained in the existing bill are merely to bring dental prosthetists and dentists up to the same standard as dental technicians is, in my opinion, deceptive. In the very same briefing taken for me by my research assistant, Mr Dominic Wong, comments were made that if the National Health and Medical Research Council guidelines were established for dental technicians, they would be too stringent and dental technicians would not be able to do their work.

I do not see why the work of dental technicians should be subject to any less a standard of infection control than any other piece of work in the dental chain. The Democrats certainly do not want any weak links in the chain. The imposition of National Health and Medical Research Council standards of infection control will no more make the work of dental technicians impossible than they will make the work of dentists and dental prosthetists impossible. I do not accept the arguments of the Government. It has been suggested that this is essentially an occupational health and safety issue, as the Minister for Health confirmed in the correspondence he provided me.

However, the Occupational Health and Safety Act is merely a general guideline on acceptable work standards in the average workplace; it is not sufficient to cover health controls in the health industry. If we protect the health and safety of health workers by infection control, we protect the health of the public. I do not believe that it is possible to separate the two issues. It has been suggested to me that I should move an amendment to schedule 4, page 11, line 11 and after the word prosthetics insert:

(k) infection control standards to be followed by dental technicians engaged in dental work.

I do not know why the Minister cannot accept that. I think it is a reasonable amendment. I will have it drafted between now and when the debate resumes after question time. I urge the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier, who is acting for the Minister for Health in another place, and the Department of Health advisers to consider my simple amendment. I do not believe it is good enough to place the onus on dentists by suggesting that material from which the prosthesis is made be

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sterilised before it leaves the dentist's surgery and be resterilised when it comes back from the dental technician. It may very well be sterilised, but we know that it will not be autoclaved in every circumstance because not all dentists in New South Wales have autoclaves, nor have they yet been required to have autoclaves.

The Hon. Dr B. P. V. Pezzutti: How can they sterilise them if they do not autoclave?

The Hon. ELISABETH KIRKBY: By the old-fashioned methods of sterilisation, which are certainly not good enough when we are trying to prevent the spread of viruses that transmit hepatitis and HIV-AIDS. The argument has been put that dental technicians do not attend dental surgeries or members of the public. Many members of the public have their prosthesis made not by a dentist but by a dental technician. If they need an adjustment to their dental plate, they go to a dental technician, not to a dentist. That is particularly the case in the country with older people, partly because they cannot afford dentist charges but they can afford the lower charge of a dental technician. I know of many occurrences of that.

I know of patients who have had prostheses fitted to adjust protruding teeth or whatever - many children now have such a prosthesis fitted - in collaboration with a dental technician and a dentist in the dentist's consulting room. That is a weak link in the chain. I hope that my simple amendment will receive the support of the Government and the Opposition when the bill reaches the Committee stage.

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

QUESTIONS WITHOUT NOTICE

MALABAR SEWAGE TREATMENT PLANT INCINERATOR

The Hon. J. R. JOHNSON: I ask a question of the Deputy Leader of the Government in this House, the Minister for Planning and Minister for Housing. What action has been taken to suspend incineration at Malabar treatment works having in mind the consequences of the resolution of the other place?

The Hon. R. J. WEBSTER: I know how attentively the Hon. J. R. Johnson listens to matters in this Chamber so I am surprised that he was not here the other day when I made a ministerial statement on this very matter. In that statement I informed the House of the exact position with the Malabar incinerator and of the scientific advice and evidence available to me. I said that a motion of the lower House does not bind this House or the Government to any course of action, and that I was not prepared to make a decision on the Malabar incinerator until the report that is being prepared is furnished to me in, I think, September. I do not have all the information at my fingertips, but I refer the honourable member to the *Hansard* of the last sitting week, which contains my answer in detail.

MORISSET HOSPITAL FORENSIC PRISONER ESCAPES

The Hon. ELISABETH KIRKBY: My question is addressed to the Attorney General and Minister for Justice. In view of the fact that late last week three forensic prisoners escaped from the grounds of Morisset Hospital, made their way to Sydney and were later picked up by the police and returned, will the Minister inform the House why the forensic wing of Long Bay gaol, which was specifically designed to house psychotic people who committed serious crimes because of their psychoses, was not being used to house these men and why they had been moved to Morisset Hospital? Why and on whose authority have they been allowed the freedom that permitted them to leave the hospital grounds and make their way to Sydney?

The Hon. J. P. HANNAFORD: To some extent I regret that the Hon. Elisabeth Kirkby asked that question; it was something I might have expected from the Opposition. Notwithstanding that, my comments will be the same. I was absolutely amazed at the knee-jerk reaction of the Leader of the Opposition. His remarks - if I can recall his words - that all these people should be locked up and not allowed out at all are an indictment of the Leader of the Opposition. They were obviously designed to inflame community attitudes towards people with a mental illness or mental disability. Some people have described the Leader of the Opposition as the Governor Wallace of New South Wales. It is appropriate to describe him as such a right-wing reactionary. The public of New South Wales, particularly the press, are used to knee-jerk reactions from the Leader of the Opposition being to the detriment of the community.

This sort of crass stupidity by the Leader of the Opposition does nothing for the position of the Opposition; it only serves to emphasise the stark distinction in the way that the Government and the Opposition deal with disabled people. I draw the attention of the House to a letter from the New South Wales Consumer Advisory Group - Mental Health to the Leader of the Opposition on this issue. I shall read it so that the House will know what is being said directly to Bob Carr by people involved with mental health:

On behalf of all NSW people with mental illness (and their families) I would like you to reconsider your position on the escape of forensic patients from Morisset. Whilst not trying to diminish the seriousness of the incident, it is very worrying when political points are made on these issues.

This is because the end result is that all the good being done to de-stigmatise mental illness comes undone. The press sensationally report the situation, the public become frightened and the mental health community, as a whole are the true losers.

If you wish to discuss the situation I am available at all times. Please try to bear in mind the plight of these people and their families.

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All that can be said about Bob Carr is that he does not give a continental about people with mental health problems or their families. A letter written to the Editor of the *Newcastle Herald* from a professor of psychiatry, Professor Vaughan Carr, reflects on the Opposition. It states:

The response of the Leader of the Opposition, Mr Carr . . . to the absence without leave of three patients from Morisset Hospital on 28 April is intemperate, ill-informed and to be deplored.

Feverish over-reactions to such events by public figures excite levels of anxiety in the community which are grotesquely out of proportion to any real danger currently represented by the three persons concerned. Ignorance of the effectiveness of treatment provided to mentally-ill offenders and of the stringent security conditions under which such treatment and rehabilitation occurs is no excuse.

The real threat in this matter is the potential to set back severely the process of rehabilitation of these and similar mentally ill offenders. If we are to pursue an enlightened, humane approach to rehabilitating the mentally ill offender, then, notwithstanding the assiduous application of appropriate regulatory processes, incidents of this kind will occasionally occur. However, since decisions with respect to the degree of freedom allowed to such persons are always taken with scrupulous care and with due regard for the safety of the community, then the risk to the public of unauthorised leave of such patients from the Morisset Hospital will be minimal.

The Herald's manner of reporting this incident, by giving front page details of the offenders' previous criminal activities, pandered to the community's deeply ingrained prejudices against the mentally ill. This can only inflame the public's misplaced anxieties.

I endorse Professor Carr's approach: the comments of the Leader of the Opposition are intemperate, ill-informed and to be deplored. Professor Carr referred to the way in which the legislation works to rehabilitate people with a mental illness. It was Laurie Brereton who in 1983 introduced the legislation that provided for the present approach towards treatment of the mentally ill, but it was not until Peter Anderson was the responsible Minister, in 1986, that the legislation was finally proclaimed. The Mental Health Act was amended by the coalition Government, which introduced new legislation in 1990. It adopted exactly the same regime that was administered by at least some enlightened members of the Australian Labor Party. It is obvious that the division between Peter Anderson and Bob Carr on many issues that have been manifested in the current round of preselections was also manifested in mental health administration. It is obvious that in matters relating to mental health legislation, Bob Carr is inhumane and intemperate, while Peter Anderson is enlightened and informed. I can only say that the Labor Party has a lot to learn in that regard.

Every six months the mental health condition of all people with a mental illness who are forensic patients is reviewed by an independent tribunal made up of psychiatrists and people with legal experience. The treatment of those patients is gradual, as is their program of reintegration into the community. On several occasions both I as the former Minister for Health and Ron Phillips as the current Minister had reason to ask questions of the tribunal about the application of its program, and on some occasions the tribunal's proposals were rejected. One thing that can be said about the Mental Health Review Tribunal is that it pursues its task assiduously, in a dedicated manner, and seeks to make certain that the program, which was established by the Labor Party, is genuinely maintained for the benefit of the patients.

In reference to the three patients already mentioned - I use the word "patients" because they are in fact mental health patients - yes, they have committed criminal offences. Two of them, unfortunately, murdered people, and the third caused serious bodily harm. In all of those cases, however, the offences were committed at a time when they were mentally ill. They are treated by the law as being mentally ill and they should be regarded by members of Parliament as people who are mentally ill and who should be, and are being, managed as mentally ill patients. Decisions allowing people to take day leave within the grounds of the hospital are taken upon the basis of whether they constitute a danger to the community.

The Mental Health Review Tribunal, on the advice of the managing psychiatrists and independent psychiatrists, determines whether people are a danger to the public. The three patients referred to had committed offences but as far as the tribunal was concerned they were not a danger to the public at the time they were given day release. For the Leader of the Opposition to suggest that every forensic patient should be locked up - that we should go back to the troglodyte days and throw away the keys - is outrageous. The Government has embarked upon a program that tries to deal with these people as patients and lead to their eventual reintegration into the community when that is appropriate. The troglodyte Leader of the Opposition wants to take mental health treatment back to the dark days. I did not hear one Opposition member support his statements - and that is of some credit to them - but neither did any of them seek to distance themselves from that position. It is about time Opposition members

started to examine themselves and ask where the Labor Party is going on issues of concern to the community.

OPEN TRAINING EDUCATION NETWORK SERVICES

The Hon. R. T. M. BULL: I address my question to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier. How many students are taking advantage of the educational services offered by the open training education network, and what services are offered by OTEN?

The Hon. VIRGINIA CHADWICK: The question asked by the Hon. R. T. M. Bull is indeed timely as only yesterday I had the pleasure of inspecting the OTEN site at Strathfield. The collaboration between the State Government and the Commonwealth Government in the delivery of

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expanded and highly professional services to distance education students, both in school and in vocational training through technical and further education, has to be commended. I am particularly proud to be able to inform the House that, through OTEN, the Government provides education and training to about 27,000 students in New South Wales. That is an extraordinary success story. I am equally proud that some 12 months ago I announced that the distance education component of the Department of School Education and the open learning component of TAFE would be combined in the magnificent new facility at Strathfield that is now being constructed. That amalgamation is working very well, with no detriment to either the long and very proud history of the Department of School Education in the provision of what used to be correspondence or distance education or the valued contribution of TAFE. Rather, the amalgamation is to the benefit of students, through expanded choices and opportunities both in subject choice and in the use of technology.

In addition to inspecting the site yesterday with my colleague Paul Zammit, the local member, I was very pleased to have the opportunity to present three statewide TAFE medals to our top students. In terms of the very high quality of distance and open learning available in New South Wales, it is worth noting that in 11 subjects in last year's higher school certificate the top student worked through open learning, distance education. Decades ago distance education as a method of providing education was only a second option, something provided to students in very isolated areas or in very special circumstances. That is not the case now. Through the use of technology and expertise that has been developed both in TAFE and in school education, distance education is now well and truly a legitimate and equal partner in the provision of education and training services in this State.

ENTERPRISE AGREEMENTS

The Hon. J. W. SHAW: I direct my question to the Minister for Education, Training and Youth Affairs, representing the Minister for Industrial Relations and Employment. Does the Minister acknowledge that the former industrial relations Minister, now the Premier, gave an undertaking that 12 months after the proclamation of the Industrial Relations Act a full bench of the Industrial Relations Commission would be requested by ministerial reference to review and report to the Government in relation to the industrial and economic consequences of the introduction of enterprise agreements? Does the Minister acknowledge, three years after the proclamation, that the Government has failed to honour this agreement? When does the Government intend to keep its promise to allow an independent review by the Industrial Relations Commission of the enterprise bargaining arrangements?

The Hon. VIRGINIA CHADWICK: I do not immediately recall the matter that has been raised but I shall certainly refer it to my colleague the Hon. Kerry Chikarovski for her informed and detailed comment. I am somewhat heartened by the enthusiastic way in which members opposite, through the Hon. J. W. Shaw's question, are now clearly embracing the basic elements and thrust of the industrial legislation,

which had such a tortuous path through this Parliament over three years ago. We all recall three weeks of constant sittings in this House and the rather historic visit, upon invitation, to my colleague the present Premier. Such was the opposition, such was the strenuous and somewhat entrenched troglodyte positions adopted by members opposite. It is gratifying to note, through the question of the Hon. J. W. Shaw, that the day of reality and - dare I say it - enlightenment may be upon us.

SCHOOL COMPUTER USE

The Hon. HELEN SHAM-HO: My question is directed to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier. Will the Minister inform the House about the special one-off \$10 million grant for school computers? How important is computer education in schools? What is the current student-computer ratio in our schools?

The Hon. VIRGINIA CHADWICK: The Hon. Helen Sham-Ho has asked a very important question and has a continuing interest in education in New South Wales. I was absolutely delighted to join the Premier last week in making a most welcome and valuable announcement about computers and school education in New South Wales.

The Hon. Dr B. P. V. Pezzutti: That was at Parramatta.

The Hon. VIRGINIA CHADWICK: Indeed, it was at Parramatta. The injection of \$10 million will allow the Government to continue the valuable work that it has undertaken since 1989 in computer education.

The Hon. Franca Arena: It was political expediency to choose Parramatta.

The Hon. VIRGINIA CHADWICK: Let us talk about expediency. What did this Government inherit in 1988-89? When we looked at the shabby treatment of education over a long period, what did we find? If you walked into the office of a school and talked to the ancillary staff, did they have a computer? No. They were still working with pencils, ledgers, Gestetners and the like. This Government brought automation and technology into the administration of the Department of School Education. How many computers were in classrooms and available to our students in 1988-89? Statewide there was one computer for every 60 students. That is the importance that the Labor Government placed on introducing our children to the technology of the twenty-first century. What was the position a week ago as a result of a \$95 million program sustained right through the recession, throughout which we had kept up funding for computers and technology in our schools? I know that the Hon. Franca Arena could

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not care less. By last week this Government had changed the ratio from one computer for every 60 students to one computer for every 22 students.

The PRESIDENT: Order! I cannot hear the Minister.

The Hon. VIRGINIA CHADWICK: This matter may not be important to the people opposite but it is very important to people on this side of the Chamber. With the injection of another \$10 million into computer technology in our schools, the ratio has decreased to one computer for every 19 students. That is an unprecedented improvement. Again New South Wales leads our nation as this Government provides resources to our students to take them into the twenty-first century. I am not surprised that the Hon. Franca Arena rabbits on. Having been a member of the Schools Commission without addressing the question of technology in our schools, she should be ashamed of herself. The Government is very proud that it leads the nation in the provision and availability of computers. Every school in the State will benefit from this grant, and that will benefit every student in this State. There are certainly no whiteboards in our education system.

RACETRACK SAFETY

Reverend the Hon. F. J. NILE: I ask the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier, representing the Minister for Sport, Recreation and Racing, a question without notice. In view of the tragic death of the world-famous Formula One driver Ayrton Senna, will the Government review the safety regulations for Formula One and other racing cars and racetrack conditions for any future racing in New South Wales, especially in areas campaigned for, such as puncture-proof fuel tanks, full harness safety belts, roll bars, carbon fibre seat survival cells, oxygen bottle, traction controls, improved braking systems, et cetera?

The Hon. VIRGINIA CHADWICK: I am sure that all honourable members were shocked and appalled by the death of this world champion. Despite the wonderful spectacle of some of those races, I suspect many of us have been lulled into a false sense of security - the spectacle without a spate of serious injuries or deaths. For two people to be killed within a day or so, one being a high-profile world champion, makes us all pause for thought. I understand that many of the safety regulations, including some of those referred to by my honourable colleague, are set as international standards rather than local standards. I concede that I do not profess in any way to be an expert on these matters. Our conduct of similar races is a matter of pride and concern. We would wish not in any way to reduce the spectacle but to ensure that safety of the highest standard is maintained. I will refer the question to my colleague, who, I am sure, will be keen to respond.

VOLUNTARY INDUSTRY CODES

The Hon. B. H. VAUGHAN: I refer my question without notice to the Minister for Planning and Minister for Housing, representing the Minister for Consumer Affairs. I refer to the signing yesterday of the jewellery and timepieces industry code, a compliance that is entirely voluntary. Why does this Government persist in such voluntary codes when, to take two recent examples, including one of particular importance to me, the voluntary code of practice for leases and the voluntary code of practice for tobacco advertising, have been absolutely ignored by both industries involved?

The Hon. R. J. WEBSTER: I shall refer the honourable member's question to my colleague and seek a speedy answer from him, but I will make a general comment about regulation. I am sure the honourable member would agree that regulation can have the effect of enforcing minimum standards for the benefit of the community but that it can also have a negative effect. If it is possible for voluntary codes and regulations to work - and they have worked in many industries over time - surely that is the best way to go. Having read with great interest the contribution in this House by the Leader of the Opposition on the Address in Reply, when he spoke about wholesale slashing of regulations and red tape, I wonder whether he and the Deputy Leader of the Opposition are members of the same party, let alone the same faction. I commend the speech of the Leader of the Opposition to the Deputy Leader of the Opposition because it may help him to get his obviously jumbled thoughts on regulation into some perspective.

CORRECTIVE SERVICES INDUSTRIES STANDARDS

The Hon. J. M. SAMIOS: My question without notice is directed to the Attorney General. Is the quality of the products produced by Corrective Services Industries near the standard of private manufacturers or is its involvement just a means of keeping inmates occupied?

The Hon. J. P. HANNAFORD: I commend the Hon. J. M. Samios, who is a member of the ethnic advisory committee on corrections, for his interest in what is going on in Corrective Services Industries. In fact, the honourable member visited Long Bay gaol during the past few days. I thank him for his interest and for encouraging others to maintain an interest in this matter. I have spoken at length of the

need to keep prison inmates involved in some meaningful activity, be it in education or industry, and I have made a number of comments in this Chamber. While the aim is to keep them occupied and to give them a feeling of achievement, there would be little point if we were to accept substandard efforts and substandard products as the end result.

Inmates need to be given some pride in the work they carry out or it will not mean anything to them and they will not continually try to improve

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themselves. This became evident during the past couple of weeks with the awarding of Australian Standard 3902 to the Cooma Correctional Centre textile plant. This is the first time an Australian standard has been awarded to a correctional centre, and Cooma is only the second correctional centre in the world to receive the award - the other centre being in Canada. The standard recognises the quality of work produced at Cooma and is a signal to companies wanting to buy its products that its production is consistently top quality. Hopefully, the award will mean increased business for the Cooma textile plant, and that in turn will mean that the centre will be able to employ even more inmates. Currently, in the New South Wales correctional system 80 per cent of inmates work one shift and have one period of education each day.

But I should point out that, although the Government wants the inmates to try to produce a quality product, Corrective Services Industries will never be competitive with private manufacturing companies. The department's overheads are extremely high when one takes into account the security measures, training and supervision needed, plus the fact that inmate labour cannot, by definition, be as productive as trained and skilled private sector workers. Keeping inmates occupied and involved in some activity during the day averts boredom and gives them skills which can be used to secure a job when they are released. The whole aim of Corrective Services Industries is to show inmates that they can work as part of a team and to give them the confidence to realise that they do not have to re-offend in order to make a living. If we can progressively cut down the recidivism rate, we will progressively reduce the number of houses broken into, cars stolen and violent crimes committed.

It is disappointing to realise that the vast majority of inmates did not work before entering correctional centres. Industry in correctional centres is a real training ground for the development of workplace skills and a work ethic. It is an opportunity for people to change for the better. The inmates in Cooma have now achieved a goal and, hopefully, it will make them want to take that a step further. The application for an Australian standard was initiated 15 months ago by the department's Sydney office, and was based on Cooma's good track record and the industrial systems already in place there. Among its current output the plant produces such interesting products as body bags for the health system -

The Hon. Virginia Chadwick: Send one to Peter Anderson.

The Hon. J. P. HANNAFORD: Yes, we might gift wrap some of them and provide them to the Labor Party; and pillow cases, and school aprons for the Department of School Education. The inmates are being taught world-class skills that will enhance their chances of employment when they return to society. The Cooma plant currently employs 75 of its 160 inmates and is overseen by five officers. The Australian standards award is a joint effort by inmates and officers. If the inmates had not been on side with the effort and worked to conform to the Australian standard, they would not have won the award. This is a unique achievement for correction centres, not only in New South Wales but throughout Australia. It is an indication of the effectiveness of industry in our prisons. While I repeat that Corrective Services Industries will never be competitive with privately owned companies, the fact that these men have united with correctional services officers to achieve this recognition is a tribute to them; it is an ethic that they will transfer to other inmates as they come into the system. It provides a standard for other inmates to maintain, and they will have a tremendous sense of satisfaction within the system if they can do so. I commend the inmates and staff for that effort.

HELENSBURGH LAND ZONINGS

The Hon. R. S. L. JONES: I ask a question without notice of the Minister for Planning and Minister for Housing. Has the Minister announced a commission of inquiry into proposed land use and zonings within the vicinity of Helensburgh in the City of Wollongong? Is the commissioner, Dr Mark Carleton, the person who approved the proposed ocean outfall at Look At Me Now Headland and who presided over last year's inquiry into the extension of Port Kembla coal terminal and did not recommend reducing the number of coal trucks on Mount Ousley Road? Is one of the companies involved in a major proposed subdivision of 500 hectares, the property developer Lang Walker? Did the Walker Corporation make a donation of \$30,000 to the Liberal Party between 10 and 17 April 1991? Why has the Minister announced this inquiry into the use of this highly sensitive land when Wollongong Council has, on two occasions, voted against the development of this area?

The Hon. R. J. WEBSTER: I am not quite sure what the Hon. R. S. L. Jones is driving at from the tenor of his question. However, if I interpret his remarks correctly, if, by associating Dr Mark Carleton - who is a very fine commissioner of inquiry - with a number of developments, he is trying to insinuate that Dr Carleton might somehow not be objective in the way in which he goes about his business, I utterly reject that suggestion. I call upon the Hon. R. S. L. Jones to make those insinuations outside this House. To cast aspersions upon commissioners of inquiry is tantamount to casting aspersions upon members of the judiciary, because commissioners are de facto members of the judiciary. I suggest that the Hon. R. S. L. Jones should think very carefully before he utters one more word about commissioner Mark Carleton.

As for the other part of the honourable member's question, as members of this House know, I am a member of the National Party. I have no idea whether Mr Walker or anyone else has given money to the Liberal Party and I have no idea what relevance that would have to this development. As for the commission of inquiry into the land at Helensburgh,

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it is fair to say that that issue has been one of considerable concern to residents of that area and people within the Wollongong Council area for a long time. Many people in the town of Helensburgh believe that the town will not grow and will not survive without further urban development. A large number of representations on this issue have been made to me and to my predecessor. I met with the mayor of Wollongong to hear what he and his council had to say on this subject before making my decision to hold a commission of inquiry. That inquiry will be independent; it will listen to the views of all parties, both for and against future urban development of Helensburgh; and, as with all commissions of inquiry, I will abide by its recommendations.

STATE WARDS PROTOCOL

The Hon. R. D. DYER: I ask the Attorney General and Minister for Justice a question without notice. Did the Government last week complete a protocol devised by the Department of Community Services and the Office of Juvenile Justice to clearly delineate areas of responsibility regarding the care of State wards facing criminal charges? Does the Minister believe that this protocol will satisfy the concerns raised in the past by Children's Court magistrates regarding a lack of suitable accommodation where juveniles can be housed when released on bail?

The Hon. J. P. HANNAFORD: I am pleased to inform the House that such a protocol has been completed. If my recollection is correct, the honourable member raised this matter towards the end of last year. At that time I informed the House that a protocol was being negotiated to address an issue raised by the Children's Court magistrate in Wollongong. I am led to believe that the completed protocol will satisfy the magistrate's concerns. I hope that the problems that have occurred previously, which were caused by young people falling between the chairs of responsibility of the Office of Juvenile Justice and the Department of Community Services, will now be redressed. I know that an issue of concern to all

three Ministers who had responsibility for the administration of the community services portfolio was that of patch protection. I am pleased that an agreement has now been reached to overcome that problem.

NATIONAL EQUITY PROGRAM AGREEMENT

The Hon. D. F. MOPPETT: My question is addressed to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier. Is the Minister aware of the intense interest that was expressed at the recent Isolated Children's Parents Association conference in Hay about the future of equity programs for disadvantaged schools and other categories under those programs? Will the Minister inform the House whether New South Wales has signed the national equity program agreement, and what the benefits of that agreement are to New South Wales?

The Hon. VIRGINIA CHADWICK: I commend the Hon. D. F. Moppett for his continued interest in education, particularly the education of isolated rural children. The discussions at the Isolated Children's Parents Association conference demonstrate his intense interest in those issues. Last week I was somewhat startled to read in the newspaper that New South Wales had not signed what is known as the NEPS or equity program agreement. The formulation of that agreement has involved me in many discussions with my Canberra colleagues and a great deal of negotiation between our offices and departments. The agreement is vitally important, representing as it does the release of equity funds totalling about \$400 million. Obviously not all of those funds will flow to rural education, much as I am sure some of my colleagues might like that to happen.

The national equity program agreement is underpinned by a set of different programs that deal with a number of equity areas, including disadvantaged families, students with special needs, special training services, and rural education. Although the negotiations were rather long and tortuous, I am pleased with the result. I have signed the agreement and I expect that by this time Minister Free will have also signed it on behalf of the Commonwealth. That means that the negotiations were worth while. The money that will flow to New South Wales will represent an increase of about 5 per cent on the amount allocated in 1992-93.

BEHAVIOUR MODIFYING DRUG ADMINISTRATION

The Hon. FRANCA ARENA: I ask the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier a question without notice. Has the Minister seen reports in yesterday's *Sydney Morning Herald* that Dr Mark Clayton, a newly appointed adviser to her ministry, has stated that schools should administer the powerful behaviour modifying drugs that a growing number of students with learning difficulties are taking? Does the Minister think that schools should adopt such procedures to ensure that a child's medication is not only administered but monitored, so that there are no overdoses of drugs? Will she instruct her department to take such action?

The Hon. VIRGINIA CHADWICK: I should like to make one or two comments about the question asked by the Hon. Franca Arena because I also read the comments in yesterday's newspaper. I was somewhat surprised to read that a person who started work in the Ministry of Education and Youth Affairs as recently as last Monday was reported as talking about these issues as a departmental expert.

The Hon. J. R. Johnson: He is like all of your mob - they are instant experts.

The Hon. VIRGINIA CHADWICK: I note the interjection of the Hon. J. R. Johnson. However, this man is renowned as a national and, indeed, an international expert. Some of his comments were

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made at a conference to which he had been invited to speak as an expert on medication and learning difficulties. He is, in fact, an expert, but at the stage he made those comments he was not working in the

Ministry of Education and Youth Affairs, although he is now. A range of programs and protocols within the Department of School Education relate to particular aspects of medication, whether for children who might be diabetic or asthmatic, or who, for one reason or another, are on different types of medication.

It is important to ensure a balance between a number of important factors. Those factors are the need to ensure that a teacher - or, indeed, an approved member of staff - knows precisely what he or she is doing, is comfortable with it and has agreed to be the designated person and to take that important responsibility. That needs to be negotiated between the medical expert, the family involved and, indeed, the teacher or other person so that all those factors are balanced. As I understand it, Dr Clayton was referring to the need to ensure that those co-ordinations, whether they are between those parties to whom I have referred or between departments, are in place. I feel comfortable with all of that. Protocols have been in place in the Department of School Education since at least 1986. Today I have taken the trouble to look at those protocols to ascertain if they are in order and whether the interests of the teacher or staff member, the child and the family are protected. Those protocols are well established and, so far as I am aware, they are working fairly well.

I would be very nervous about taking the protocols any further, and I would need a lot of persuading to do so. If mind-altering substances are to be involved - particularly if the efficacy of those substances has not been proved - in a sense I have a threefold responsibility. In many ways the teachers and staff in our schools are what I would almost term co-parents. They take a broader responsibility than merely the traditional educating of a child. They have a delicate co-parent responsibility. I am nervous about whether teachers and staff would have the ability or the willingness to become involved in the administration of mind-altering substances. The simple answer is twofold. The Government does have protocols in place and they have been working well for a long time. Any move to expand either the range of medications or the involvement of teachers or staff in the administration of any of those medications is a serious matter for everyone concerned and would require a lot of thought and consultation before implementation.

POLITICAL NEPOTISM

The Hon. D. J. GAY: Is the Minister for Planning and Minister for Housing aware of bizarre statements made by the Opposition spokesman for housing in another place? Does he believe those statements have anything to do with the ancient practice of nepotism?

The Hon. R. J. WEBSTER: I have been studying the *Concise Oxford Dictionary* because I wanted to bring to the attention of the House the definition of nepotism: undue favour of appointing one's relatives to office. Nepotism began with the popes who appointed their illegitimate sons and called them nephews. It is true that the Australian Labor Party is suffering a particularly acute dose of nepotism.

The Hon. I. M. Macdonald: Get on with it.

The Hon. R. J. WEBSTER: I am getting on with it. The reason for my shadow spokesperson's bizarre behaviour may well be that she is a product of nepotism. She is a member of Parliament, as is her brother. A recent article in the *Australian* said, "Keep it all in the family". There are so many family groups in this place that they would not be able to fit in a telephone booth.

[*Interruption*]

The Deputy Leader of the Opposition is not a product of nepotism, so far as I am aware, but I am happy for him to disabuse me of that fact. We have had Laurie Brereton and Mrs Grusovin; we may have the Eassons; we certainly have the Della Bosca-Neal alliance; we have the Albanese alliance with his friend Carmel Tebbutt who, I understand, will soon be endorsed for the seat of Ashfield; we have Jeff, the son of Merv Hunter, in another place; we have Stan, the son of George Neilly; we have Craig, the son

of another Stan, Knowles; we used to have Laurie Ferguson, but he has gone to Canberra; we are soon to be joined by Laurie Ferguson's brother-in-law, who will be the honourable member for Liverpool; and I understand that the two other Ferguson boys are soon to enter Parliament, so we will have the whole family.

The PRESIDENT: Order! Hansard has the difficult task of reporting the proceedings.

The Hon. M. R. Egan: On a point of order: is it in order for the Minister to make a personal reflection on the Chair?

The PRESIDENT: Order! It is not in order for the Minister to make a personal reflection on the Chair, and I heard no such reflection.

The Hon. R. J. WEBSTER: Then we have from the Hunter the Morrises, the Joneses, the Neillys -

The PRESIDENT: Order! I call the Hon. Dr Meredith Burgmann to order.

The Hon. R. J. WEBSTER: I can understand why Labor Party members are slightly sensitive and precious about this.

[Interruption]

Why would the Left be helping the Right? I have done some counting today and it is interesting to note that five members of the Right faction opposite are retiring at the next election, but there are 10 people who want their jobs. Those 10 people might have a chance of getting their jobs. Who will give up a spot for Peter Anderson?

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The Hon. Franca Arena: Not I. You can tick me off the list.

The Hon. R. J. WEBSTER: That is one strike. Will the Leader of the Opposition give up his spot for Anderson? Will the Hon. K. J. Enderbury give up his spot for Whelan? Will the Hon. Judith Walker give up her spot for Henry Tsang, Deputy Lord Mayor? I am disappointed that the Hon. J. R. Johnson is not in the Chamber. I understand that he was in the lower House during question time. The Premier accused him of being there so that he could keep an eye on the Leader of the Opposition to make sure that the Leader of the Opposition did not give the honourable member's seat away to the Hon. Peter Anderson. What about Peter Primrose? When he loses Camden again he will have to find a seat and the Labor Party has already promised him one of the Right seats. Five members of the Right are already in this Chamber and at least another five want their seats. That is why the people on the Left should feel a little uneasy. I know that the Hon. Delcia Kite is retiring, but if I were the Hon. A. B. Manson or the Hon. Ann Symonds I would be feeling very nervous, not to mention the Hon. P. F. O'Grady, because I know that the failed Labor candidate for Lismore has already announced that she is coming to the upper House at the next election.

The Hon. Dr Meredith Burgmann: The Australian Labor Party believes in women.

The Hon. R. J. WEBSTER: So she is coming? Whose place is she taking?

The Hon. Virginia Chadwick: Andy's seat.

The Hon. R. J. WEBSTER: Government members hope that some appointments that may take place on the other side do not follow in the line of some of the royal houses of Europe where nepotism, over a long period, achieved some dastardly results. I wish my colleagues on the other side well in their

deliberations.

POLICE CORPORATE SPONSORSHIP

The Hon. ELAINE NILE: My question without notice is directed to the Attorney General, Minister for Justice and Vice President of the Executive Council, representing the Minister for Police and Minister for Emergency Services. Is it a fact that the New South Wales Police Service has announced a new policy seeking sponsorship by private companies, with logos on police cars, police stations, uniforms, et cetera? What is the Government's policy in response to this controversial sponsorship scheme, which will demean New South Wales police officers?

The Hon. J. P. HANNAFORD: I note that Mr Jarratt from the Police Service flew a kite, to put it kindly, about sponsorship. I also note that the next day the Minister for Police shot down the kite. There is no Government proposal to support sponsorship in the way it was proposed.

ANTI-DISCRIMINATION ACT AMENDMENT

The Hon. Dr MEREDITH BURGMANN: My question without notice is directed to the Minister for Education, Training and Youth Affairs, representing the Minister for Industrial Relations and Employment and Minister for the Status of Women. Will the Minister inform the House when the exemption for industrial awards under section 54 of the Anti-Discrimination Act will be repealed? Is the Minister aware that the former Minister for Industrial Relations, Mr Fahey, promised to repeal the section in 1991 and that the current Minister for Industrial Relations and Employment promised to do so in 1993? How long do women have to wait for this important reform, which will bring New South Wales legislation into comity with Federal legislation?

The Hon. VIRGINIA CHADWICK: I thank the Hon. Dr Meredith Burgmann for the implied support for the consistent policy of the Government. As to the implementation of that policy, I will check with my colleague in another place.

The Hon. J. P. HANNAFORD: In view of the hour, I suggest that any further questions be put on notice.

HEALTH LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL

Second Reading

Debate resumed from an earlier hour.

Reverend the Hon. F. J. NILE [5.0]: The Call to Australia group is pleased to support the Health Legislation (Miscellaneous Amendments) Bill. The bill covers a number of important areas, the most important of which arose from the tragic case in which a number of patients were infected with HIV-AIDS when attending a surgery for minor surgical treatment. Apparently four people were infected, and at least one of those has since died. It is similar to the tragedy of the 400 people who were infected with AIDS through the Red Cross blood transfusion service, some through blood transfusions and others through the use of blood products. That is a parallel situation to that which occurred in the doctor's surgery. This legislation intends to reduce and, if possible, eliminate the possibility of that happening in the future.

The bill will amend the Public Health Act 1991 to modify the circumstances in which information

about persons who have been tested for, or who are infected with, HIV-AIDS can be disclosed. It will require authorised medical practitioners to take into account certain matters when making public health orders. The bill will extend the Act to cover requests by medical practitioners and registered nurses for cervical cytology tests to be carried out. It will require the results - whether positive or negative - of cervical cytology tests, and certain other prescribed tests, to be reported to the Director-General of the
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Department of Health and will provide that information identifying the patient can, but only with the consent of the patient, be sent to the Director-General in the test report.

The bill will make a number of other amendments. There has been some discussion in various areas following this tragic case. There has also been a report of the Anti-Discrimination Board dealing with the Public Health Act 1991. This legislation will take up the point of the wording in the Act which is being amended. It states: "... disclosure as a normal duty as a consequence of providing the service in the course of which information was obtained". The words "normal duty" have had a limiting effect and need to be clarified. This legislation will do that. For that reason the Call to Australia group is pleased to support the bill. "Normal duty" was seen to be an imprecise term and it created the potential for misuse.

The Minister for Health referred to the apparent danger that a chain of disclosure could be created with each person in the chain being able to claim a need to know which is not connected with public health or the needs of the HIV positive individual concerned. The bill will amend the existing wording of section 17(3)(d) of the Public Health Act 1991 so as to clarify the situation by providing that a person who, in the course of providing a service, acquires information that another person is HIV positive may only disclose the information to a person who is involved in the provision of care and treatment or counselling of the other person if the information is required in connection with providing such care, treatment or counselling.

I hope that the bill will remove the concern of some persons involved in the Police Service and the Ambulance Service, particularly the paramedics, who may have come in contact with a person who, through an accident or some other injury, has shed blood. The blood may come in contact with the police officer or paramedic - sometimes it is done deliberately by threatening persons. If the injured person is shown by testing to be HIV positive, that information should be passed on to the police officer or paramedic involved. That should also be the case if the person is tested negative - that is probably just as important so that the officer involved will not experience unnecessary concern about his or her health and safety because of contact with that patient's blood.

Another matter that has been raised in the debate, and with me directly, concerns the Association of Dental Prosthetists. The association was concerned that the bill was defective because it omits any reference to infection control procedures to apply to dental technicians. The association and the people it represents want to ensure that the dangers of cross-infection in the laboratories of dental technicians are recognised and are provided for in this legislation. I have had discussions with the office of the Minister for Health. I believe it is not necessary to amend this legislation. The Association of Dental Prosthetists wants to amend the Dental Technicians Registration Act 1975 by adding "(k) infection control standards to be followed by dental technicians engaged in technical work".

I understand from the Minister's office that there is no need for that amendment to be moved, even though the association's concern is for the well-being of patients and to ensure that the highest possible infection control standards are required in that part of the dental industry. For that reason I have asked the Minister's office for an assurance that, even though the Association of Dental Prosthetists feels the wording of the Act is insufficient, the Minister believes it is sufficient; and that if the association drafts a plan for infection control in its area of activity the Minister will take steps to incorporate that in a regulation that is part of the Act. If the Minister gives me that assurance, I see no need to support the proposed amendment.

The Hon. BERYL EVANS [5.7]: It is with pleasure that I speak to the Health Legislation (Miscellaneous Amendments) Bill. The proposed changes to the New South Wales health legislation can be summarised as follows. Schedule 1 amends the Public Health Act 1991 relating to HIV-AIDS confidentiality. It makes further provisions regarding public health orders and strengthens those provisions relating to the disclosure of HIV-AIDS related information. Schedule 2 amends the Public Health Act 1991 to provide for the reporting to the Director-General of the Department of Health of both positive and negative cervical cytology test results. The reporting of this information will enable the establishment and effective operation of a cervical cytology registry.

Schedule 3 makes amendments to the Area Health Services Act 1986, Public Hospitals Act 1929 and the Ambulance Services Act 1990 to allow the Health Administration Corporation to enter into enterprise agreements and to enable these agreements by area health services, hospitals and ambulance services to be registered under the Industrial Relations Act. Schedule 4 makes amendments to the Medical Practice Act 1992, the Dentists Act 1989 and Dental Technicians Registration Act 1975 to provide powers to set infection control standards for equipment used in doctors' and dentists' private rooms and by dental prosthetists.

Schedule 4 also makes amendments to the Physiotherapists Registration Act 1945, the Optical Dispensers Act 1963 and the Dentists Act 1989 to allow for the making of regulations in circumstances other than on the recommendation of the board, which will standardise the regulation-making powers in all our health professional registration Acts. Schedule 5 makes amendments to the Psychologists Act 1989, the Podiatrists Act 1989 and the Physiotherapists Act 1945 to standardise certain disciplinary powers in line with other health registration Acts.

I would like to make some comments in relation to both the cervical cytology register and HIV-AIDS confidentiality. Honourable members will know of

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my involvement in Cancer Awareness Week for Women in the Workplace, an awareness campaign which offers free screening clinics in women's workplaces in an effort to improve women's attitudes towards cancer risks. I have been following keenly the establishment of a cervical cytology registry in New South Wales. In 1992 the Commonwealth and States agreed to adopt an organised approach to preventing cancer of the cervix.

In entering the agreement, the Commonwealth and States agreed to take a public health approach in which the prime aim is to offer services to as wide an audience as possible, remembering that there is a potential audience of 1.8 million women in New South Wales. The target audience is women aged 18 to 70 years. Specific target groups include: women over the age of 50 years; women of Aboriginal and Torres Strait Islander descent; women from non-English speaking background; women from rural and remote areas; and women of low socioeconomic background - generally women who have traditionally had very low screening rates.

Critical to the success of the program is the aim of converting women's intentions to have a pap smear into action and then encouraging them to go back to the service every two years. Therefore, the State planning and co-ordination unit for cervical cancer screening has been established within the New South Wales Cancer Council to publicise the program. The unit will be responsible for the operation of the statewide cervical cytology registry, a function of which is to monitor individual women and send out reminders if women forget to have regular tests. It will also have an extremely valuable role in providing quality assurance in the cancer of the cervix prevention program.

The purpose of schedule 2 to the bill is to make modifications to the existing legislation to enable the registry to proceed. In addition to providing for the reporting to the director-general of both positive and negative cervical cytology test results, the amendment is worded to ensure that reports do not disclose the name and address of the patient unless the patient has consented to the disclosure of such information. The New South Wales Privacy Committee is to be consulted in establishing the registry to

ensure that privacy and access issues are adequately addressed. I would like to add here that both the Australian Medical Association and the Royal Australian College of General Practitioners have indicated their support for the establishment of the registry. Furthermore, pathology laboratories have been informed about the proposed register and they are in full support.

On the disclosure of HIV-AIDS information and the issue of public health orders, the amendments are in response to concerns raised by the Anti-Discrimination Board's report of its inquiry into HIV-AIDS related discrimination and by the New South Wales Health Department. The Public Health Act prohibits the disclosure of information about persons who have been tested for or who are infected with HIV-AIDS. However, such information can be disclosed in certain circumstances. The proposal will provide that information about a person's HIV-AIDS condition may be disclosed to a person involved in providing care to or treatment or counselling of the person who has been tested or is infected with HIV-AIDS, but only if the information is required in connection with such care, treatment or counselling.

The amendment regarding public health orders will require an authorised medical practitioner, when making a public health order, to take into account guidelines provided by the director-general as well as the principle that the order should restrict the liberty of a person only if this is the only way to ensure that the health of the public is not endangered. This will ensure effective administration of public health orders while enabling the free flow of information to address public risk situations. I support the bill.

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [5.14], in reply: I thank all honourable members for their contributions, particularly in light of the importance of the amendments, which we agree will benefit the health of people of New South Wales and will assist specific groups in relation to their future health. My colleague the Hon. Beryl Evans just alluded to that. While there has been agreement on and support for the legislation, for which I am grateful on behalf of the Government, the Hon. Elisabeth Kirkby raised an issue - not in opposition to the bill but to seek clarification - to ensure that the concerns of dental technicians are addressed within the ambit of this amending legislation. Reverend the Hon. F. J. Nile raised the matter in his contribution.

A couple of points need to be made in reply on that matter, particularly as the Hon. Elisabeth Kirkby has moved an amendment. Dental technicians wrote to members expressing concern that they believed that they were not covered by the legislation. The Hon. Elisabeth Kirkby referred to the letter, a copy of which we all have, from the Minister for Health, the Hon. Ron Phillips, which specifically addresses the concerns of the Dental Technicians Registration Board. The Government believes that dental technicians are covered under section 35(2)(f) of the Dental Technicians Registration Act and therefore it is not necessary to include dental technicians in the current proposal - not because they are not important, not because there are not legitimate concerns that must be addressed, but because dental technicians are already covered.

The proposed amendment would fill a gap in the regulation-making powers of the Acts referred to in respect of the standards of infection control to be followed by doctors, dentists and dental prosthetists. However, there is already an existing regulation-making power similar to the one we are putting into these Acts in the Dental Technicians Registration Act to enable standards of hygiene to be established for dental technicians. Accordingly, we legitimately believe - not that the matter is not of concern - that the matter is already covered. Section 35(2)(f) of the

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Dental Technicians Registration Act allows regulations to be made "for the standards of hygiene to be observed by, and protective clothing to be worn by, dental technicians and persons employed in and about premises used for or in connection with technical work". This regulation-making power specifically refers to dental technicians and other persons employed in laboratories carrying out technical work.

I repeat: it is not that we do not understand and do not have sympathy with what the Hon. Elisabeth Kirkby has said; rather, the provisions of the amendment she has foreshadowed are already covered

under other legislation. However, given that there is no disagreement in this Chamber about the importance of this matter, and given that the matter was raised by the Dental Technicians Registration Board, that board has the right and the authority to make recommendations to the Minister about the Act being amended and about its own Act. After discussions with my colleague the Hon. Ron Phillips, I am authorised to give the assurance that Reverend the Hon. F. J. Nile seeks: if the board, upon reflection, wishes to make a submission about regulations that it believes would strengthen or enhance the protective measures, the Minister for Health would be happy to examine and entertain such proposals.

Reverend the Hon. F. J. Nile: That is relating to infection control.

The Hon. VIRGINIA CHADWICK: Indeed, that includes any proposed regulations relating to infection control. This matter is interesting. It is not that we find ourselves in disagreement; rather, it is a matter of the way in which we interpret the existing legislation and the proposals before the House. I should have thought that the offer and the assurances of my colleague the Hon. Ron Phillips would clarify the matter and would bring us all into agreement on this worthwhile and important proposal. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Schedule 4

The Hon. ELISABETH KIRKBY [5.25]: I move:

Page 11, Schedule 4, line 11. After "prosthetics", insert "and by dental technicians while carrying out technical work".

One of the Acts to be amended by the bill is the Dental Technicians Registration Act 1975. The House is already making amendments relating to the standard and control of infection and is already amending the Dental Technicians Registration Act, so I do not recognise any reason for not including my amendment, which refers to dental technicians. I am not satisfied with the Minister's explanation which, of course, is the explanation given to me earlier today by the Minister's advisers. In spite of the remarks I made in my second reading contribution, there still seems to be confusion in relation to what are standards of hygiene and what are infection control standards. Schedule 4, proposed new section 35(2)(j), uses the expression "infection control standards to be followed by dental prosthetists engaged in the practice of dental prosthetics". Why should infection control standards not refer to dental technicians in exactly the same way as they refer to other dental practitioners?

A few moments ago the Minister in reply said that if it were thought necessary and if the Dental Technicians Registration Board wanted to put forward a submission to change these regulations, the Minister would be prepared to examine such submission. I ask honourable members how many months we will have to wait for that to happen. It certainly would not happen before the House rises for the winter recess. Dental technicians would have to put forward their proposals and the only assurance given to the House is that the Minister will examine those proposals. There has been no assurance that the Minister will impose the same infection control standards on dental technicians, even if they themselves wish that.

The Minister will examine the proposal, and that may take months or possibly even years. In the meantime, everybody else affected by the legislation - and by that I mean dental practitioners and dental prosthetists - is covered by the amendments but dental technicians are not. That is the reason for my amendment. There is no need to labour this matter any further: I thought I went into considerable detail

in my second reading contribution. I beg honourable members on the Opposition benches and Reverend the Hon. F. J. Nile and the Hon. Elaine Nile to support me in my amendment.

The Hon. J. W. SHAW [5.28]: The Opposition has considered the amendment put forward by the Hon. Elisabeth Kirkby and is prepared to support it. The amendment does seem to address an anomaly in the legislation. Opposition members understand the Government's basic defence to the amendment to be that the matter has already been covered. The Hon. Elisabeth Kirkby has pointed out the difference between infection control and hygiene. It is not clear that the powers in relation to dental technicians deal fully and adequately with infection control and regulations made in relation to infection control.

If the Government is right and the matter has already been covered then the amendment would do no harm - it would simply put the matter beyond doubt and create an adequate power in any event. Given that a doubt does exist and that dental technicians do the kind of work that needs regulation in relation to infection control, it would be sensible to make sure that all of the relevant classes of professionals who perform this work and who need some superintendence in relation to infection control are adequately covered by legislation.

Reverend the Hon. F. J. NILE [5.29]: I understood from the Minister's assurances that the regulation was not simply based on the word "examine", which has been referred to by the Hon.

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Elisabeth Kirkby, and that if the Dental Technicians Board and other bodies produce a draft set of infection control regulations it could be incorporated by the Minister through the regulation process. It is my understanding that the Government has no objection to infection control procedures for dental technicians and that the Government believes the term "hygiene" to be sufficiently wide to include the regulations that the Government would incorporate. The term "examine", in my understanding, did not mean that the Government would examine proposals and then reject them but that proposals would be followed through as rapidly as possible.

The Hon. ELISABETH KIRKBY [5.29]: If Reverend the Hon. F. J. Nile's understanding of the Minister's reply is correct and my understanding is incorrect, I do not understand why the Government would not accept my amendment now. The amendment seeks to do something to which, according to Reverend the Hon. F. J. Nile, the Minister has no objection. Why can that not be done within the ambit of this legislation? If the Government intends to follow the proposal, I would have thought dental technicians were the persons to decide and not the Minister's advisers. The Government's intention does not support the suggestions made to my research assistant that it would be impossible for dental technicians to apply my amendment. With all respect to the Minister, the Minister in another place and his advisers, I insist on my amendment.

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [5.30]: The Hon. Elisabeth Kirkby is entitled to move her amendment and insist on its being debated. A couple of points need to be made. First and foremost we maintain that the concern raised by the Hon. Elisabeth Kirkby is already covered within the Act. Second, even if the Government were to accept this amendment, which it does not, it does not automatically mean that there is a regime of regulations and guidelines to be followed. They only come into play when the regulations are drafted. That does not refer to just dental technicians but to all professionals. The Hon. Elisabeth Kirkby is trying to separate dental technicians from other professionals and say that by the time there are regulations for dental technicians, they will be disadvantaged vis-à-vis other professional people who somehow will have guidelines and controls. That is simply not the case.

The regulations in question will encompass these amendments and apply to all professional people. Assurances which clearly include infection control matters are the regulations that will apply whether they happen to be doctors, dental technicians or any other professional or paraprofessional affected by the legislation. If dental technicians wish to be involved in the drafting of the regulations, the Government

would welcome their contribution. I thank Reverend the Hon. F. J. Nile for giving me the opportunity to clarify that matter. While I understand the concern of the Hon. Elisabeth Kirkby, I maintain that her concern is without foundation given that the matter is covered and the Government does not accept the amendment.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 19

Dr Burgmann	Mr Macdonald
Ms Burnswoods	Mr Manson
Mr Dyer	Mr Obeid
Mr Egan	Mr O'Grady
Mr Enderbury	Mr Shaw
Mrs Isaksen	Mr Vaughan
Mr Johnson	Mrs Walker
Mr Jones	<i>Tellers,</i>
Mr Kaldis	Mrs Arena
Mrs Kite	Miss Kirkby

Noes, 19

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

Pair

Mrs Symonds	Mrs Chadwick
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The TEMPORARY CHAIRMAN (The Hon. Beryl Evans): The numbers being equal, I give my casting vote with the noes and declare the question to have passed in the negative.

Amendment negatived.

Schedule agreed to.

Bill reported from Committee without amendment and passed through remaining stages.

VICTIMS COMPENSATION (AMENDMENT) BILL

Second Reading

Debate resumed from 20 April.

The Hon. Dr MEREDITH BURGMANN [5.43]: I wish to address two aspects of this legislation. The first is the section that relates to the raising of the threshold limit for awards to \$4,000. I really believe that the Government needs to justify why the amount of \$4,000 has been struck. The previous amount of \$200 may or may not have been too low, but \$4,000 is certainly too high. There has
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been a lot of talk in this Chamber in the past few weeks about the rights of victims. I remember the Attorney General's eloquent speech on that subject during the debate on retention of the dock statement. If one is talking about victims' rights -

Reverend the Hon. F. J. Nile: The Australian Labor Party now supports the retention of the dock statement.

The Hon. Dr MEREDITH BURGMANN: - I am sure that Reverend the Hon. F. J. Nile will agree with us in this that -

The PRESIDENT: Order! I ask the honourable member to address the Chair and Reverend the Hon. F. J. Nile to desist from interjecting.

The Hon. Dr MEREDITH BURGMANN: I am sure Reverend the Hon. F. J. Nile will agree that if the Government is not hypocritical about its support for victims' rights, it will support a change in the threshold limit under which awards can be made. I should like to quote the case study of an elderly woman living in the western suburbs. She was bashed and robbed by a group of young girls outside an RSL club. She was badly shaken, had some teeth knocked out and made an application to the Victims Compensation Tribunal for compensation, including a claim for dental expenses. Under the proposed amendments to the Victims Compensation Act, her claim may be refused as it may not reach the \$4,000 threshold. No other avenues of compensation would be available to this woman.

Obviously, if the Government is trying to uphold the rights of victims, it has to uphold the rights of all victims; not just those who have a large claim for compensation, but also those who also claim a smaller amount, such as \$3,500, which could be a reasonable expense for dental work after a bashing. It seems to me that there are many such sad little stories as this, where victims would be badly financially affected in their own terms but unable to claim from the Victims Compensation Tribunal because their claim is less than \$4,000. I ask the Attorney General to take heed of his own speech about the rights of victims. Another issue I wish to touch on briefly is multiple awards, which is a particular problem for women. Under the so-called multiple award section of the legislation, the proposed amendments will limit awards to a number of applicants who have been the victims of multiple attacks.

Now, who are likely to be the victims of multiple attacks as defined under this legislation? The people most likely to suffer multiple attacks are women subject to domestic violence and children subject to abuse. I will mention another case study. A 40-year-old woman was the victim of ongoing assaults by her ex-husband. Before leaving her family home she was beaten on numerous occasions. On one occasion she sustained a broken jaw; on another she suffered considerable facial damage and a broken arm. Two months later, while staying with a friend, she was sexually assaulted by her ex-husband. Separate criminal charges have been laid in relation to each of the assaults. However, under the new legislation, it appears that she may only be compensated as though a single act of violence occurred.

This clearly discriminates against victims of domestic violence and child sexual assault where there may be an ongoing relationship between the offender and the victim. If victims of street violence are compensated separately for each individual act of violence, why are victims of domestic violence to be treated in this manner? I reiterate that the people most likely to be adversely affected by the changes relating to the non-allowance of multiple claims for multiple assaults are women in domestic violence situations and children in sexual abuse situations.

The Hon. ELISABETH KIRKBY [5.48]: The Australian Democrats support many of the provisions contained in the Victims Compensation (Amendment) Bill but will move significant amendments to the legislation. The Attorney General is already aware of that. The amendments have been prepared by Parliamentary Counsel and as soon as they are to hand I will give them to the Clerks for distribution. The Australian Democrats believe that the overall package of reforms contained in this bill is, in fact, an overreaction to the perception that the cost of the Victims Compensation Tribunal is now running out of control. I do not believe that that cost is out of control. Indeed, at page 58 of the Brahe report it is argued:

Claims are increasing - averaging at present 500 per month, cost estimated 1992-93, \$52 million.

However, that statement must be put into perspective. It is largely due to dealing with the backlog of claims. When Mr Cec Brahe took up his appointment as Chairman of the Victims Compensation Tribunal in February 1991, there was a backlog of 8,192 claims. From that time, 6,547 fresh applications were received. By 30 June 1992 the number of pending applications had been reduced to 2,250. In other words, in approximately 16 months 14,739 applications for victims' compensation were determined. It is inevitable that when so many applications are being dealt with, the total annual compensation will increase. I believe that, with the clearing of this backlog, the amount will decrease. That contention is proved by the fact that the total annual victims' compensation payout peaked in 1991-92 at \$69 million. In 1992-93 the total payout had dropped to \$54 million.

The Victims Compensation Tribunal has recently been portrayed as a black hole into which government money is being thrown. It has also been argued that it contributes to the State debt and that payments are made at the expense of delivering other services. However, honourable members should recall why the Victims Compensation Tribunal was established. Compensating a victim of violent crime recognises the injury and suffering engendered by the crime. Indeed, the compensation is an acknowledgment by the community that the injury and suffering were

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unjustly inflicted; it is an expression of support and concern by the community and by government authorities. It is ironic that the Government claims to be championing victims' rights by abolishing dock statements, but it wishes to severely restrict the compensation of genuine victims of violent crime. Compensation is also very much in the public interest. The former Attorney General, the Hon. John Dowd, is recorded at page 8455 of *Hansard* as telling Parliament on 25 July 1989:

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.

The Hon. E. P. Pickering, when he was Minister for Police and Emergency Services, is recorded at page 14247 of *Hansard* as telling Parliament on 6 December 1989:

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 a much more difficult process. It is important to recognize that just as we place demands and expectations on victims, so victims have expectations and demands that we must recognize and meet.

Therefore, it is clear that victims' compensation should not be regarded merely as a drain on the budget. Victims of crime save the Government money in many other areas. In recognition of the fact that most of the perpetrators of violent crime are impecunious, the Government has been underwriting victims' compensation claims since 1968. Victims of violent crime would therefore achieve little satisfaction by directly suing their attackers, where they are known. This principle must be borne in mind, because one cannot get blood out of a stone.

The Australian Democrats recognise that steps should be taken to control the total annual compensation payout. However, we also hold that the benefits payable to genuine needy crime victims

should not be substantially reduced, as is proposed by the Government. The Democrats in fact support the majority of the provisions of the bill that will tighten up the availability of compensation. The measures we support include a general tightening up of the definitions of an act of violence, of an injury, and of secondary victims. We support the restriction of compensation for loss of earnings to the amount payable to an incapacitated worker under the Workers Compensation Act 1987. We also support the removal of those who suffer injuries arising out of motor accidents, within the meaning of the Motor Accidents Act 1988, from the scope of the Victims Compensation Tribunal.

We also support increasing the threshold below which compensation is not payable from \$200 to \$4,000, because that will have the effect of eliminating more than a third of claims. Given that the general trend since the publicising of the scheme has been towards a gradual increase in claims, fiscal responsibility dictates that claims that are of a generally minor nature and occupy scarce administrative resources should be excluded to ensure that seriously injured victims are properly compensated. I make it clear that I only support the raising of the threshold in the context of maintaining compensation for the seriously injured on common law principles.

The current threshold of \$200 was established in 1987 and clearly needs to be increased, at least in line with inflation. Although the Australian Democrats decry all violence, the legislation already recognises that not all victims can be compensated. Similarly, honourable members should remember that the Motor Accidents Act has an initial threshold, which is currently \$17,500. Therefore, it is reasonable to include a threshold in this legislation. Our view is that the raising of the threshold is a necessary trade-off for maintaining common law principles of compensation. Before I reached a conclusion, I made a careful study of the profile of those claimants eligible for compensation of less than \$4,000. They will have suffered bruising and minor lacerations, but at common law all broken bones, ruptured organs, impairment of senses, moderate and severe psychological injury and other than very minor disfigurement would still be compensable if the threshold was raised.

I do not believe that people who have suffered from serious assaults causing serious physical injuries will lose if the threshold is raised to \$4,000. Indeed, in the report of the Bureau of Crime Statistics and Research titled "Criminal Victim Compensation - A Profile of Claims, Claimants and Awards", one sees substantial figures. The report points out that 36.5 per cent of applicants received a total of \$4,000 or less, and that the annual compensation bill could be greatly reduced by raising the minimum compensation threshold from \$200 to \$4,000. The report suggests also that the threshold might be raised to \$3,000, but the Government has chosen \$4,000 as the figure. On a type-of-victim basis, close relatives of deceased victims - that is, victims who are deceased because of murder or manslaughter - receive the largest mean award, which is more than \$11,000.

That would mean that about 91 per cent of close relatives would still be eligible for compensation if the threshold were raised to \$4,000. Possibly the other 9 per cent would only be claims for marginal psychological injury. On the type-of-victim basis, secondary victims received the next largest mean award, more than \$10,000, but only 17 per cent of them would be excluded by a threshold of \$4,000. Therefore, secondary victims who directly witness offences, and moderately and severely affected parents of sexual assault victims, whose non-marginal psychological injuries are fairly easy to establish and accept, would be in the 83 per cent of secondary victims and would not be excluded by a threshold of \$4,000.

Police officers represent the third largest group of primary victims awarded compensation - 10.3 per cent - but they were awarded only 5.3 per cent of the total amount granted to primary victims. Indeed, primary victims who are police officers are awarded

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the smallest mean amount of compensation by far. In a perfectly equitable and non-discriminatory way, a large proportion of police officers' claims for very minor to minor injuries, which disproportionately consume time and other resources in addition to considerable compensation and costs, would be excluded by raising the threshold to \$4,000. I do not think there could possibly be any objection to that

proposal. The Hon. Dr Meredith Burgmann raised her concern that certain vulnerable sections of the community would be unduly affected by the threshold being raised. However, that is not borne out by the facts. For instance, pensioners may comprise a relatively large proportion of primary victims - 9 per cent - but their mean award is already more than \$7,000. Therefore they would not be affected disproportionately by a threshold of \$4,000.

Examination of the victim profile reveals also that raising the compensation threshold to \$4,000 will affect minor claims equally only, and equally across all categories of victims. However, relatives of murder and manslaughter victims would be less affected than other groups, and sexual assault victims would be very much less affected because their average awards are very much higher than the awards given to others. We must accept that limited funds are available and that limited time for hearing cases is available. I stress that it is very important that the seriously injured do not lose out. Therefore, eliminating minor claims will do much to free up resources for the victims of serious crime. At page 1159 of *Hansard* of 14 April the Attorney General agreed with that supposition in his second reading speech:

There has been some limiting of categories of claimants qualifying for compensation so that the most deserving victims of crime will not be prejudiced.

While the Government is quite right to tighten up eligibility for compensation so that the genuinely needy victims receive compensation, it should not introduce other measures that will impact on the genuinely needy. That is where I part company with the Government. I wish to turn to the measures in the bill that I find most destructive. The first is the abolition of common law principles for determination of compensation and their replacement with a payment by way of consolation only. The second is a restriction on the manner in which the District Court can hear appeals from the tribunal's determinations.

I will deal first with the common law principles. When the tribunal was established in 1987, common law principles were intended to apply to victims' compensation. The report of the New South Wales task force on services for victims of crime, which was published in September 1986 and forms the basis of the New South Wales Victims Compensation Act 1987, states that the aim of the legislation should be to restore victims as far as possible to their pre-injury state at the earliest opportunity. The report states at pages 56 and 57:

Under the existing New South Wales Scheme the amount of an award is assessed in accordance with ordinary common law principles for the assessment of damages insofar as they can be made applicable to the schemes.

This method of assessment is felt to provide victims with substantial benefits and is strongly favoured by the Task Force in preference to the less generous assessment principles applicable in Victoria, where claims are assessed on a "solatium" basis, or in Queensland, where they are assessed in line with a workers' compensation scale.

If that was the view of the New South Wales task force in 1986 and if it formed the basis of the Victims Compensation Act 1987, I fail to see why things have suddenly changed in 1994. The use of common law principles in New South Wales is well established. The Court of Criminal Appeal has stated authoritatively the purpose and philosophy of our victims compensation legislation in *Regina v. McDonald*, 1979. This has been confirmed by the Court of Appeal in *Southgate v. Waterford*, 1990. In *Regina v. McDonald* the Court of Criminal Appeal adopted *Regina v. Fraser*, 1975, 2 New South Wales Law Reports 521 at 526, in which Mr Justice Wootton held:

Under this section compensation for injury can be just as comprehensive as damages for personal injury in the law of torts . . .

In *Regina v. McDonald* Chief Justice Street said:

The courts have, over many years, evolved principles governing the assessment of compensatory damages which have been found to be suited to the ends of justice. There is no reason to apprehend that the interests of either the victim or the convicted person would be better served by applying an approach differing in any respect from the application of ordinary principles. On the contrary, by importing an element of uncertainty by treating the assessment of compensation as being at large, as it were, trial judges would have no established guide by which to determine what factors can and what factors cannot legitimately be taken into account or to emulate the relevant significance of various factors.

Assessment on common law principles facilitates due appellate processes. The Brahe report asserted that the payment of victims compensation does not derive from a legally enforceable right, but, rather, is an act of grace. However, in *Regina v. McDonald* Mr Justice Lee described it as a right. It is an insult to the victims of violent crime to suggest that compensation is merely an act of grace. The whole concept of solatium is vague and subjective. Common law principles are established and consistent in New South Wales. They deal with levels of compensation and the causation of injury.

In its response to the Brahe review, the Bar Association pointed out that under a solatium system there would still need to be just and predictable rules for determining the nature, extent and medical causation of injury. Proceedings would be no more or no less adversarial. The real impact of the solatium system would be to reduce the amounts of compensation payable. There is absolutely no indication from the Government as to how this will occur under this legislation. It may be left to the magistrates in the Victims Compensation Tribunal to determine matters without any precedent in New South Wales.

Under the system proposed in the Brahe report, payments could be reduced to one-sixth of their present amount. Is this the system the Attorney

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General has in mind? Under the Brahe system a woman who has been sexually assaulted and who is currently eligible for compensation of around \$30,000 would have her compensation reduced to \$5,000. I do not believe any woman would think that to be a suitable amount of compensation. The Bar Association quite rightly points out on page 25 of its submission to the Brahe review that the adoption of the solatium system would "result in crime victims being treated as fourth class compensation claimants, behind common law plaintiffs, motor accident claimants and workers' compensation applicants".

Victims' compensation for injury is currently awarded at common law levels up to a maximum of \$40,000. There is no reason for changing the basis on which compensation is awarded. Considerable sums will be saved by other provisions in the bill, which the Australian Democrats support. In spite of the Attorney General's professed championing of victims suffering serious injuries resulting from violent crime, these are precisely the people who will now be disadvantaged by the abolition of common law principles in determinations and their replacement of the solatium system.

I am also very concerned at the proposals in the bill relating to appeals to the District Court. Contrary to the Attorney General's assertions, the bill does not enhance the rights of victims to review tribunal determinations. The bill provides that appeals to the District Court shall be heard on a re-hearing basis rather than on a de novo basis. It also provides that the District Court will not be able to hear appeals regarding the tribunal's refusal to allow lodgment of a claim outside the two-year limitation period, or the tribunal's refusal to reconsider a determination pursuant to proposed section 24B. This proposed section deals with the reconsideration of determinations by the tribunal.

The high success rate of appeals to the District Court - 86.5 per cent of appeals are successful - indicates that there is a very real need for such an avenue of appeal. In 1992-93, 71 per cent of appeals to the District Court were upheld and the amount of compensation was increased; 15.5 per cent of appeals were upheld but remitted to the Victims Compensation Tribunal under section 29(4)(b); only 8.3 per cent of appeals were dismissed; and 5.2 per cent of appeals were discontinued or withdrawn. It

appears to me that if such a high rate of success of appeals to the District Court can be proved by the statistics I have just given, there is something very wrong with the amounts being awarded by the Victims Compensation Tribunal. I do not know the reason for that. I believe that that avenue of appeal should not be withdrawn.

The proposals before the House would severely restrict victims' rights of appeal, particularly since the number of appeals fluctuates in line with the clearing of the backlog. For example, in 1991-92 there were 888 appeals and in 1992-93 there were 413 appeals. In other words, the appeal rate has declined from 10.5 per cent at the peak of the tribunal's backlog clearing operation to its current level of 6 per cent. If we abolish the right of appeal to the District Court on a de novo basis, we are only dealing with 6 per cent of the cases going to the District Court. That can hardly be considered a very high level. In 1993 the Court of Appeal in *Goldsmith v. Victims Compensation Tribunal*, unanimously ruled that appeals should be heard de novo, that is, on the facts and law as at the time of appeal. New evidence ought not to be excluded. I cannot understand why the Attorney General is so determined that new evidence shall be excluded by his amendments. I refer honourable members to the ruling by Mr Justice Mahoney in which he stated:

In my opinion, the hearing before the District Court under s29 is a hearing de novo. The learned judge was therefore formerly in error in not admitting the evidence tendered.

If the Minister believes that allowing new evidence will allow applicants to be sloppy in their presentation of cases, there is already an adequate and flexible mechanism for dealing with this problem. Part 6, division 7, of the District Court rules provides for individually tailored cost penalties for adducing evidence on appeal which could have been adduced before the Victims Compensation Tribunal. Under proposed section 29(2C) of the bill, updating evidence will not be admitted as a right, only in special circumstances. We have to take into consideration that as there are only three call-overs per year, and that much time could pass before an appeal is heard, this is most unjust. I also believe that abolishing the ability of the District Court to hear appeals relating to the refusal of the Victims Compensation Tribunal to hear a complaint because it is out of time will impact unfairly on victims who are sick, incapacitated or overseas.

I give notice that during the Committee stage I shall move amendments in relation to compensation on common law principles and in relation to District Court appeals. I will also move detailed amendments in relation to the definition of an act of violence, the definition of injury, delays in reporting to the police, the eligibility of certain secondary victims and the recovery of funds. Obviously it will be more appropriate for me to leave the details of my amendments to the Committee stage. The amendments have been prepared, over a considerable period of time, by Parliamentary Counsel. They were brought to the House only a few minutes before we commenced the resumed debate on this legislation. Within the next half hour the amendments will be distributed to all honourable members. They will then have the opportunity to consider them before we move to the Committee stage. I think that is the proper way to deal with it.

Therefore, I will leave my remarks on the amendments until we reach the Committee stage. I have already explained to the Attorney General - every Tuesday at one o'clock a meeting is held with the crossbenchers - that it is my intention to move 15 amendments to this legislation. I put the House on notice that there are at least four amendments on

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which I shall divide the House. With those reservations, I support many of the provisions of the bill. However, I believe that the bill needs to be significantly amended in order to strengthen it and to protect the people we are elected to protect and the victims of crime.

Reverend the Hon. F. J. NILE [6.20]: Call to Australia supports the Victims Compensation (Amendment) Bill, which follows the review conducted by Mr C. Brahe, Deputy Chief Magistrate and former chairperson of the Victims Compensation Tribunal. Because of the rapid growth in expenditure and problems in the operation of the tribunal he was asked to review the Victims Compensation Act, the

first intensive review since introduction of the legislation back in the days of Attorney General Dowd. We all agree in principle with John Dowd's initiative but this legislation aims to make the tribunal work more effectively by adequately compensating true victims in accordance with the funding capacities determined by the Government.

No government bodies have the luxury of unlimited funding. I sought from the advisers present clarification of what has been happening with funding of the tribunal. Expenditure is not our main consideration; we must consider the welfare of victims. But in our capacity as good stewards members of Parliament must consider the total picture rather than deal emotionally with issues and provide a blank cheque for the compensation of victims. The annual report for 1992-93 of the Victims Compensation Tribunal produced by the then chairperson Mr E. Elms shows that expenditure progressively increased from an initial budget of \$10 million to about \$38 million in 1990-91. For various reasons a backlog of claims had built up and the reduction of the backlog in 1991-92 resulted in expenditure skyrocketing to about \$69 million. Following the reduction in the backlog the expenditure in 1992-93 fell to about \$48 or \$49 million. That was a pleasing decrease but the projected figure for 1993-94 is about \$68 million.

All members understand the Government's concern about the operation of the Victims Compensation Tribunal and the need for legislation to clarify the operations of the tribunal, the type of people eligible for compensation and the method for determining the amount of compensation. The report by Mr Brahe issued in March 1993 contains a number of recommendations. From my observation of the debate I would summarise that there are two essential changes. The first is the threshold figure of \$4,000. An increasing number of police officers have been making claims for injuries incurred pursuing criminals who were not subsequently caught. A policeman may trip over a footpath and then put in a claim for the injury sustained. This seems to me, as a non-lawyer, to be more appropriately a workers' compensation matter. I was surprised that so many public servants such as police were putting in claims under this legislation. I have not read Mr Dowd's second reading speech but I would imagine that when the scheme was introduced it was not envisaged that many claims would come from police officers.

I remember that when the scheme was introduced in the Parliament our focus was on the dramatic picture of a woman who had been raped, violently abused, physically injured, or emotionally or psychologically injured. It seemed that society focused more on the criminal and his care in prison than the injustice suffered by the victim. The scheme was an attempt to put the focus on to the victim. If it had been suggested in those days that policemen would be the main beneficiaries of the scheme most of us would have laughed. We would have seen no purpose in introducing the tribunal. It seems that the Government is trying to restore the tribunal to operating in accordance with the original intention and we support that move. The second main change in the bill is moving away from the common law assessment of compensation and adopting what is called the solatium approach. Lawyers may be familiar with that term but I had not heard it prior to this debate. I would prefer a term such as compensation or another common English word which would convey to the lay person a clear idea of its meaning.

A document headed "Some Thoughts on Common Law Assessment & Solatium" by Mr Elms has "or compensation" in brackets after solatium. As he was previously chairman of the tribunal, perhaps the word compensation would have been adequate even for this debate. Opposition and Democrat members have complained that no one will be able to determine a financial benefit or reimbursement to a victim based on solace, a vague term. But Mr Elms said that common law principles will still have to be used as a guide to assessment rather than relying on the arbitrary whims of the decision-maker; it is now a form of compensation sui generis.

[The Deputy-President (The Hon. D. F. Moppett) left the chair at 6.31 p.m. The House resumed at 8.30 p.m.]

Reverend the Hon. F. J. NILE [8.30]: Before the adjournment I was referring to the expenditure blowout of the Victims Compensation Tribunal being a major concern to the Government. That concern resulted in the review of the Victims Compensation Act by Mr C. Brahe, the Deputy Chief Magistrate and

former chairman of the tribunal. I referred also to the two issues that appear to be at the heart of the controversy over the legislation. The first is the threshold level of \$4,000 and the second relates to the introduction of solatium as a principle of assessing compensation for those who apply to the Victims Compensation Tribunal. Various bodies such as the Law Society, the Bar Association, and a number of other organisations, some connected with legal centres, believe that the tribunal should assess the quantum of compensation on common law principles rather than solatium which, as was stated earlier, relates more to solace, from which the word is derived.

Before the adjournment I was quoting from a paper written by a former chairman of the tribunal, Elwyn Elms. He has only recently provided these

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comments on the legislation and, particularly, on the debate about how to assess damages. The paper is headed "Some Thoughts on Common Law Assessment & Solatium", and is dated 28 April, so perhaps nothing could be more recent as a legal overview of the impact of the bill on the assessment of future claims. He makes the point, which I accept, that assessments will still be based on common law principles. In other words, it is not either or, but in trying to assess solatium or compensation common law principles must be kept in the background by those seeking to decide the amount of the compensation. He states:

At the moment, it is extremely difficult, if not impossible, to assess some matters on ordinary common law principles, e.g. those where it is said that the repercussions may not manifest themselves for some years in the future. Child sexual assault cases are a prime example. There may be little or no injury at the moment, but it may be postulated that things may occur in the future, e.g. when the child attains adolescence. Being virtually impossible to assess on ordinary common law principles, solatium or compensation is a more reliable guide which gives a decision-maker some flexibility in taking into account what has happened and what is likely to happen or is possible. At the moment, if common law principles were applied strictly to such cases, the applicant would receive nothing for those injuries which have not yet manifested themselves and where there was no such evidence that they were in fact likely to happen in the case of this particular individual.

He says also:

People are regularly over-compensated under the present system. If a person has an existing psychiatric disorder at the time he or she experiences an act of violence and one cannot distinguish the repercussions of the act of violence from the previous condition, that person is compensated for the lot, in other words, including the previous condition which was not the result of the act of violence . . .

At another point he says:

Common law assessment is an inappropriate form of assessment, where the laws of evidence do not apply. Common law assessment and the rules of evidence go hand in hand. The absence of rules of evidence simply means again that people can be overcompensated on the common law principles since all sorts of things can get into the evidence which would not be allowance on common law principles . . .

Under the old S.437 system, there was someone there to do the tending of the applicant's claim: the offender had a right to be heard, and the Crown had a right to appear to protect the public purse. That is not the case under the present system. Here, it is entirely inappropriate that the same principles of assessment should apply.

I will not read the remainder of the paper, but I urge honourable members to study it, particularly those members of the Opposition and the Australian Democrats who have questioned the bill. In my earlier remarks I also made the point that there seemed to be a high proportion of claims from persons who were not originally expected to fall into the main category of victims. I refer to the large number of police

officers who were lodging claims to the Victims Compensation Tribunal. I made the point that that did not appear to have been a central feature of the original legislation, or the planning of it. At that time the focus was on the dramatic event of a woman being raped or being involved in a violent attack.

I have been provided with another paper for this debate by the Attorney General's Department. The paper comes from the New South Wales Bureau of Crime Statistics and Research. It was published in 1993 and a summary at the beginning of the report - again I will not read the entire report, which occupies 40 pages - puts forward some strong arguments for setting the threshold at \$4,000. The paper suggests that the whole question of where police officers fit into the system should be examined as a separate matter. I agree with those remarks. In other words, the paper questions whether there should be some kind of alternative mechanism in the Police Service for compensating police officers injured in the course of their employment when their claims fall below the threshold. I urge the Government and the Minister for Police to consider that matter. There may be justification for some compensation, but I argue that the Victims Compensation Tribunal does not seem to be the right place to make such claims, as a large proportion of the available funds are absorbed in that way and the availability of funds to needy applicants is reduced. As I said earlier, the tribunal was originally intended to compensate women who had been assaulted or raped, or who had experienced violent attacks.

The overview conducted by the Bureau of Crime Statistics and Research has shown that 24 per cent of claimants were employed at the time they became victims of an act of violence. More than half the primary victims were employed as police officers, 90.3 per cent; taxi drivers, 85.7 per cent; bank staff, 78.3 per cent; security staff, 72.7 per cent; prison officers, 71.4 per cent; and entertainment venue employees, 61.7 per cent. It seems as if that may overlap workers' compensation, but I know that workers' compensation has a cutoff level that would not provide for smaller claims. There may be a strong argument that available funds should not be drained from the main area of concern - victims who are members of the public - and that the police officers, prison officers and security staff, who make up a large percentage of claimants, should be covered in some other way.

The survey shows also that assault with or without a weapon, occurring in 72.9 per cent of claims, was the most common type of offence in the act of violence for which victims apply for compensation. The most common type of injury sustained by victims was bruising, with almost 56 per cent of the victims sustaining bruises; laceration-type injuries, 44.3 per cent; and psychological injuries, 39.1 per cent. Approximately one-third, or 30.1 per cent, of the acts of violence occurred in a dwelling and a further 20.8 per cent occurred in licensed premises, which raises the question of the impact of alcohol on acts of violence. About 92 per cent of the claimants that appeared before the tribunal were awarded compensation.

On average, victims were awarded \$8,612 in compensation. More than three-quarters of the victims awarded compensation were awarded \$12,000 or less, including compensation for injury, expenses

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and the loss of personal effects. Across occupation groups, primary victims employed as security staff at the time of the act of violence received the largest mean award, \$12,765. In total, however, students were awarded the largest proportion of compensation, accounting for 18.7 per cent of all the moneys awarded to primary victims. Taking that mean award - the average - the cutoff level of \$4,000 is not unreasonable when victims were awarded \$8,612 in compensation on average. I refer that report to honourable members for further study.

From the establishment of the Victims Compensation Tribunal on 15 February 1988 to 31 October 1992, 22,113 applications have been received, determinations have been made in 16,410 cases and a further 2,351 applications have been dismissed. The balance includes applications refused outside the two-year period and the pending total. The Victims Compensation Tribunal has paid out awards totalling \$144 million. Without going into the detail of the review of the Victims Compensation Act undertaken by Mr C. Brahe, it appears that the legislation will implement the main recommendations. When an inquiry is set up to produce a report and make recommendations, those recommendations should be given

serious consideration. The Attorney General has endeavoured to do that in this legislation. Perhaps one of the major differences between the bill and the report and its recommendations was recommendation 9:

If assessment of compensation is to be on other than Common Law principles then the \$200 threshold should be increased to \$1000, which is the maximum amount which may be awarded under Part 6 to victims where there is a convicted offender.

The legislation provides for a threshold of \$4,000. I do not know whether the Attorney General has received any response from Mr Brahe to the increase from the recommended \$1,000 to \$4,000. Recommendation 13 states that an appeal to the District Court be limited and spells out a number of qualifications. From the points of view of the Government and the community it is important to endeavour to recover money from the person who committed the original assault but that raises problems because one is dealing with people who, in some cases, do not have money. Criminals may be able to evade the justice system, move out of the State or move away from any area from which they can be located and forced to pay the debts. Recommendation 15 provides for a continuation of the present practice of seeking recovery and states:

Once the tribunal has performed its functions under the Act, further recovery should be contracted out to private Commercial Agents.

That could be a worthwhile move. Obviously some commission would be sought for that recovery, which might lead a commercial company to carry out recovery more zealously than perhaps a public servant might. In spite of some of the criticisms of the bill, I believe it should be passed in this House. Call to Australia will certainly support it. The amendments foreshadowed by the Australian Democrats seem to be in conflict with the direct intention of the legislation and would be a regressive step. The recommendations resulting from the review of the Victims Compensation Act would not be acted upon and the Victims Compensation Tribunal would not be brought under definite regulation and control.

However, after talking with representatives of the Law Society and the Bar Association and others I strongly urge the Government to consider setting up a monitoring body through the Attorney General's Department, or Mr Brahe, or a composite committee made up of representatives of the Law Society and the Bar Association, a government representative, a representative of various victims' organisations and a police representative to monitor the operation of the legislation over the next 12 months and to produce at the expiration of that period a review of the operation of the bill, identifying particularly any areas of injustice.

No one is really sure how the legislation will work. The paper produced by Mr Elms seems to answer some of the fears that solatium will not automatically decrease dramatically the compensation that victims receive. If a monitoring committee can monitor the legislation and produce a report, the Government could fine-tune the legislation in a future amending bill that would remove any injustices or unexpected repercussions. Call to Australia supports the bill and will allow it to go forward with a strong recommendation for the implementation of a monitoring body made up of interested groups, thus ensuring the successful operation of the legislation.

The Hon. JAN BURNSWOODS [8.50]: The Labor Party has been waiting a while to deal with this bill. It is but another area where the Opposition has had quite a few promises. I remind honourable members that the Attorney General released an issues paper on this subject in 1992. At the beginning of 1993 the Governor said in his opening speech:

This year the Government will propose legislation arising from the review of the Victims Compensation Act.

A few months later the Attorney General released the report of the review and stated that he would soon

announce his intention on reform. At the beginning of this year honourable members again heard from the Governor. I suppose honourable members should be pleased that this legislation is before the House. Given the two-year wait, I am surprised that the community legal centres in particular - which represent so many victims in the tribunal - have complained about their lack of consultation with the Attorney General and the Government. They were not asked what they thought about the bill. Indeed, they tell me that despite months of trying to find out exactly what was going on and what the Attorney General intended, they heard exactly what the bill entailed only after its second reading. They were disappointed with and critical of that. I share their disappointment and their criticism.

Earlier honourable members heard that the real purpose of the bill was to stop fraud. Yet an examination of the clauses reveals that it does not

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seem to be directed at stopping fraud but at limiting the number and categories of people who can make claims and the size of the payouts. The bill is directed at saving money by hitting the victims of crime, even though the Government has been trying to portray itself as being concerned for victims of crime. I have a number of worries about the real purpose of this bill, and whether it will achieve some of the things the Government has said about it in its rhetoric.

I criticise the move to lift the threshold from \$200 to \$4,000. I am concerned particularly about the number of victims who will be unable to get any compensation. While the Attorney General has said that he wants to stop rorts in the system, it seems that this provision will stop legitimate claims for compensation from innocent people. I am informed that more than half of the awards currently made by the tribunal are under \$6,000. I would be surprised if the Attorney General was really suggesting that most of those claims were fraudulent. Unless the Attorney General can give the Opposition very good reasons for limiting appeals to those over \$4,000, the Opposition cannot support this limitation.

I am concerned also about the proposal to limit appeals to the District Court, despite the fact that so many appeals from the tribunal to the court have been successful, and about the provision that compensation will be by way of consolation only and will not reflect common law entitlements. This seems to make the decisions on the amount of an award far too subjective. I illustrate that point by referring to the recent tribunal decision where it was ruled that to revive details of a violent incident would be harmful to a child victim and therefore the compensation was refused. That kind of ludicrous and hurtful decision could happen in a number of cases. I call on the Government not to proceed with the consolation only provision.

I return to the point I made earlier about the attitude of the Government in introducing this bill. The continual statement about stopping fraud and looking after the victims of crime is given the lie by this bill. Instead of putting the necessary resources into the Victims Compensation Tribunal to help it deal with fraud, while assisting victims at the same time, this bill is motivated far more by a rather mean attitude of penny pinching at the expense of the very victims of crime that the Government says it is trying to help.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [8.56], in reply: I thank honourable members for their contributions to this important debate. I meet the comments of the Hon. Jan Burnswoods basically by ignoring them. It is clear from her comments that she does not understand the structure of the existing Act or the amendments to it. Her comments need not be honoured further. I note the comments of Reverend the Hon. F. J. Nile. Many of the matters raised by the honourable member were also raised by the Hon. R. D. Dyer. I indicate to Reverend the Hon. F. J. Nile that victims' compensation is an important area that must continue to be monitored. He referred to the amount of money that has been paid out. There must be ongoing monitoring of the operation of this scheme.

It is my recollection - I have not been able to find the actual comment - that at the time this scheme was launched it was expected to involve expenditure of about \$10 million a year for compensation. This year I will be expending approximately \$60 million in compensation to meet claims made under the Act.

There does not appear to be a limit to the amount of expenditure. It is fair to say that the only limit on the expenditure is the limit of the ability of the tribunal to handle all the claims that come before it. In relation to the suggestion of Reverend the Hon. F. J. Nile that I should look at a monitoring committee involving a number of organisations, I assure him that I will take that proposition seriously. I will establish such a monitoring committee. I will consult the organisations to which he adverted as to how best to put that monitoring committee in place. Once a decision has been made, I will provide information to the honourable member on such a committee.

Even with these amendments there will be an ongoing need to monitor the operation of the tribunal. So far as I am concerned the compensation should be going to those who are the subject of serious injury. We should be seeking to provide financial assistance to help those particular people get back on their feet. There may be other ways in which we are able to provide support to these people. In recent times I have established a number of counselling services for the victims of crime. I have put in place counsellors at the Office of the Director of Public Prosecutions; I have funded a counselling service to be operated through the Sydney City Mission; and we are looking at extensive counselling services in other areas.

Only yesterday the Minister for Health and I met to consider the range of counselling services that are available across the spectrum of government, to look at the level and nature of those services and the way in which they can be provided. Counsellors are available at the city morgue to provide direct support to the families of the victims of homicide. We are looking at ways to increase the number of counsellors. We should be supporting the victims of crime in many ways. Money may not be the only way in which that can be done. The next step may be to pursue the request for the establishment of a committee to monitor the matter and then consider our next step forward.

The issues raised by the Hon. Elisabeth Kirkby in the main were also raised by the Hon. R. D. Dyer. By responding to the matters raised in his speech I will therefore canvass all the other matters. The Hon. R. D. Dyer raised a number of perceived concerns about various aspects of the bill. I wish to allay the concerns of members that are based on false assumptions about the current nature of the Act and its operation under the legislative amendments and the concerns of others which are based on a failure to

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appreciate the contents of the bill as a whole. The concerns raised relate to what is described as the substitution of common law principles with the solatium principle; a so-called restriction on the nature of appeals; the proposed increase of the threshold for awards from \$200 to \$4,000; and a supposed restriction on the capacity to make a multiple award.

The Hon. R. D. Dyer referred to the fact that the Victims Compensation Act was introduced by the previous Labor Government's Attorney General, Terry Sheahan. The purposes of the legislation were accurately described as being to provide benefits to the victims of violent crime and to establish the Victims Compensation Tribunal. The coalition parties, as the Opposition of the day, supported the introduction of the legislation. The Hon. John Dowd, Q.C., noted in debate in the Legislative Assembly at the time that "the common law system that has built up is predicated on the assumption that people can pay for their injuries. That is an invalid assumption in the case of most convicted criminals". Hence the need for the legislation.

That Act gave no guidance as to the principles of compensation which would apply. The Act itself does not provide and never has provided that compensation under the Act is based upon common law principles. The 1987 second reading speech does not clarify the issue. The initial assumption was that solatium principles applied. That arose from the nature of the scheme established by the Act, being a act of grace, being a payment made by the Government to victims of violent crime. In the absence of guidance on the issue there has been a great discrepancy of legal opinion on the correct application of principles. As a result, variation in awards has arisen. The issue was tested in the case of Ginestra, which was appealed to the District Court. The court did not find the issue clear-cut. It found that common law principles applied only because there was no legislative guidance on the issue. This

decision has been reluctantly and unevenly accepted.

For this reason the District Court applies common law principles in appeal cases but the anomalous situation occurs of common law principles applying in some cases with the cutoff of \$50,000. This gives an unjust result to those suffering serious injuries. The bill provides clarification: it will allow for the making of consistent and just awards to victims of crime. For the Hon. R. D. Dyer to say that common law principles are abolished and replaced with solatium principles is indeed incorrect and misleading. To imply that the principle of solatium is new to this legislation is also false. One of the express terms of the Brahe review reference on which the bill is based was to consider the nature and determination of compensation. Mr Brahe noted the conflict in approach on the correct principles of compensation applying in the Act and said:

It is beyond argument that the payment of compensation to victims of crime stems from a sense of compassion and social responsibility by the State to its citizens and therefore as an act of grace, rather than by way of a legally enforceable right or obligation.

It would be nice to be able to fully compensate all victims of crime from the public purse on the basis of Common Law assessment of damages with no ceiling at all, and to fully compensate everyone who has suffered at the hands of wrongdoers on the same basis. However, it would be naive and socially irresponsible to pretext that the public purse is a bottomless pit, and we have witnessed in recent years how compromises have been found necessary in the field of motor accident insurance with a view to giving the community a scheme which it can afford. Victims of violent crime should be compensated to as full an extent as is possible, but they should be compensated evenly across the board and not to the detriment of the most seriously injured as is prone to occur at the moment.

Mr Brahe went on to say:

It is difficult to understand the rationale behind the award of compensation on Common Law principles in a statute such as this, where

- a) the payment of compensation does not derive from a legally enforceable right against the state but rather as an act of grace embodied in statutory form. The Act uses the words "eligible to receive" in contrast to the entitlement to receive damages which a person has under the Motor Accidents Act. Victims Compensation Act S.15(6).
- b) the rules of evidence do not apply, S.30;
- c) only the applicant's side of the argument is heard in contrast to the situation in adversarial proceedings where common law awards are made;
- d) there is a ceiling on the award of compensation;
- e) the Act's procedures are inquisitorial, rather than adversarial.

Mr Brahe therefore recommended that the Act should be clarified to provide that compensation is payable on solatium principles. Proposed section 3B provides the clarification for the award of compensation that is critically needed by the victims of crime in this State. Honourable members must remember that with a limit of \$50,000, awards made under the Act result in compensation to victims of crime and cannot result in damages on the scale of awards made under common law principles of assessment. With the amount of \$50,000 continuing to apply, the application of common law principles would be illogical and prejudicial to victims with serious injuries. The application of common law principles does not give true common law results. Let me illustrate some of the difficulties arising from the application of common law principles in assessment of awards under the Act.

Because of the \$50,000 limit, awards do not actively and definitively reflect the quantum of common law damages. There is nothing in the Act that provides for using the maximum award of \$50,000 and scaling down as there is in the Motor Vehicle Accidents Act. It is extremely difficult to assess some matters on common law principles. Under common law principles the tribunal would be limited to making awards on the basis of the status of the injury at the time of its determination. There would be no scope for making awards for injuries that had not yet manifested themselves and where there was no evidence of manifestation in the future. This would be particularly problematic in sexual assault cases. Common law principles usually apply in the

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adversarial system, where evidence is tested. In this way a pre-existing condition or an exaggerated claim will be disclosed and the appropriate award made.

That is not the case in the tribunal, where the rules of evidence do not apply and proceedings are one-sided and not adversarial. The adoption of solatium principles does not mean that victims will receive less compensation. It is a fairer system, having regard to the absence of rules of evidence, the absence of an opponent to test evidence placed before the tribunal and the fact that many cases before the tribunal cannot possibly be assessed on common law principles. Because of the nature of the tribunal's proceedings, the operation of a \$50,000 limit and the need to compensate in some areas not ordinarily compensated on a common law basis, common law principles cannot be evenly and justly applied. Because of the absence of guidance in the Act and the rulings of the courts on appeal there is currently a lack of consistency in awards, which must be addressed. The bill addresses this by providing for assessment on solatium principles.

The Hon. R. D. Dyer stated that compensation on solatium principles would result in substantially reduced levels of compensation. That is a fallacy. It arises from the argument that solatium awards will be scaled by reference to common law awards. The argument has been advanced by the Bar Association, to which the Hon. R. D. Dyer referred. It is based on an assumption that taking the \$50,000 limit for awards under the Act and scaling it against the highest award of general damages at common law for pain and suffering, that is \$300,000, would result in awards under the bill being reduced to one-sixth of the existing levels of awards. That is not true. The bill does not adopt the Brahe recommendations for the adoption of a worst case scenario and scaling down of awards. The bill does not assume the common law level of \$300,000 or any such level provided from time to time as a basis for providing awards under the Act.

The Hon. R. D. Dyer has also spoken of the importance of consistent awards. He has suggested that consistency is possible only under the application of common law principles. It is a fact that the absence of guidelines in the Act and the uneven application of common law principles in the victims' compensation scheme have resulted in a great variation of awards. That will be rectified under the bill by the adoption and application of the solatium principle. It is envisaged that a set range of awards for categories of injuries will apply under the solatium proposals. The applicable range of awards would give to applicants and their representatives an indication of likely awards. However, each case would be assessed on its merits.

The range of awards would be published and would therefore provide a guide to victims, practitioners and tribunal members for the determination of awards. It is expected that figures will be based on current determinations. The reasoning of the tribunal in making its awards will be open to scrutiny and adjustment by the courts of appeal. The benefits of the adoption of the solatium principle will be that victims and practitioners will be able to estimate levels of awards; that awards will be standardised, reducing current discrepancies in awards; and that the District Court of appeal will have access to the guidelines used by the tribunal in its assessment of a victim's case. Item (24) will insert in section 18 a new subsection (1A) to provide for a set of awards, which will assist in administrative assessment of claims of less than \$7,000. The range is based on current payouts and there should be no reason for it to result in a reduction of awards. Certainly there is no suggestion of using a figure of \$300,000 as a basis for scaling down awards. There is no proposal to use common law awards as a

reference point. I repeat that the purpose of the solatium proposal is to clarify the object of the legislation and to remove any doubt as to the correct principles in the making of an award.

Members will be interested to note that this year the criminal injuries compensation authority in Great Britain abandoned the assessment of victims' compensation on common law principles. As from 1 April assessment in Great Britain has been made by reference to a tariff per injury. New Zealand has abolished lump sum payments. The two remaining jurisdictions applying common law principles are Western Australia and South Australia. The system of determination in South Australia is adversarial. The general trend in the assessment of victims' compensation is towards the abandonment of common law principles. Such a move is not without precedent. If awards are made on a solatium basis, all applicants will receive a fair, standard and predictable result.

The Government agrees with the Hon. R. D. Dyer that there is a need for consistency in awards. The adoption of the solatium principle will provide that consistency. The Hon. R. D. Dyer quoted the case of T, in which an award made by the tribunal was increased by the District Court to \$40,000. It would be fair to say that that case illustrates the discrepancies in the existing system of compensation arising from confusion as to the application of the correct principles. There is nothing in the bill to suggest that under the solatium principle an award of less than \$40,000 would have been made in that case.

I now wish to turn to another of the concerns expressed by the Hon. R. D. Dyer, the so-called restriction on appeals. This concern arises from an incomplete reading of the bill. The bill contains several legislative amendments relating to the review of tribunal determinations. They enhance the victim's position in the appeal process. One measure overlooked by the Hon. R. D. Dyer is that item (15) will insert proposed new section 24B, under which the tribunal may reconsider an application that it has previously considered. This mechanism will be available to applicants when evidence not previously available to the tribunal has become available, regardless of whether it is fresh evidence. It will save an applicant from having to go to the expense,

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inconvenience and delay - not to mention the trauma - of seeking an appeal in order to have such evidence considered. This indeed is of great advantage to victims.

In this context the proposed amendments to the procedure of appeal to the District Court cannot be described as a restriction. Nor can the provisions clarifying the appeal procedure - proposed section 29(2B), which will be inserted by item (20)(b) of schedule 1 - be described as restricting the nature of appeals. The proposed amendments expand the victim's rights to a review of the tribunal's claims and once again provide clarification where none is provided under the existing legislation. The provisions of proposed section 29(2B) set down the procedure for the running of appeals to the District Court. It provides that the District Court is to rely on the tribunal's record without the victim or appellant having to give evidence again. However, proposed section 29(2C), as inserted by item (20)(b), provides that the District Court may grant leave for the giving of evidence in proceedings on an appeal, including: evidence that was available to the tribunal, evidence that was not available to the tribunal, and fresh evidence - but only if the special circumstances of the case require it. That discretion is usually exercised generously by the court.

The purpose of this provision is to overcome the argument that appeals should run on a de novo basis - on the basis that the case is run afresh. This will involve the victim in the time, the inconvenience and the expense of preparing a case all over again. In the case of child victims this could result in what has been described by some children's protection groups as systems abuse. The preparation of a fresh case would involve victims in additional legal and medical expense, not to mention the inconvenience of having to repeat their evidence. It would also result in the District Court lists being clogged up with unnecessarily lengthy cases.

The Hon. R. D. Dyer stated that the number of appeals to the District Court decreased from 1992 to

1993. He did not, however, refer to the most recent statistics. In the first quarter of this year 184 appeals were lodged. In the same quarter of last year 63 cases were appealed. That figure represents a tripling of appeals. In the last quarter of last year 140 appeals were lodged. The number of appeals is increasing, and so far this financial year it has increased by 58 per cent. That number of appeals translates into delays for victims of crime. To provide for redetermination by the tribunal of its determinations in clarification of the appeal procedure to the District Court on the proviso that fresh or previously overlooked evidence may be received can only be to the great advantage of victims. This is so because it will expand avenues of review and reduce any delay in the review process.

The Hon. R. D. Dyer reminded us that the object of the 1987 legislation was to establish a tribunal and save the victim from the rigours of proceeding through the court system. The refinements to the appeal and the review process contained in this bill restate that commitment to victims. It is perfectly appropriate in appeal cases for the court to consider matters on a rehearing basis. After all, the tribunal has usually considered all of the available evidence, and the role of the court is to determine whether the tribunal has correctly applied the Act to the facts and whether it has reached the correct decisions on the application. As I have said, the court may receive fresh or previously overlooked evidence; thus the right of the victim to have fresh evidence considered by the court is certainly protected.

The Hon. R. D. Dyer expressed concern about cases in which medical conditions change after the making of a determination. He gave the example of a sexual assault case in which a young person is traumatised because of sexual abuse. He said that he would be distressed if changes in the medical condition of that victim could not be considered under the proposals in the bill. As I have illustrated, such fresh evidence could be considered by that tribunal on a reconsideration or by the District Court on an appeal. On the question of appeal, the Hon. R. D. Dyer was concerned also about what he described as the complete abolition of appeals against refusal of leave to apply for compensation after the two-year period. This statement is also based on an incomplete reading of the bill.

The proposed changes to section 29 made by schedule 1 to the bill provide that an appeal does not lie against the tribunal's decision to refuse an out-of-time application under present section 17(2)(d). This proposal, however, must be considered in the context of proposed section 17(2A) - which will be inserted by item (8) to schedule 1 - which provides criteria to which the tribunal may have regard in exercising its discretion to accept a claim outside the current two-year limitation period.

The Brahe review noted that the refusal to grant leave to consider an out-of-time application is an administrative act and that in other cases in which a court is required to exercise its discretion on an out-of-time application this does not give rise to a right to seek a review of a court's ruling in another jurisdiction. The Brahe review recommended that there should be no appeal to the District Court against refusal by the tribunal to accept an application out of time. However, it would remain open to an applicant to appeal to the Supreme Court in its supervisory capacity on the basis that the tribunal had failed to properly exercise its discretion. Further, it is not proposed to alter a victim's right of appeal to the District Court on the substantive aspects of a determination. Therefore, the Hon. R. D. Dyer's statement that an applicant's right to appeal against refusal of leave to apply for compensation after the two-year limitation period is completely abolished takes the proposal completely out of context. It is incorrect.

Further, proposed section 17(2A) will overcome any possible prejudice against bona fide victims with out of time applications. Also, in the course of his

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contribution the Hon. R. D. Dyer quoted some very interesting figures. He argued that the success rate for appeals to commence a matter out of time was no less than 80 per cent in 1991-92 and 1992-93. Once again I fear that the honourable member has been presented with an incomplete picture. In the period from 1992 to 1993, of the 1,115 applications lodged for out-of-time determinations, 343, or 31 per cent, were refused. Of those, only 54 were appealed, being 15.7 per cent of the 31 per cent of the out of time applications refused. Of those appealed to the District Court, 43 cases were successful,

representing 80 per cent of the 15.7 per cent appealed. This amounted to 0.8 per cent - that is less than 1 per cent - of all cases lodged with the tribunal for determination that year.

Under proposed section 17(2A) this figure for out of time appeals would be substantially reduced. When the figures provided by the Hon. R. D. Dyer are explored and taken in context with the other proposed amendments, they do not stand up. The Hon. R. D. Dyer also expressed concern about the three-month period for lodgment of appeals under proposed new section 29(2). The proposal is for the current period of 28 days for lodgment of appeals to be replaced with a period of three months, with the court having a power of extension. It was suggested that this would prejudice victims who are ill or overseas at the time of making an award.

The tribunal does not make awards in cases in which an applicant is ill or overseas. In such cases the tribunal will adjourn a case to take into account the needs of the applicant. In most courts the period for appeals is 21 to 28 days or such time as the courts may fix. Extensions will be granted after hearing submissions from the parties to the appeal. Where there is no power for the courts to extend, the period for lodgment of appeals is not extended. The courts will not extend time for lodgment of an appeal to a notional date, and will usually only extend time when delays by the party seeking extension are adequately explained and any prejudice to the respondent is examined. Time for lodgment of appeals is usually extended when a court in the first instance has delivered complex reasons for its judgment, and in the interests of justice wishes to allow the parties further time in which to assess their positions.

Reasons given by the tribunal for its determinations are not as complex as those contained in judgments of the Supreme Court, the Federal Court or the High Court, where more limited time frames apply. The tribunal does not knowingly make an award in the absence of a victim from its jurisdiction. In this context the purpose of the proposed extension to three months is to provide more than adequate time for the representatives of a victim to prepare a case for appeal. Any further extensions would create uncertainty in the commencement of recovery proceedings against offenders. For this reason the Brahe review recommended the amendment to three months on the basis that there be no power to extend that period.

The three-month period for lodgment of appeals will be the most generous in any jurisdiction. It has been framed to take into account precisely the circumstances referred to by the Hon. R. D. Dyer and to allow victims to fully consider their positions. The Hon. R. D. Dyer said also, "There is a great deal of safety in an appeal mechanism being readily available and readily acceptable". The Government upholds this precept of justice and has implemented it in the bill. Honourable members must agree that, with the proposals I have outlined, accessibility of victims to review will only be enhanced by this proposal.

Another of the Hon. R. D. Dyer's concerns arises from the proposal to increase to \$4,000 the threshold for claims. Section 19 of the Act currently provides a minimum threshold of \$200 for claims. That figure has not been increased since the Act was introduced in 1987. Submissions in the course of the Brahe review supported a range of increases. The concept of a minimum threshold for awards appears in other legislation, such as the Motor Accidents Act and the workers' compensation regimes. There is a higher scope for fraudulent claims with smaller claims and they occupy a significant amount of the tribunal's administrative time and funds, to the detriment of serious claimants. Smaller claims also include top-up claims by claimants with workers' compensation entitlements or claims for small amounts by persons not qualifying under the workers' compensation threshold.

The Brahe review recommended that victims injured in the course of employment should be excluded from the ambit of the Act. This proposal was not implemented because it discriminated against workers. Honourable members should bear in mind that victims with claims falling below the threshold will be entitled to pursue claims against offenders under part 6 of the Act. Under that part the court may make an order for compensation to a victim from the property of the offender when the offender's case is before the court. Amendments are proposed to part 6, sections 53 and 61, to provide that a direction

may be based on a finding of guilt. When a victim has lodged a claim and it is refused because it falls below the threshold, the victim will still be entitled to payment of legal costs and medical expenses incurred for the purposes of lodgment of a claim.

Section 24A(2) currently provides that an applicant may be awarded costs even if the application for compensation is dismissed. A tribunal generally awards costs for legal representation and for medical reports that are married in the course of an application that is unsuccessful, except in the case of frivolous claims. There is no proposal to amend section 24A(2) and this section will apply to claims dismissed because they fall below the new threshold of \$4,000. The Hon. R. D. Dyer has quoted the heart-rending case study of a pensioner who is bruised and loses a tooth in an act of violence. This case is not typical of those falling under \$4,000, which usually involve bruising and laceration occasioned in assaults, many arising from brawls.

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Of the 1,315 awards of less than \$4,000 in the period from 1 April 1993 to 31 March, only 15 cases involved a primary victim of sexual assault. In any event, the tribunal's awards of compensation for loss of teeth range between \$4,000 to \$8,000. Less than 3 per cent of claims of \$4,000 or under in the period from 1 April 1993 to 31 March involved a loss of teeth; 53 per cent of cases under \$4,000 involved lacerations and bruising. In Great Britain the Criminal Injuries Compensation Authority does not compensate for lacerations and bruising unless they occur in connection with other injuries. Many of the cases for claims under \$4,000 involve top-up workers' compensation claims and fraudulent claims.

Most cases of roting involve small claims. I give an example of one matter before the tribunal where the claimant was a law enforcement victim. He did not seek medical assistance and continued to discharge his duties. The injury appeared to be of an extremely minor nature. The only indication of an assault was redness to the general area. The tribunal was satisfied that there was an act of violence but, given the circumstances, was not satisfied that the injury could be assessed at \$200 or greater, and declined to make an award. An appeal was lodged and correspondence from the solicitors indicated that in this relatively minor matter an appropriate award would be in the range of \$400 to \$800. That case demonstrates how tribunal and court time can be tied up with relatively minor matters. Using current District Court decisions as an indication, should the applicant be successful, the solicitor's costs will be in excess of any award made. These costs are then paid from the Victims Compensation Fund. It is only fair that the threshold be set at a realistic level; that it exclude small, fraudulent or top-up claims, providing compensation for victims of serious crime without discriminating against any one group.

The final matter causing concern for the Hon. R. D. Dyer was the so-called restriction on the capacity to make multiple awards for victims of crime. It was suggested that the amendments at proposed section 3A(3) involves a new limitation on awards. In fact, proposed section 3A(3) provides clarification of the existing operation of the Act. It was never intended by the Opposition when it introduced the Act that a separate award would be made for each act of violence occurring in a series of acts of violence in a continuing relationship. It is suggested that the proposed amendment will result in a reduction of compensation to victims of multiple assaults, and that this will have its greatest impact on women as the victims of sexual assault and domestic violence.

The Hon. R. D. Dyer has claimed that the Government's proposals are gender biased. Of course, the Hon. R. D. Dyer has not referred to all of those sections of the bill in which the position of child and adult sexual assault victims and victims of domestic violence have been expressly taken into consideration. Proposed amendments affecting child and adult victims of sexual assault include the following. First, in proposed section 3A the definition of act of violence has been redefined to refer to violent or offensive conduct. Proposed section 3A(2) defines offensive conduct to include certain cases of sexual assault, including sexual intercourse without consent, sexual intercourse with a child under the age of 16 or a person having an intellectual disability, participation with a child in prostitution, and employment of a child for pornographic purposes. It also provides for offensive conduct to include

instances of intimidation and stalking in breach of an apprehended violence order.

Second, proposed section 3(1)(b1) provides for an expansion of categories of injury to include psychological trauma. This will be available to primary victims of a sexual assault, including child victims, pursuant to proposed section 15. Third, proposed section 17(2)(b) provides for matters to which the tribunal may have regard when considering any out of time applications. These cover circumstances particularly affecting child victims and sexual assault victims. Fourth, proposed section 20(4) provides for matters to which the tribunal must have regard in considering the reduction of an award because of late reporting to the police. These matters are similar to those in proposed section 17(2)(2A).

Fifth, proposed section 10(1) provides for the elements of sudden sensory perception required for secondary victims to establish a crime. Proposed section 10(1) provides that a parent or guardian or secondary victim who has not contributed to the child or primary victim's injuries need not establish the element of sudden sensory perception required for other secondary victims. Therefore, the provisions for reconsideration of determinations by the Victims Compensation Tribunal in proposed section 24B, and for the running of appeals as rehearings rather than on a de novo basis in proposed section 29(3), will streamline proceedings and alleviate the need for fresh proceedings. This will reduce any systems abuse of children giving evidence before the tribunal and the courts.

To suggest that the bill in any way discriminates against women is spurious and incorrect. The meaning of related acts at section 3A(3) has been clarified in order to provide that only one award for compensation may be made in relation to a series of acts occurring in the course of a continuing relationship. Such victims will not be precluded from making a further claim arising from a fresh series of acts of violence. It is only fair that all victims suffering in the course of a continuing relationship receive the same treatment under the Act. The Hon. R. D. Dyer referred to the examples of a woman being the subject of a gang rape and that of a 40-year old woman suffering a number of injuries over a period as a result of assaults by her husband.

The Hon. R. D. Dyer also affirmed the statement of Mr Elms, the chairperson of the tribunal, that the purpose of the compensation regime is to compensate for injuries rather than to compensate for crime. This position is upheld by the Government. Sexual assault victims receive awards in the high

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range. The New South Wales Bureau of Crime Statistics and Research found in its profile of claims and claimants published in February 1993 that of its sample of 1,022 victims the average award to victims was \$8,612 but that only 15 per cent of victims were awarded \$12,000 or less. Primary victims of adult sexual assault received the largest average award of \$21,298. The primary victims of child sexual assault received the next highest average award of \$15,618. The fact is that the tribunal considers the victim's injuries. In both the illustrations provided by the Hon. R. D. Dyer the victims would receive high awards and, more likely than not, the maximum award. Their position is further enhanced by the proposed expansion of the definition of injury at section 3(1) to include psychological harm in the case of sexual assault victims.

The purpose of the amendment to related Acts at proposed section 3A(3) is to overcome the outlandish argument advanced under the current Act and, I might add, against the intentions of the architects of the scheme, that such victims should receive a separate award for each act of violence occurring in a continuing relationship. If I might provide an illustration, there is currently a case on appeal involving a woman who was sexually assaulted by her father on an average of once a week over a 20-year period. There were 1,040 individual acts of sexual assault. If the woman were to receive the average award for sexual assault for each such act, her award would total \$22,149,920. Even if she were to receive an award for each act based on the proposed threshold of \$4,000, her total award would be \$4,160,000.

Honourable members must agree that these are ridiculous results and were never intended by the architects of the scheme. As I have said, the purpose of the section is to provide clarification rather than

to create new regimes of restricted awards for these victims. The proposal must also be taken in context with proposed sections 18 and 19, which will allow the unfortunate victim to receive a full award for a claim covering a series of acts of violence. Where there has been a case of continuing abuse, a high award will be made. If there is a further act or series of acts of violence involving the same party, the victim will be able to make a fresh claim covering the further series of acts of violence.

As I have said, the concerns raised by the Opposition have been based on a limited reading of the bill. It must be read in its entirety before this Government can be accused of disadvantaging victims of crime in this State. If each section causing concern is read by honourable members in its proper context, they will clearly see that it is a finely balanced bill. It meets the urgent need of victims of violent crime in this State; it contains a restatement of the Government's commitment to victims of crime; and it largely provides clarification and direction where the Act has failed to do so. Some of the very principles now attacked by members of the Opposition derive from themselves as architects of the scheme.

The Hon. R. D. Dyer has chided the Government for being cynical. He referred to the second reading debate on legislation to abolish unsworn statements from the dock, and suggested that the Government's pro-victim attitude is not apparent in the bill before the House. As I have illustrated, the Opposition's claims are based on an incomplete reading of the bill, and false assumptions as to its operation. I have demonstrated that this bill is pro-victim. It is consistent with the Government's many efforts to improve the lot of victims of crime in this State. For the Opposition to oppose the proposals set out in the bill is itself cynical. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

COURTS LEGISLATION (CROWN APPEALS) AMENDMENT BILL

Second Reading

Debate resumed from 21 April.

The Hon. R. D. DYER [9.39]: The Opposition supports the bill. Honourable members will recall that the principal Act, the Children (Criminal Proceedings) Act 1987, was introduced shortly before the former Labor Government left office. The Act regulates the conduct of criminal proceedings against children. The Act applies to juvenile offenders, whether they are dealt with by the Children's Court or according to law in the general courts of the State. In 1987, when the Children (Criminal Proceedings) Act became law, the Crown was not entitled to appeal to the District Court against sentences imposed on offenders by magistrates. However, that position changed in 1988 by virtue of an amendment made to the Justices Act. The result is that there is now an anomaly in the law in that although it is permissible for the Crown to appeal to the District Court against a sentence imposed on a juvenile offender by a court other than the Children's Court, the Crown cannot do so when a sentence is imposed on such an offender by the Children's Court.

It appears to the Opposition as a matter of principle that there is no reason why some sentences imposed on juvenile offenders should be immune from correction on appeal and others should not. The purpose of the bill is to amend the Children (Criminal Proceedings) Act 1987 and the Justices Act 1902 to allow the Director of Public Prosecutions to appeal to the District Court against sentences imposed by the Children's Court. It should be noted in particular that when sentencing offenders the Children's Court is limited to the sentencing options contained in section 33 of the Children (Criminal Proceedings) Act. I note also that under section 33 it is not open to the Children's Court to impose a sentence of imprisonment, although it is within the power of the Children's Court to commit a juvenile offender to the custody of the Minister administering the Children (Detention Centres) Act 1987 for a period not

exceeding two years.

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I am concerned about one matter. Although the Minister said in his second reading speech that when the Director of Public Prosecutions appeals to the District Court the judge hearing the appeal will be confined to the sentencing options available to the magistrate in the Children's Court, I cannot find a precise provision to that effect in the amending legislation before the House. It may well be that that will be the outcome of the principal Act being amended in the manner contemplated by the bill. I do not suggest for one moment that the Minister attempted to mislead the House when he gave that undertaking. However, it is the duty of the Opposition to ensure that laws are properly enacted and that undertakings given by the Minister meet the facts and circumstances and, indeed, the provisions of the bill.

I again draw that matter to the attention of the Minister and his advisers to enable the Minister to give a specific assurance and some short explanation in reply as to why, in the event of an appeal by the Director of Public Prosecutions to the District Court, the judge is confined to the sentencing options available to the magistrate in the Children's Court. It may well be that that is the effect of the measure before the House, but I would like both a further undertaking by the Minister in that regard and a brief explanation as to why that is the outcome. It is an important point and the Opposition would like it to be laid to rest. In fairness I should say that it appears to the Opposition that there is no valid reason that the correction mechanism - that is, the availability of an appeal to the District Court - should not be available to the Crown when a sentence is believed to be unduly lenient.

After all, an appeal is available when the defence believes that a sentence imposed by a magistrate in the Children's Court is unduly harsh. I have always believed in balance, and in my view it is difficult to understand why such an appeal should be available to the defence and not to the Crown. In his second reading speech the Minister mentioned that the bill is supported by the Chief Magistrate, Mr Ian Pike, by the Senior Children's Court Magistrate, Mr Blackmore, and by the Chief Judge of the District Court, Judge Staunton. I have taken the liberty of speaking to the Senior Children's Court Magistrate and he has confirmed that he supports the bill. He sees a degree of safety being available in some guidance being given by a superior court in relation to sentences imposed from time to time in the Children's Court. It is apparent that the Opposition supports the legislation for the reasons I have mentioned.

Before I conclude, I should like to place on the record that the Marrickville Legal Centre and Children's Legal Service has sent correspondence dated 2 May to the Attorney General concerning the bill. In effect it argues against the provisions of the bill. I am unable to agree with some of the points of view put to the Attorney General. I believe that the approach taken in the correspondence is unduly one-sided and advances some arguments that are not tenable in that they are used against the Crown and not, as they might well be, against the defence when the defence, as is sometimes the case, lodges an appeal against what is perceived to be an excessively harsh sentence. I cannot support much of what is said in the correspondence, except in relation to some of the more general points.

In its remarks to the Attorney General, the Marrickville Legal Centre claims that the bill has been presented to Parliament without any community consultation or public debate. The Attorney General has indicated that there has been consultation with the members of the judiciary to whom I have referred, but I am concerned about the statement by the Marrickville Legal Centre that there has, in effect, been no community consultation regarding the provisions of the bill. The Marrickville Legal Centre also draws attention to the fact that the Government has seen fit to bring forward this amendment despite the fact that it has not yet brought to finality and issued the white paper on juvenile justice.

Juvenile justice reform has undergone a long gestation period. From memory, the green paper has been available for about 12 months and I would have thought that the issuance of the white paper is somewhat overdue. In making those comments I do not say that the amendment is not justified, but I say,

as Marrickville Legal Centre does, that it might have been advisable for the Government not only to bring forward this piece of amending legislation but also to set in place its juvenile justice reforms by issuing the white paper on juvenile justice. A few weeks ago the Attorney General and I attended a conference on juvenile justice held at Terrigal on the Central Coast and organised by the Juvenile Justice Advisory Council and the Australian Institute of Criminology. The Attorney spoke at that conference and I chaired a conference session.

I would have thought that the Government's aim would be to have the white paper on juvenile justice available for that conference. That was not the case. I am concerned that the white paper may have run into some trouble in Cabinet, presumably for funding reasons. In connection with this bill I place on record the Opposition's concern regarding the continuing delay in completing the juvenile justice reforms set in train by the report on juvenile justice by the Standing Committee on Social Issues, followed by the green paper. The Opposition anxiously awaits the white paper. The Opposition supports the bill. However, I seek the assurance of the Attorney General on the matter I raised earlier regarding the District Court being confined to sentencing options provided for and contemplated by section 33 of the Children (Criminal Proceedings) Act 1987. I would not like to think that the appeal entitles the District Court to go outside those statutory sentencing options provided by the principal Act.

The Hon. S. B. MUTCH [9.52]: I support the Courts Legislation (Crown Appeals) Amendment Bill and congratulate the Hon. R. D. Dyer on his erudite and considered speech. He certainly has shored up his position and I think it is probably a good thing
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because the Hon. Peter Anderson will certainly be looking to move to the upper House. I feel that the Hon. Peter Anderson will be able to play a tremendous -

The Hon. Franca Arena: Not in the place of the Hon. R. D. Dyer.

The Hon. S. B. MUTCH: No, but he will be able to play a tremendous support role to the Hon. R. D. Dyer as second in charge to the honourable member and deputy spokesman for whatever shadow portfolio the Hon. R. D. Dyer is elevated to after the next State election. I commend the Hon. R. D. Dyer for his speech; he has my support.

The Hon. R. D. Dyer: Is the Hon. S. B. Mutch trying to help me?

The Hon. S. B. MUTCH: I am throwing my weight behind the Hon. R. D. Dyer, saying that he has my vote; I have some influence.

The Hon. R. D. Dyer: You do not have a vote.

The Hon. S. B. MUTCH: But I have influence. I am sure the assurances that the Hon. R. D. Dyer is seeking from the Attorney General as to the intentions of the legislation will be forthcoming. The bill was introduced to rectify an anomaly whereby, although the Crown may appeal to the District Court with respect to sentences imposed upon juveniles by a magistrate authorised by proclamation to exercise the jurisdiction of the Children's Court, such an appeal is not available when the sentence has been imposed by a Children's Court. It is a matter of significance where non-specialist magistrates are dealing with juvenile offenders. It could be said that in those cases there is a need for that type of appeal, but one has to ensure that the law is consistent in relation to the avenue of appeal. This legislation will produce greater uniformity in sentencing.

On appeal the District Court will be bound by the same statutory sentencing options which bound the magistrate in the first instance. Among other things that means that sentences of imprisonment will not be available on appeal. The existing rights of defendants to appeal on conviction and or sentence are not disturbed by the amendments. Although the facility for the Crown to appeal should exist, it is not anticipated that the number of such appeals will be great. This has been the experience in respect of

Crown appeals on sentencing generally. The amendments have been canvassed among the judiciary and are supported by the Chief Judge of the District Court, the Chief and Deputy Chief Magistrates, the Senior Children's Court Magistrate and the Director of Public Prosecutions. I thank the Opposition, and particularly its brilliant spokesman, the Hon. R. D. Dyer, who I anticipate will have a long and secure reign on the Opposition benches in the Legislative Council.

The Hon. ELISABETH KIRKBY [9.56]: As has been stated by other members, the Courts Legislation (Crown Appeals) Amendment Bill addresses an anomaly in the Children (Criminal Proceedings) Act 1987 and the Justices Act 1902 whereby the Crown can appeal to the District Court in relation to a sentence imposed on a juvenile offender by a court other than a Children's Court but cannot do so in relation to a sentence imposed on a juvenile offender by a Children's Court. The Children (Criminal Proceedings) Act and the Justices Act will be amended to allow the Crown to appeal to the District Court in relation to penalties imposed by the Children's Court.

I am well aware, and I note, that this right of appeal will not alter the sentencing options that may be imposed under the existing section 33 of the Children (Criminal Proceedings) Act. In other words it will not be possible to impose a sentence of imprisonment. This has been referred to by other speakers to this debate. The bill will ensure that all sentences imposed on juvenile offenders will be subject to Crown appeal. It is obvious that the community has an interest in correct sentencing policy being applied. However, the House should be aware that a specific exemption was made by John Dowd, Q.C., when he was Attorney General of this State. During debate on the Justices (Appeals) Amendment Bill in the Legislative Assembly on 10 November 1988 Mr Dowd stated, as recorded at page 3172 of *Hansard*:

This amendment will enable the Crown to appeal against inadequate sentences imposed by magistrates. It does not extend to decisions of magistrates in the Children's Court, which is a different jurisdiction and ought not to be subject to the same criteria.

In common with the Hon. R. D. Dyer, I ask the Attorney General and Leader of the Government in this House why he has now seen fit to reverse that policy, notwithstanding the generic statements that he has made about getting rid of an anomaly. If there is an anomaly, it was created for a reason by the former Attorney General, a member of the Liberal administration, and it was presumably accepted by Cabinet. I wonder what has changed to persuade the Leader of the Government in this House to get rid of that so-called anomaly. In common with the Hon. R. D. Dyer, I ask the Attorney General to address this question in his remarks in reply.

Reverend the Hon. F. J. NILE [10.0]: The Call to Australia group is pleased to support the Courts Legislation (Crown Appeals) Amendment Bill. The object of this bill is to amend the Children (Criminal Proceedings) Act 1987 and the Justices Act 1902 to enable the Crown to appeal to the District Court in relation to penalties imposed by the Children's Court. This bill will amend the Children (Criminal Proceedings) Act 1987, including section 27, and remove the bar in section 42 that prevents the application of division 4A of part 5 of the Justices Act 1902 to decisions of the Children's Court. The Hon. Elisabeth Kirkby asked what had changed. I think there has been a lot of public concern about some of the decisions made by the Children's Court. Some magistrates seem to have given lenient penalties or sentences in serious cases.

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I believe it is a matter of justice that the Crown should have the ability to appeal against those decisions where it feels it is justified.

The original legislation was drafted by the then Attorney General, Mr Dowd, and it reflects his philosophy. I do not necessarily support all the elements of Mr Dowd's philosophy. I believe that this bill brings courts into line, whether they are children's courts or adults' courts, so that they operate under the same principles. I think the Crown should have the ability to appeal when an appeal is justified. It should not be necessary to use that process often. I know that in recent times juveniles who have been guilty of multiple car stealing - they have stolen 40 or 50 - have received minor sentences.

In another case a schoolboy fractured the skull of a 13-year-old boy. There was no sentence as such - no community service or juvenile justice detention, nothing. The parents are obviously distraught over what was almost a murder. Apparently the boy who carried out the offence walked out of the Children's Court with a big smile on his face. In a situation where the Crown is present, knows the evidence and feels that the magistrate has made a wrong decision, it should have the ability to appeal in the public interest. That right should be available, not to be abused but to be used on occasions when it seems justified. We support the bill.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [10.3], in reply: I thank honourable members for their support for this important legislation. I shall deal first with what I can best describe as a cynical comment from the Hon. R. D. Dyer, who is not known for his cynicism, except on rare occasions. On this occasion he cynically questioned the delay of the white paper. I intend to deliver a workable white paper that will achieve real change in juvenile justice. I draw the attention of the House to the fact that in 1983 the former Labor Government introduced a child welfare Act. By 1988 that Act still had not been proclaimed.

The Labor Party introduced legislation that even it acknowledged was inordinately expensive and unworkable. I have no intention of following the model that was set by the Labor Party to introduce change in this area. When Cabinet finally resolves upon a direction on juvenile justice, I intend it to be a package of workable proposals that will be capable of implementation and which will be financed to achieve that direction.

Reverend the Hon. F. J. Nile: And it will not be window-dressing.

The Hon. J. P. HANNAFORD: It will not be the window-dressing of 1983, which was just before an election. To my recollection, that window-dressing continued to be rolled out in varying forms before each election.

The Hon. Franca Arena: The Minister is being very cynical now.

The Hon. J. P. HANNAFORD: If the Hon. R. D. Dyer wants to lay out some cynicism, I will lay out some cynicism in response. He can be assured that the white paper will soon come forward. The Hon. Elisabeth Kirkby referred to comments made by the Hon. John Dowd in 1988. There is no doubt that there is a need for a specialist Children's Court. I support that. There is no doubt that appeals from decisions in the Children's Court must be allowed. There are now a number of children's courts in this State.

There are not only the specialist children's courts, but also the Local Courts, which provide a similar jurisdiction. There is a need to ensure consistency in the law that is being applied by all the courts. That can best be achieved by appeals and by giving direction to the District Court about the way in which justice should be delivered. The fact that the magistrates support this reform indicates that there is now a maturity in the community in the way in which children should be dealt with by the courts; leadership is being provided by the children's courts in achieving that. There is a need for the District Court to provide guidance to all the magistrates. That can best be achieved by this reform.

The Hon. R. D. Dyer asked whether a District Court judge presiding over a Crown appeal from a sentence imposed by a children's court would be limited to the sentencing options available to the Children's Court. As a matter of common sense, it should be accepted that a court hearing an appeal on sentence would be bound by the sentencing options available to the court below. The exercise of the appellate function depends upon the context of principles and parameters that the court appealed from was expected to apply. In the present situation this is put beyond doubt by section 131AB(4) of the Justices Act 1902. That section deals generally with Crown appeals on sentence to the District Court, and subsection (4) provides that on appeal the District Court may not vary a sentence so that the

sentence as varied could not have been imposed by the court at first instance. It also provides that the District Court may not impose a sentence that could not have been imposed by the court at first instance.

That this position will operate in respect of Crown appeals that may be instituted as a result of the passage of the bill is made clear by new section 131AA(2A), which will be inserted into the Justices Act by clause 4(a) of the bill. The approach of the Court of Criminal Appeal in *Regina v. XYJ*, an unreported decision of 15 June 1993, is also relevant in that regard. That case was a Crown appeal on sentence from the District Court. The offender was a child at the time of sentencing. The District Court judge, exercising the power conferred by section 18 of the Children (Criminal Proceedings) Act, elected to deal with the penalty as though he was sitting as a children's court. Subject to argument as to the true construction of provisions in the Children (Criminal Proceedings) Act, the Court of Criminal Appeal approached the appeal on the basis that it had available to it only the sentencing options that were

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available to the District Court judge after he had exercised the discretion under section 18. Indeed, from the judgment of the court, it does not appear to have been argued that the Court of Criminal Appeal had any other option.

The Hon. Elisabeth Kirkby asked what was wrong with the status quo. There is no convincing logic underpinning it. The principles that govern the sentencing of juvenile offenders are not the same whether the offender is being dealt with by a children's court or not. These principles derive from the general law and section 6 of the Children (Criminal Proceedings) Act. The relevant difference is that the sentences that may be imposed by a children's court differ from those that may be imposed by a court applying the general law. Just as a magistrate sentencing a juvenile offender according to law may err in applying principle within available parameters, the same holds good for a children's court. There is no reason why an erroneous decision of one type should be immune from appeal and another subject to appeal.

By allowing the offender and the Crown to appeal from sentences imposed by a court that is not a Children's Court, it is recognised that a magistrate may err on the side of undue severity or undue leniency. By allowing an offender sentenced by a Children's Court to appeal against a sentence imposed, it is recognised that a magistrate presiding over a Children's Court may err on the side of undue severity. If this is so, it is also true that such a magistrate may also err on the side of undue leniency. The bill accepts this and seeks to remove the anomaly. A further anomaly arises from the operation of section 18 of the Children (Criminal Proceedings) Act. In substance that section allows a court that is not a Children's Court a discretion to act as a Children's Court in sentencing an offender. Where this discretion is exercised there nevertheless exists a Crown right to appeal on sentence. It is absurd that in some cases a decision applying the principles and sentencing options available to a Children's Court should be immune from appeal and in others subject to appeal.

A third anomaly arises from section 20 of the Children (Criminal Proceedings) Act which, in certain circumstances, allows a court that is not a Children's Court a discretion to remit a matter to a Children's Court for sentence. If the matter is remitted, any sentence imposed would be immune from Crown appeal. If it is not, the right of Crown appeal exists. Although it was the ideal of the Children's Court Act that juvenile offenders should be dealt with by specialist magistrates, it is not always possible for this to occur. The creation of the Crown right of appeal contained in the bill will introduce a mechanism by which discrepancies in sentences can be corrected and greater uniformity can be introduced. Traffic offences, for instance, are excluded from the jurisdiction of Children's Courts and therefore the Crown can appeal against sentences imposed on juveniles in such matters.

As there already exists a Crown right of appeal in what would amount to many matters involving juveniles, there does not seem to be any good reason why the right of appeal should not exist in respect of other categories of offences. The Hon. Elisabeth Kirkby also asked whether the bill would deprive the Children's Court of its character of a separate jurisdiction. The answer is emphatically no. What gives the Children's Court its character as a separate jurisdiction is the Children's Court Act, which establishes

it, and part 3 of the Children (Criminal Proceedings) Act, which deals with the conduct of criminal proceedings in the Children's Court. The bill does not amend the Children's Court Act or part 3 of the Children (Criminal Proceedings) Act in any way. Therefore the character of the Children's Court is not changed. I trust that the House will be satisfied with my response to the issues raised, and I thank the House for the support of the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

VICTIMS COMPENSATION (AMENDMENT) BILL

In Committee

Schedule 1

The Hon. ELISABETH KIRKBY [10.15]: I move:

No. 1 Page 3, Schedule 1(2), lines 5 and 6. Omit all words on those lines, insert instead:

- (b) that has involved actual or attempted violent or offensive conduct against one or more persons, or a conspiracy to commit violent or offensive conduct against one or more persons, or an act causing one or more persons to apprehend immediate violent or offensive conduct against himself or herself, or themselves; and

I have moved the amendment to restore eligibility to people threatened with violence and to victims of assault as well as to victims of battery. The existing definition in the bill merely refers to violent or offensive conduct. I believe that it is necessary to redefine the act of violence, and certainly the amended definition will exclude victims of negligent cyclists and dog owners and regulatory offences not involving physical force. I ask honourable members to support my amendment.

The Hon. R. D. DYER [10.16]: The Opposition supports the amendment. The Opposition is appreciative of the detailed response of the Attorney General and Minister for Justice to the second reading debate. The style I shall endeavour to adopt in Committee is to be brief rather than to deal with matters at length. The Hon. Elisabeth Kirkby is moving amendments, and unless I feel that I can usefully add something in particular, generally speaking I will be content to indicate the Opposition's support for or opposition to her various amendments.

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I agree that where a person is threatened with, to take one example, a loaded gun at close range - such as a bank teller - that person can be greatly traumatised by the event. One does not have to be physically assaulted to sustain damage, psychological or otherwise. I believe that the amendment moved by the Hon. Elisabeth Kirkby will extend the provision of the bill in an acceptable way that will cover some aspects of trauma that would not otherwise be covered in the shorter form of words contained in the bill at the moment.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [10.18]: The Government does not accept the amendment. Proposed section 3A(b) as drafted provides for an act of violence to include violent or offensive conduct against one or more persons. The object of the proposed amendment, the definition of act of violence, is to provide compensation arising out of acts of physical violence or offensive conduct as set out in subsection 2. A conspiracy to commit violent or offensive conduct does not result in actual physical injury, which is the

basis of compensation under the Act. The purpose of the definition is to provide for compensation in connection with the commission of an offence resulting in such physical injury. If the apprehension of violence or offensive conduct is followed by an act that results in physical injury, the victim will be compensated under the Act as amended. To broaden the amendment as proposed by the Democrats would be to defeat the definition of an act of violence that was recommended by Mr Brahe in his review. The Government therefore opposes the amendment.

Amendment negatived.

The Hon. ELISABETH KIRKBY [10.19]: I move:

No. 2 Page 3, Schedule 1(2), line 33. At the end of the line insert:

; or

(f) conduct against a person apparently constituting an offence under section 90A(Kidnapping) or 91 (Taking child with intent to steal etc.) of the Crimes Act 1900.

This amendment seeks to restore eligibility to a child who is severely psychologically disturbed by a kidnap that has been maintained by inducements, intimidation or threats but not by violence. It is my understanding that the Government is happy to accept this amendment. Honourable members would agree that a child, particularly a small child, could be severely traumatised by a kidnap even if no violence were offered and that the intimidation, the inducements or the threats that may have been given him or her could have a very severe effect even though no actual violent acts had taken place. I hope that I understand the Attorney General correctly when I say that I believe he will accept this amendment. If that is so, I am delighted.

The Hon. R. D. DYER [10.20]: I wish to place it on record that the Opposition strongly supports this amendment. For the reasons outlined by the Hon. Elisabeth Kirkby, Opposition members ask the Government to give very serious consideration to accepting the amendment.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [10.21]: The Government does accept the amendment, but not for the reasons put forward by the Hon. Elisabeth Kirkby. When speaking in support of the amendment, the honourable member referred to the impact of significant trauma. This relates directly to amendments that will otherwise be moved by her. The Government accepts the amendment because it falls within the spirit of paragraphs (a) to (e) of proposed new section 3A(2) and fits into the scheme of the legislation. The Government accepts the amendment as an expansion of section 3A(2) but wants it clearly recorded in *Hansard* that this is done with the intention that the confinements contained in the rest of the legislation apply to this provision also.

Amendment agreed to.

The Hon. ELISABETH KIRKBY [10.22]: I move:

No. 3 Page 4, Schedule 1(2), lines 3-7. Omit all words on those lines, insert instead:

(b) if, in the opinion of the Tribunal, both of the acts were related to each other because they happened at or about the same time or because they happened over a period of time during the course of a continuing relationship.

I contend that acts of violence that have a common factor should not be acknowledged as a single act of violence. My amendment will ensure that acts of violence with a common factor are not counted as a single act of violence. Having said that, I assure the Attorney General, particularly in view of his lengthy

reply to the second reading debate, that the Australian Democrats acknowledge that there is a need to strike a balance between compensation for victims and finite public funds, particularly in relation to multiple acts of violence occurring within a relationship. The Attorney General adverted to that in his reply.

That need was borne out by the decision of the Court of Appeal in *Director-General of the Attorney General's Department v. District Court of New South Wales and Stark*, of 21 September 1993. In one case a girl was raped approximately 650 times by a family friend who had cared for her over a number of years. Under the Act as interpreted in *Stark* she would have been eligible for a maximum of \$32.5 million. Obviously, such a sum is ridiculous and could not possibly be accepted - after all, it is more than half the annual compensation bill and reality and common sense dictate that there must be a limit to compensation.

I do believe, however, that the bill has gone too far by substituting the concept of common factor for the concept of a related act of violence currently in

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the legislation. An example was given to me by the Bar Association: a nurse who finishes her shift at night may be raped by different offenders on occasions a year apart whilst going home from work. Those offences would not be related but they may be deemed to be linked by a common factor because, after all, a nurse finishing her shift late at night may be increasingly vulnerable simply because of the hours she has been forced to work and the fact that she has to travel home at a time when she would be considerably less safe than she would be had she worked what would be regarded as more normal hours.

The amendment is necessary for the benefit of many women who have to work strange hours and who may have a long journey to return home, possibly on inadequately supervised public transport. I realise that there are many men who do not wish to travel on public transport late at night, and particularly not on public trains, but they are in a much better position to defend themselves against assaults or attempted rapes. This amendment is important, and I ask all honourable members to support it.

The Hon. R. D. DYER [10.26]: The Opposition agrees with the arguments advanced by the Hon. Elisabeth Kirkby in support of this amendment, and Opposition members will vote in favour of it.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [10.27]: The definition of a related act as set out in proposed new section 3A(3)(b) provides for the Victims Compensation Tribunal to assess the circumstances of a continuing relationship. It is appropriate that it is open to the tribunal to take account of other factors in its consideration of what a related act may be. The concluding words of the clause, "because they share some other common factor", merely allow the tribunal to consider any combination of factors that may give rise to acts being considered to be related. To remove that discretionary power from the tribunal would be to narrow the definition severely and would deprive the tribunal of the opportunity to consider all the relevant factors. The Government believes that the tribunal is the body best placed to decide what a relationship is, and the measure proposed by the Government is an appropriate mechanism to give the tribunal that power. The amendment proposed by the Australian Democrats and the Opposition would reduce the power of the tribunal. The Government does not believe that to be appropriate and will therefore oppose the amendment.

The Hon. ELISABETH KIRKBY [10.29]: I should like to add to my previous remarks on this amendment because I believe it is important that my concerns are placed on the record. The Government's legislation will restrict awards of compensation for related acts. If acts of violence are considered to be related, a victim will be entitled to only one award of compensation. 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 had some other connecting factor. This amendment is gender based; it will reduce the amount of compensation awarded to victims who suffer multiple assaults

as a result of domestic violence or incest. As I said earlier, the overwhelming majority of these victims are women. The Government suggests that victims of multiple assaults in the home should be treated less seriously and, therefore, are entitled to less compensation than victims of multiple assaults outside the context of a relationship.

I am very concerned that the effect of this amendment will be that a victim who is attacked by a number of assailants, as in a gang rape, will not be able to lodge more than one claim. I should like to give an example to the House. A 40-year-old woman was the victim of ongoing assaults by her husband. On one occasion she sustained a broken jaw; on another she suffered considerable facial damage and a broken arm. Two months later while staying with a friend she was also sexually assaulted by her husband. Separate criminal charges were laid in relation to each of these assaults - in my opinion, quite rightly so - but under the new amendments this woman may be compensated only as though one single act of violence occurred, because they occurred in the context of an ongoing relationship.

This shows very clear discrimination by the Government against victims of domestic violence and child sexual assault. If victims of street violence are compensated separately for each individual act of violence, why should victims of domestic violence be treated differently? Of all the amendments that I will move tonight, this is the one that concerns me most. I give notice to the House that I intend to divide on it because of its overriding importance. I cannot believe that I will not have wide support in the community when the effects of the Government's new legislation are known. I cannot conceive that in any sort of justice a woman should be continually abused in her home by a person whom she has every right to trust, any more than a child could be continually abused by a relative in the privacy of the home and still receive a lesser compensation than if the assault had taken place outside the home. It is against all tenets of natural justice. I urge the Attorney General to reconsider the amendment.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [10.33]: The comments of the honourable member require some response. The definition of related acts at section 3A(3) has been amended in order to provide that only one award for compensation may be made in relation to a series of acts occurring in the course of a continuing relationship; but such victims will not be precluded from making a fresh or further claim arising from a fresh series of acts of violence. This is to overcome the arguments that victims in these cases should receive an award for each act of violence occurring over a period of time. As I indicated in my second reading speech, such an argument could result in awards well in excess of the \$50,000 limit, and that has never been the intention of the legislation.

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However, in determining the award in such a case, the tribunal will consider the level of injuries over the period, and this will result in a high or maximum award. In sexual assault cases the tribunal will be able to consider psychological harm pursuant to proposed section 3(1)(b1) so that if a fresh series of violence occurs after the victim has made an application, it may be the subject of a fresh determination by the tribunal under proposed section 19(5). It is only fair that all victims suffering in the course of continuing relationships receive the same treatment under the Act.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 19

Mrs Arena	Mr Macdonald
Dr Burgmann	Mr Manson
Mr Dyer	Mr Obeid
Mr Egan	Mr O'Grady

Mr Enderbury	Mr Shaw
Mrs Isaksen	Mr Vaughan
Mr Johnson	Mrs Walker
Mr Kaldis	<i>Tellers,</i>
Miss Kirkby	Ms Burnswoods
Mrs Kite	Mr Jones

Noes, 19

Mr Bull	Revd F. J. Nile
Mrs Chadwick	Dr Pezzutti
Mrs Evans	Mr Pickering
Mrs Forsythe	Mr Ryan
Miss Gardiner	Mr Samios
Dr Goldsmith	Mrs Sham-Ho
Mr Hannaford	Mr Rowland Smith
Mr Jobling	<i>Tellers,</i>
Mr Moppett	Mr Coleman
Mr Mutch	Mrs Nile

Pair

Mrs Symonds	Mr Webster
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The CHAIRMAN: The numbers being equal, I give my casting vote with the noes and declare the question to have passed in the negative.

Amendment negatived.

The Hon. ELISABETH KIRKBY [10.42], by leave: I move the following amendments in globo:

No. 4 Page 4, Schedule 1(3), lines 19-35. Omit all words on those lines.

No. 17 Page 24, Schedule 1(42), lines 5 and 6. Omit "(on a consolation basis)".

No. 18 Page 26, Schedule 1(53), lines 22-27. Omit all words on those lines.

These amendments deal with common law principles of compensation and omit the item replacing compensation on common law principles with the solatium system. In his speech in reply to the second reading debate, the Attorney General tried to make capital of the fact that the existing Act does not explicitly state that common law principles should apply when accessing compensation. Indeed, he tried to imply that the solatium principle is what was actually intended when the Act was drafted. The fact is that, in the absence of any explicit statement in the Minister's 1987 second reading speech, it is entirely reasonable, under section 34(2)(b) of the Interpretation Act 1987, to refer to a report which has been laid before either House of Parliament.

The report of the New South Wales task force on services for the victims of crime was laid before Parliament and it expressly - I repeat, expressly - rejected the Victorian solatium principles as being less generous and recommended the continuation of common law principles. If it had been intended that the 1987 Act should change the basis of compensation from common law to solatium - after all, this is a most fundamental change - one would have expected an indication in the Minister's second reading speech; but there was no such statement. I must reject the suggestion that the payment of victims' compensation does not derive from a legally enforceable right. In *Regina v. McDonald* it was described as a right by Mr Justice Lee, so I do not accept that victims' compensation is simply an act of grace embodied in statutory

form.

During my contribution to the second reading debate I made the point that common law levels of compensation are well founded and established, as distinct from arbitrary principles that would be in place under the solatium system. That is why I have moved this amendment, and I still hold to that view. The Attorney General has tried to argue that a solatium system would be fairer, since the existing \$50,000 ceiling has had an adverse impact on the more seriously injured. But the fact is that very few people would be eligible for compensation of more than \$50,000, and the majority of seriously injured victims would easily be accommodated within the \$50,000 limit.

The problem is that this switch to solatium is likely to have an adverse impact on the majority of seriously injured victims. The Attorney General has promised that the solatium system would be based not on a worst case scenario but on current pay out levels. That means that the ceiling of \$50,000 would still apply and that there would still have to be some scaling down in proportion to the degree of injury. For those reasons I believe my amendment should be supported. As I said about my previous amendment, I am concerned about these and some other amendments and I again put the Committee on notice that I intend to divide on these amendments.

The Hon. R. D. DYER [10.47]: The Opposition very strongly supports the amendments moved by the Hon. Elisabeth Kirkby, which the Opposition believes are central to the Committee's consideration of the bill. I went into considerable detail during the second reading debate to place on
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record the Opposition's concern about the substitution of the solatium principle for the application of common law principles to awards made by the Victims Compensation Tribunal. The Attorney, in his reply to the second reading debate, sought in effect to downplay or minimise the effect that the application of the solatium principle would have on the level of awards made by the Victims Compensation Tribunal.

I would argue that what the Government is doing in this regard is very central to its objectives with this bill, and that it would not be seeking the imposition or adoption of a solatium principle unless it believed that the effect of that change would be a substantial diminution in the level of awards made by the Victims Compensation Tribunal. The Opposition believes that the solatium principle, if it becomes law and the tribunal is obliged to apply it, will lead to substantially reduced levels of compensation for most victims of crime. The Opposition does not believe that that is acceptable to the general community, and very strong representations have been made on this aspect by the Bar Association. Members of the bar believe it will lead to a mean level of awards, and the Opposition believes that the fears of the bar in that regard are well founded. For those short reasons, the Opposition strongly supports the amendments moved by the Hon. Elisabeth Kirkby.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [10.49]: Honourable members are correct when they say that this proposal is a key point in the legislation. The defeat of the solatium principles would significantly undermine the direction in which the Government is seeking to proceed to try to achieve a clear, manageable and more beneficial award scheme. The Government completely rejects the arguments put forward by the Bar Association in relation to these amendments, as its position is without justification or substance. The Government does not accept the amendments.

The Hon. R. D. Dyer: Why are you making the change?

The Hon. J. P. HANNAFORD: I have outlined the reasons. I will obviously have to repeat in some detail the comments I made in my second reading speech, as it is necessary to make certain the Government's reasons for not accepting the amendments are placed clearly on the record. Awards to victims made by the Victims Compensation Tribunal are drawn from the Victims Compensation Corporation Fund, which is supplemented by the payment of compensation levies, funds recovered from

offenders and the confiscated proceeds of crime. Payments into the fund by offenders do not offset payments to victims by the tribunal. Therefore, awards to victims are funded from the public purse and, ultimately, the people of the State. Payments are not made from private sources or premiums, as they are with insurance-based compensation schemes. Payments are made by the Government on behalf of the community in recognition of the suffering of victims.

Awards are broken down into compensation for expenses, injury and personal expenses. Compensation for expenses includes compensation for actual and future expenses and for actual and future loss of earnings. Compensation for injury includes compensation for pain and suffering and loss of enjoyment of life. Under section 16, \$40,000 is the maximum award for compensation for injury, \$50,000 for expenses, and \$1,000 for personal effects. Therefore, the total limit on awards is \$50,000. So far the Act has provided no guidance as to the principles of compensation that shall apply. This has resulted in confusion as to the nature of compensation and a variation in awards. One of the express terms of reference of the Brahe review, on which the bill is based, was to consider the nature and determination of compensation. Mr Brahe noted conflict in the approach taken to the correct principles of compensation to be applied under the Act and made detailed comments, which I referred to in my second reading speech and which I will not repeat.

However, Mr Brahe clearly recommended that compensation should be made on solatium principles. Proposed section 3B provides clarification of the award of compensation, which is critically needed by the victims of crime in this State. Honourable members must remember that the limit of \$50,000 on awards made under the Act results in compensation to victims of crime and cannot result in damages on the scale of awards made under common law principles of assessment. With the limit of \$50,000 continuing to apply, the application of common law principles would be illogical and prejudicial to seriously injured victims. The application of common law principles does not give true common law results.

Let me illustrate some of the difficulties arising from the application of common law principles to the assessment of awards under the Act. Because of the \$50,000 limit, awards do not accurately and definitively reflect the quantum of common law damages. Nothing in the Act provides for using the maximum award of \$50,000 and scaling down, as is provided in the Motor Accidents Act. It is extremely difficult to assess some matters using common law principles. Under common law principles the tribunal would be limited to making awards on the basis of the status of the injury at the time of its determination. There would be no scope for making awards for injuries that had not yet manifested themselves or for possible future manifestation. That will be particularly problematical in sexual assault cases. If common law principles were applied in such matters, applicants would not receive the levels of compensation now being advocated if the solatium principles were applied.

Common law principles usually apply in the adversarial system, where evidence is tested. In this way, a pre-existing condition or an exaggerated claim is disclosed and the appropriate award made. That is not the case in the tribunal, where the rules of evidence do not apply and proceedings are one-sided and not adversarial. The adoption of the solatium principles does not mean that victims will receive less compensation. There is no justification for the argument by the Bar Association or its adoption by

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the Labor Party or the Australian Democrats. Solatium is a fairer system having regard to the absence of rules of evidence, the absence of an opponent to test the evidence placed before the tribunal, and the fact that many cases before the tribunal cannot possibly be assessed on common law principles. Because of the nature of the tribunal's proceedings, the \$50,000 limit and the need to compensate in some areas not ordinarily compensated on a common law basis, common law principles cannot be overly and justly applied.

Because of the absence of guidance in the Act and the rulings of courts on appeal, the current lack of consistency in awards must be addressed. The bill does this by providing for assessment on solatium principles. It has been suggested that the adoption of solatium or consolation principles will result in a

reduction of current levels of awards. That suggestion is based on the assumption that the Brahe recommendation of using \$50,000 as the worst case scenario and scaling down from that figure for remaining awards will be adopted. It has also been suggested that taking the \$50,000 limit for awards under the Act and scaling against the highest award of general damages at common law of \$300,000 will result in awards under the bill being reduced to one-sixth of existing levels. That is just not true.

I emphasise that the bill does not adopt the Brahe recommendations for the adoption of a worst case scenario and the scaling down of awards. The bill does not assume the common law level of \$300,000 as the basis for making awards under the Act. Those approaches are rejected. It is envisaged that under the solatium proposal a set range of awards for categories of injuries will apply. The applicable range of awards will give an indication to applicants and their representatives of likely awards. However, each application will be assessed on its merits and will be published. It will therefore provide a guide to victims, practitioners and tribunal members. It is anticipated that figures will be based on current determinations, and the reasoning of the tribunal for making awards will be open to scrutiny and to adjustment on appeal.

The benefits of the adoption of the solatium principle will be, first, that victims and practitioners will be able to estimate levels of awards; second, that awards will be standardised and current discrepancies in awards will be reduced - and that standardisation will be determined by the tribunal itself, not by some other party; third, that on appeal the District Court will have access to the guidelines used by the tribunal in its assessment of the victim's application; fourth, the adoption of a set range of awards will therefore assist in administrative assessment of claims of less than \$7,000 under proposed section 18 of the Act. If awards are made on a solatium basis all applicants will receive fairer standard and more predictable results. Consistency in awards will then be achieved. If these amendments are adopted, the question of the correct principles of compensation to be applied will be left open and the current discrepancies in awards will continue. It is these current discrepancies in awards that the Government seeks to overcome to give all parties greater certainty in the system. For those reasons the Government rejects the proposals by the Australian Democrats, which have been supported by the Australian Labor Party.

The Hon. ELISABETH KIRKBY [10.57]: Having regard to what the Attorney General has just said, I question how relevant it is to refer to the fact that proceedings before the Victims Compensation Tribunal are non-adversarial. Although former section 437 of the Crimes Act 1902 and the Criminal Injuries Compensation Act 1967 were criminal court based compensation schemes, as distinct from the tribunal based victims compensation scheme, the schemes were similar in practice. Even under an adversarial system many respondents would be impecunious and not interested in opposing applications for criminal injuries compensation because they have no income or assets to lose in such proceedings.

Indeed, I am informed that in the final years of the operation of the Criminal Injuries Compensation Act the majority of prisoners waived their right to attend compensation hearings. However, I still cannot see any justification for a less generous solatium system merely because the present scheme is not adversarial. The Attorney then said that the solatium system would be based not on a worst case scenario but on current payout levels. However, that means that the ceiling of \$50,000 will still apply and, inevitably, there will have to be some scaling down in proportion to the degree of injury. I cannot accept that the reasons offered by the Attorney General have any validity, and once again I seek support for my amendments.

Question - That the amendments be agreed to - put.

The Committee divided.

Ayes, 19

Dr Burgmann	Mrs Kite
Ms Burnswoods	Mr Macdonald

Mr Dyer	Mr Manson
Mr Egan	Mr Obeid
Mr Enderbury	Mr Shaw
Mrs Isaksen	Mr Vaughan
Mr Johnson	Mrs Walker
Mr Jones	<i>Tellers,</i>
Mr Kaldis	Mrs Arena
Miss Kirkby	Mr O'Grady

Noes, 19

Mr Bull	Mrs Nile
Mrs Chadwick	Revd F. J. Nile
Mr Coleman	Dr Pezzutti
Mrs Evans	Mr Ryan
Miss Gardiner	Mr Samios
Dr Goldsmith	Mrs Sham-Ho
Mr Hannaford	Mr Rowland Smith
Mr Jobling	<i>Tellers,</i>
Mr Moppett	Mrs Forsythe
Mr Mutch	Mr Pickering

Pair

Mrs Symonds	Mr Webster
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The CHAIRMAN: The numbers being equal, I give my casting vote with the noes and declare the question to have passed in the negative.

Amendments negatived.

The Hon. ELISABETH KIRKBY [11.7]: I move:

No. 5 Page 5, Schedule 1(4), lines 5-7. Omit all words on those lines, insert instead:

In section 3(1), after paragraph (c) of the definition of "injury", insert:

(c1) other psychological trauma or disturbance (whether or not amounting to mental illness or disorder);

The additional definition of injury included in the bill may not solve the legal problems that have led to child sexual assault victims and their mothers being denied compensation. I believe the definition that I have just proposed will more adequately achieve this purpose. This matter was brought to the attention of the Attorney General prior to this debate by way of questions on cases that have been before the courts. I hope that this amendment will rectify what, I believe, is a serious anomaly.

The Hon. R. D. DYER [11.8]: The Opposition supports the amendment and agrees with what has just been said to the Committee by the Hon. Elisabeth Kirkby.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [11.8]: Extension of injury to include disturbance, together with psychological trauma, is an amendment which is not accepted by the Government. Compensation under the Act is made on

the basis of assessment of categories of injury for which medical evidence is available to be provided. The proposal of section 3(1)(b1) is to provide compensation for psychological trauma only in the case of sexual assault victims. This will be a broad head of psychological damage which has so far not amounted to mental disorder as required under the Act. It is impossible to imagine a case of disturbance that does not fall within the ambit of psychological trauma. It would be an impossible task for the tribunal to assess disturbance when it falls below the definition of psychological trauma.

I understand that it is capable for medical professionals to provide reports that assess psychological trauma and that is why the amendment has been proposed in the legislation. It is possible for medical professionals to assess a disturbance that is so grave as to constitute psychological trauma. But to impose the standard proposed by the Australian Democrats, that is, is a disturbance, whether or not it amounts to mental illness or disorder, is to impose a standard that is not readily capable of medical assessment and, therefore, will only lead to difficulties in the administration of this Act and will not provide benefits of any meaningful nature to the victims at whom the amendment is aimed. It will lead only to confusion within the system. The Government does not support the amendment.

Amendment negated.

The Hon. ELISABETH KIRKBY [11.10]: I move:

No. 6 Page 8, Schedule 1(11), line 8. Omit "other", insert instead "lesser".

This amendment will prevent the Government from administratively increasing the threshold above \$4,000. I believe that this is very important. It was suggested that the threshold should be \$3,000. The Government did not agree with that and made it \$4,000. In 18 months the Government may increase that threshold from \$4,000 to \$5,000 or \$6,000 without coming before the House by way of regulation. I do believe that the Government should have the power to increase the threshold, particularly when it has no power to increase the maxima of \$50,000 and \$40,000. Once again, I ask honourable members to support my amendment.

The Hon. R. D. DYER [11.12]: The Opposition very strongly supports this amendment. Schedule 1(11) of the bill provides that there shall be omitted from section 19(2)(b) of the principal Act the words "\$200 or such other amount as may be prescribed" and inserted instead "\$4,000 or such other amount as may from time to time be fixed by proclamation". The Opposition is very concerned indeed, not that the Government might at some time seek to increase the threshold, although that is a matter that would be subject to consideration at the appropriate time - whether that increase in the threshold might be justified - but at the mechanism being adopted by the Government. The explanatory note regarding this amendment as contained in schedule 1 to the bill indicates that item (11) of the schedule amends section 19 so as to increase the minimum threshold to \$4,000 and to allow future variations of the threshold to be fixed by proclamation rather than by regulation.

As a former chairman of the then Subordinate Legislation Committee and later a member of the joint Regulation Review Committee, I am well aware of the dangers of uncontrolled legislation by governments, that is, uncontrolled by the Legislature. In my view it is unsatisfactory that the threshold should be fixed by proclamation. If I recall the relevant legislation, a proclamation is not a rule, a regulation or order capable of being disallowed by Parliament. Therefore, it would be an administrative act of a government from time to time to increase the threshold. The Opposition regards that as entirely out of order and impermissible and strongly supports the amendment of the Hon. Elisabeth Kirkby. If this or any future government wishes to amend the threshold, it should be a matter for the government of the day to have the courage of its convictions and to argue the matter in Parliament and to rest or fall on the outcome within the Legislature, rather than to rely on a proclamation.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [11.15]: I hear the arguments of the Hon. Elisabeth Kirkby and the Hon. R. D. Dyer in

this regard. I indicate to them that the threshold of \$4,000 will appropriately remain in place for some time. I have no plans for the review of that

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threshold, particularly as the \$200 threshold has been in place since 1987 unamended. The proposal to introduce this threshold has only arisen as a result of those issues which were raised by Mr Brahe and highlighted by the Opposition; that is, there have been fraudulent activities in relation to these areas of claim and the Bureau of Crime Statistics and Research report identified that there would be an appropriate threshold level where most of these would be able to be eliminated.

The \$4,000 has been identified for the purposes of controlling the issue of abuse of the scheme. No doubt any subsequent review of that threshold will be determined by whether there have been other abuses of the scheme. The Government will obviously have to answer to the community in relation to its decisions in that regard. The proposal of the Australian Democrats would not allow for amendments of the threshold above the figure of \$4,000, which may be appropriate at some future period if it has been able to be identified that there are abuses of the scheme that warrant that increase. As I indicated, I am pursuing this particular proposal only because it is at this threshold that we are able to seek to control these abuses of the program. We would only seek to change it in the future if there are such continuing abuses.

The Hon. ELISABETH KIRKBY [11.17]: I know that it is getting late and we are all getting very tired, but the Attorney must at least recognise the fact that he has raised the threshold from \$200 to \$4,000 in the Parliament. He has given his reasons as to why he is doing that. I would have no objection in the future to increasing the threshold, if necessary, for all the reasons he has just suggested, such as fraudulent abuse. I am moving this amendment to make sure that that is done by this Parliament. If the Attorney General or any subsequent Attorney General believes that it is necessary to raise that threshold, the Australian Democrats would be perfectly happy to support that as long as it was done through the Parliament and the reasons for so doing were laid clearly on the record. Therefore, I cannot see why it is so difficult for the Government to accept this amendment. I am not preventing this Government or any future government from raising the threshold, provided it is done by a democratic vote of the Parliament.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 19

Mrs Arena	Mrs Kite
Dr Burgmann	Mr Macdonald
Mr Dyer	Mr Obeid
Mr Egan	Mr O'Grady
Mr Enderbury	Mr Shaw
Mrs Isaksen	Mr Vaughan
Mr Johnson	Mrs Walker
Mr Jones	<i>Tellers,</i>
Mr Kaldis	Ms Burnswoods
Miss Kirkby	Mr Manson

Noes, 19

Mr Bull	Revd F. J. Nile
Mrs Chadwick	Dr Pezzutti
Mr Coleman	Mr Pickering
Mrs Evans	Mr Ryan
Mrs Forsythe	Mr Samios

Dr Goldsmith	Mrs Sham-Ho
Mr Hannaford	Mr Rowland Smith
Mr Jobling	<i>Tellers,</i>
Mr Mutch	Miss Gardiner
Mrs Nile	Mr Moppett

Pair

Mrs Symonds	Mr Webster
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The CHAIRMAN: The numbers being equal, I give my casting vote with the noes and declare the question to have passed in the negative.

Amendment negatived.

The Hon. ELISABETH KIRKBY [11.25], by leave: I move the following amendments in globo:

No. 7 Page 8, Schedule 1(12), line 29. After "any", insert "physical,".

No. 8 Page 8, Schedule 1(12), line 37. At the end of the line, insert:

;

(f) any representation made by or on behalf of a police officer to a victim as to whether he or she should withdraw his or her complaint in relation to the act of violence concerned or consent to no further action being taken in relation to the act of violence.

I believe the Government has agreed to accept the amendments. The first amendment refers to delays in reporting matters to the police. It will allow victims who are physically incapacitated and who may not have relatives or friends to delay reporting acts of violence to police, possibly because they are still in hospital recovering from the results of their assault. The second amendment relates to police advice not to pursue a matter. It will allow the Victims Compensation Tribunal to take into account a case in which a victim delays reporting an act of violence because police have got the victim to agree not to pursue an inquiry or case but to write a report saying it was at the victim's initiative. I am pleased that the Government sees no objection to the amendments and is willing to accede to them.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [11.27]: The Government accepts the amendments.

Amendments agreed to.

The Hon. ELISABETH KIRKBY [11.27]: I move:

No. 9 Page 13, Schedule 1(20), lines 8-11. Omit all words on those lines, insert instead:

(2) Notice of appeal must be lodged with the District Court:

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- (a) within 3 months after the day on which the relevant notice of determination was given to the person by whom the appeal is made; or
- (b) within such further time as the District Court may allow.

This amendment will give the District Court discretionary power to allow notice of appeal to be lodged outside the three-month period. The amendment extends the time for the lodging of an appeal with the District Court. Originally the bill provided for the removal of the discretion of the court to allow an extension of time for the lodging of the appeal. We believe that the discretion of the 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 can have their cases considered. I trust that the amendment will be supported by the Committee.

The Hon. R. D. DYER [11.29]: I addressed this matter during the second reading debate. I agree with what the Hon. Elisabeth Kirkby has just said and indicate the Opposition's support of the amendment.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [11.30]: The Government opposes the amendment. The Hon. Elisabeth Kirkby should bear in mind that the Government's proposal increases the appeal period from 28 days to three months. In most courts the period for appeals is 21 to 28 days or such time as the courts make extensions to cover, and extensions are granted after submissions from the parties to the appeal are heard. The court will not extend time for lodging of an appeal to a notional date and will usually extend time only when delays by the parties seeking extension are adequately explained and any prejudice to the respondent is examined. Where there is no power for courts to extend it is not extended. It is usually extended where a court in the first instance has delivered complex reasons for its judgment and, in the interest of justice, wishes to allow the parties an extended time in which to assess their positions.

The reasons given for determinations by the tribunal are not usually complex. The purpose of the proposed extension to three months is to provide adequate time for the representatives of a victim to prepare a case for appeal. Any further extension would create uncertainty in the commencement of recovery proceedings against offenders. For the reasons I have just outlined, the Brahe review recommended the amendment to three months on the basis that there be no power to extend that period. If there is to be a power to extend that period, the three months provided is not a reasonable period to be sustained and therefore there is no mutual consistency in the amendment being proposed by the Australian Democrats and being supported by the Opposition. The Government does not, therefore, accept the amendment.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 19

Mrs Arena	Mrs Kite
Ms Burnswoods	Mr Manson
Mr Dyer	Mr Obeid
Mr Egan	Mr O'Grady
Mr Enderbury	Mr Shaw
Mrs Isaksen	Mr Vaughan
Mr Johnson	Mrs Walker
Mr Jones	<i>Tellers,</i>
Mr Kaldis	Dr Burgmann
Miss Kirkby	Mr Macdonald

Noes, 19

Mr Bull	Revd F. J. Nile
Mrs Chadwick	Dr Pezzutti
Mr Coleman	Mr Pickering

Mrs Evans	Mr Ryan
Mrs Forsythe	Mr Samios
Miss Gardiner	Mrs Sham-Ho
Mr Hannaford	Mr Rowland Smith
Mr Jobling	<i>Tellers,</i>
Mr Mopett	Dr Goldsmith
Mrs Nile	Mr Mutch

Pair

Mrs Symonds	Mr Webster
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The CHAIRMAN: The numbers being equal, I give my casting vote with the noes and declare the question to have passed in the negative.

Amendment negatived.

The Hon. ELISABETH KIRKBY [11.35]: I move:

No. 10 Page 13, Schedule 1(20), lines 12-35. Omit all words on those lines.

Once again this is an amendment that refers to District Court appeals. It omits sections preventing the de novo hearing of appeals in the District Court and sections preventing the District Court from hearing appeals about the refusal of the Victims Compensation Tribunal to hear applications outside the two-year time frame and appeals against the tribunal's refusal to consider a determination in respect of which a request has been made as referred to in proposed new section 24B. Appeals against a decision of the tribunal not to allow an application for compensation to be lodged out of time have been abolished, but that has the potential to cause great injustice. As I pointed out in my second reading contribution, the majority of such appeals that go to the District Court are successful.

A hypothetical case that might arise is that of a 25-year-old woman who is sexually assaulted as a child and later becomes aware of her entitlement to apply for victims' compensation. However, it has been well over two years since the assaults took place

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and the tribunal decides that her delay in making an application is not sufficiently well explained and refuses her application. Under the measure proposed by the Government that woman will have no opportunity to appeal against the tribunal's decision. That is quite wrong, and it is for that reason I move this amendment.

The Hon. R. D. DYER [11.38]: The Opposition strongly supports this amendment. During the second reading debate I had an amount to say about this issue. In what has become known as Goldsmith's case the Court of Appeal held that appeals from the tribunal to the District Court are appeals de novo. I argue that that ought to continue to be the case because, apart from any other factor, substantial delays occur before appeals come on for hearing and during that time the medical condition of an applicant may change significantly. In my contribution at the second reading stage I said that call-overs occur at four-month intervals only - that is, there are three call-overs each year. At the time I mistakenly said that the call-overs to which I referred occurred in the tribunal; in fact, they occur in the District Court.

The Hon. M. R. Egan: It is not like the honourable member to make such an error.

The Hon. R. D. DYER: No, it is most unusual, but, like everyone else, I am imperfect, and on that occasion I did fall somewhat short of an ideal. However, I still made the basic point that applicants have to wait a substantial time before their appeals come on for hearing. In those circumstances I believe that

Goldsmith's case was correctly decided.

The Hon. M. R. Egan: It was not Marlene?

The Hon. R. D. DYER: A source at the bar told me it was a relative of the Hon. Dr Marlene Goldsmith, but I shall not go into that matter in further detail. In my view, the Court of Appeal correctly decided both the law and, according to the principles of justice, that the appeal should be one where evidence can be heard afresh. That would do justice to the parties on the basis that if the medical condition of the applicant has changed, that ought to be a matter that the appeal court is able to take into account. For those reasons the Opposition again supports this amendment moved by the Hon. Elisabeth Kirkby.

The Hon. J. P. HANNAFORD [11.42]: In regard to the issue raised by the Hon. R. D. Dyer about change in medical condition, proposed section 29(2C)(b) makes it clear that such evidence that was not available to the tribunal - and, obviously, would not have been available to the tribunal because the condition changed after the hearing - is evidence that would then be available to the court. The bill covers this specific problem. The amendment proposed by the Hon. Elisabeth Kirkby involves the deletion of proposed sections 29(2B) and 29(2C) as well as section 29(5). The provisions of proposed section 29(2B) of the Act set down the procedure for appeals to the District Court.

The proposal provides that the District Court shall rely on the tribunal's record without the appellant victim having to give evidence again. I emphasise that under the proposals of the Hon. Elisabeth Kirkby - a hearing de novo - the victim not only will have to go through the proceedings before the tribunal but will again have to relive the matter before a second court. The bill would allow all that evidence to be brought before the appellate court without having to put the victim through the trauma of the incident a second time. However, there is also provision in proposed section 29(2C) for the Court of Appeal to receive fresh evidence at its discretion where the special circumstances of the case require it. That particular provision directly addresses the issue raised by the Hon. R. D. Dyer and makes certain that the problems to which he adverted are overcome by this reform.

If the amendment proposed by the Hon. Elisabeth Kirkby were to proceed, it would be open to the District Court to hear appeals on a de novo basis - that is, on the basis that the case is heard afresh - which is exactly what she wants to achieve. That would involve the victim in the time, inconvenience and expense of preparing the case again. In the case of child victims this could result in what has been described by some children's groups as systems abuse. The Child Protection Council is supportive of the Government's approach and not supportive of the approach taken by the honourable member, which is obviously advocated by the lawyers. No doubt lawyers are quite happy to run two lengthy sets of cases.

It is interesting that at least victims groups recognise the merit of the Government's approach. The preparation of a fresh case would involve victims in additional legal and medical expenses, not to mention the inconvenience of repeating their evidence. It could also result in a clogging of the District Court lists with unnecessarily lengthy cases. It is perfectly appropriate in appeal cases for the court to consider matters on a rehearing basis. Overall, the tribunal has usually considered all available evidence, and the role of the District Court is to determine whether the tribunal has correctly applied the Act to the facts so that it has reached the correct decision.

Proposed section 29(2C) provides for the District Court to receive fresh evidence or evidence that was not available to the tribunal where the special circumstances of the case require. This will allow the court at its discretion to determine whether it shall hear additional evidence. This discretion is usually exercised generously by the courts. Proposed section 29(5) provides that an appeal does not lie against the tribunal's decision to refuse an out-of-time application under section 17(2D) or to reconsider a determination under section 24B. These are administrative acts and should not be the subject of appeal.

This section should be considered in the context of the proposed amendment to section 17(2D), which provides criteria to which the tribunal may have regard in exercising its discretion to accept a claim
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outside the current two-year limitation period. The Brahe review recommended that there should be no appeal to the District Court against refusal by the tribunal to accept an application out of time. However, it would remain open to an applicant to appeal to the Supreme Court in its supervisory capacity on the basis that the tribunal has failed to properly exercise its discretion. Further, a victim's right to appeal to the District Court on the substantive aspects of a determination is not proposed to be altered. The Brahe review also noted concern at the number of appeals from the tribunal and the time taken to deal with them. The bill features a number of provisions relating to the review process which enhance the victim's rights of appeal. The Government opposes this amendment.

The Hon. ELISABETH KIRKBY [11.47]: A few further remarks need to be made in view of the Attorney General's comments. He spoke about the interests of victims. It is certainly in the interests of victims that their appeal cases are successful. As I said in my second reading contribution, 83 per cent of appeals to the District Court are successful. Is this why the Government is now trying to limit the number of cases? A victim who must again give evidence and go through the expense of preparing the case and is successful at the end of that process would feel more satisfied with the result, and it would certainly be in his interests. I do not believe the Attorney General's arguments are compelling. I, therefore, request honourable members to support my amendment.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 19

Mrs Arena	Mrs Kite
Dr Burgmann	Mr Macdonald
Ms Burnswoods	Mr Manson
Mr Dyer	Mr O'Grady
Mr Egan	Mr Shaw
Mr Enderbury	Mr Vaughan
Mr Johnson	Mrs Walker
Mr Jones	<i>Tellers,</i>
Mr Kaldis	Mrs Isaksen
Miss Kirkby	Mr Obeid

Noes, 19

Mr Bull	Mrs Nile
Mrs Chadwick	Revd F. J. Nile
Mrs Evans	Dr Pezzutti
Mrs Forsythe	Mr Pickering
Miss Gardiner	Mr Samios
Dr Goldsmith	Mrs Sham-Ho
Mr Hannaford	Mr Rowland Smith
Mr Jobling	<i>Tellers,</i>
Mr Moppett	Mr Coleman
Mr Mutch	Mr Ryan

Pair

Mrs Symonds	Mr Webster
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The CHAIRMAN: The numbers being equal, I give my casting vote with the noes and declare the question to have passed in the negative.

Amendment negatived.

The Hon. ELISABETH KIRKBY [11.53]: I move:

No. 11 Page 16, Schedule 1(27), line 29. Omit "mainly", insert instead "partly".

This amendment deals with dependants, and the replacement of the word "mainly" with the word "partly" makes it clear that people who are partly dependent on a deceased victim will be entitled to compensation as a dependent under the Act. The bill will replace the entitlement of a close relative to compensation with the entitlement of a dependent to compensation. The amendment is necessary because the term "mainly dependent" was too restrictive. If, for example, a couple included one partner earning \$400 and another earning \$350 and the person earning \$350 was killed in a violent crime, the children of the deceased would not be entitled to compensation even though the family had lost a substantial, though secondary, source of income. I believe that the Government intends to accept this amendment, and I hope that the Minister will confirm that when speaking to my amendment.

The Hon. R. D. DYER [11.54]: The Opposition agrees that the existing term "mainly dependent" is too restrictive and indicates its support for the amendment put to the Committee by the Hon. Elisabeth Kirkby. The Opposition believes that the word partly when used in the legislation will make it quite clear that children who are partly dependent on a deceased victim will be entitled to compensation on the basis that they are dependents under the Act. The Opposition believes that is just and proper and that the amendment is worthy of support.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [11.55]: The Government supports the amendment.

Amendment agreed to.

The Hon. ELISABETH KIRKBY [11.55]: I move:

No. 12 Page 18, Schedule 1(35), line 34. After "act", insert ", and includes compensation for grief arising from the death of a deceased victim".

This amendment will allow secondary victims to be compensated for grief as a result of the death of a primary victim. The phrase "pain and suffering" will cover only a psychiatric condition, for example, a depressive illness. This is to ensure that the immediate family of a primary victim who has been killed will be eligible for compensation. It is an amendment that is essentially a consequence of our other amendments so that not only dependants but also members of what should be considered the immediate family of the deceased victim of an act of violence will be compensated for grief. I believe this is a very important component of any victims' compensation legislation, and I commend my amendment to the House.

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The Hon. R. D. DYER [11.56]: The Opposition agrees with what the Hon. Elisabeth Kirkby has said and supports the amendment.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [11.57]: The bill provides at section 10(1) that a secondary victim be compensated for injuries sustained as the direct result of witnessing an act of violence giving rise to injury to or the

death of a primary victim, or witnessing the physical harm or death sustained by the victim as the result of the act of violence. Compensation is for pain and suffering or for loss of enjoyment of life. These are the classical losses arising from nervous shock. Once again I must remind honourable members that the basis for compensation under the Act, and as amended by this bill, is compensation for injury; it is not and was never contemplated by the architects of the scheme that secondary victims should be compensated for grief arising from the death of a primary victim. Grief is a regrettable result of death, but grief amounting to injury should be compensated under the victims' compensation scheme. Mere grief, tragic as it is, does not amount to injury, and it is not an appropriate matter for compensation under this regime. The Government opposes the amendment.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 19

Mrs Arena	Mrs Kite
Dr Burgmann	Mr Macdonald
Ms Burnswoods	Mr Manson
Mr Dyer	Mr Obeid
Mr Egan	Mr Shaw
Mr Enderbury	Mr Vaughan
Mrs Isaksen	Mrs Walker
Mr Johnson	<i>Tellers,</i>
Mr Jones	Mr Kaldis
Miss Kirkby	Mr O'Grady

Noes, 19

Mr Bull	Mrs Nile
Mrs Chadwick	Revd F. J. Nile
Mr Coleman	Dr Pezzutti
Mrs Evans	Mr Pickering
Miss Gardiner	Mr Ryan
Dr Goldsmith	Mr Samios
Mr Hannaford	Mr Rowland Smith
Mr Jobling	<i>Tellers,</i>
Mr Moppett	Mrs Forsythe
Mr Mutch	Mrs Sham-Ho

Pair

Mrs Symonds	Mr Webster
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The CHAIRMAN: The numbers being equal, I give my casting vote with the noes and declare the question to have passed in the negative.

Amendment negatived.

The Hon. ELISABETH KIRKBY [12.4 a.m.]: I move:

No. 13 Page 19, Schedule 1(35), lines 22-26. Omit all words on those lines, insert instead:

death, to the extent that:

- (a) the secondary victim was at the time of the act of violence:
- (i) a parent, step-parent or guardian of the primary victim or deceased victim of that act; or
 - (ii) the spouse of the primary victim or deceased victim or a person living with the primary victim or deceased victim as the victim's spouse; or
 - (iii) a child or step-child of the primary victim or deceased victim or some other child of whom the primary victim or deceased victim was a guardian; and

This amendment will allow the spouses, children and parents - not only the parents and guardians - of primary victims to be eligible for compensation. The amendment provides a tighter definition than the existing definition of "close relative" in that it excludes grandchildren and grandparents. A secondary victim is currently defined as a person who suffers an injury as a result of witnessing, or otherwise becoming aware of, the injury or death of the primary victim. That definition has been narrowed to a person being injured as a result of witnessing the act of violence or witnessing the actual physical harm to the victim. Proposed new section 10(2) provides an exception and enables the parents of children who are victims to claim compensation as secondary victims. It is believed that this exception should be precisely in the terms of the existing Act and not as in the amending bill, to preserve the rights of parents of children who have been sexually assaulted. These days that is an important provision, and once again I seek the support of honourable members for my amendment.

The Hon. R. D. DYER [12.7 a.m.]: At this late hour I am content to indicate the Opposition's support for this amendment.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [12.7 a.m.]: The Government opposes the amendment. Proposed section 10(1) includes elements of sudden sensory perception. It will be necessary for a person to have directly witnessed the act of violence giving rise to the injury or death sustained by the primary victim or the deceased victim, or the actual physical harm, to be compensated as a secondary victim. The Act currently provides that a secondary victim must witness the injury or otherwise become aware of it to qualify for compensation. This has resulted in claims by secondary victims in relation to mental disorders arising out of the mental disorder of the primary victim. There have been cases where all the members

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of a family, one member being the primary victim, have claimed psychological injuries. Secondary victims claiming for psychological injuries arising from a primary victim's psychological injuries obtain psychiatric reports to establish this.

However, because the victims compensation scheme is not an adversarial scheme, these reports are not as vigorously tested as they are in other jurisdictions, and this has resulted in many inflated awards. The Brahe review therefore recommended that a claim by a secondary victim in relation to a mental disorder arising from the mental disorder of a primary victim be excluded from the ambit of the Act. The proposals will require the secondary victim to have demonstrated the elements of nervous shock to be compensated. That is, they will have to demonstrate a sudden sensory perception of the act of violence or the physical injury resulting from the act of violence. However, proposed section 10(2) of the Act provides that the parents or guardians of child victims of crime need not establish these elements of sudden sensory perception of the child's injuries to establish themselves as secondary victims. In this way they may be compensated for injuries as defined in the Act arising from trauma arising from the assault of a child without having witnessed the assault or injury.

The object of proposed section 10(2) is to accommodate parents of child victims of crime, which, in many cases, will include sexual assault or incest victims. It has been provided to overcome any harsh

results against parents who have not witnessed the physical act of violence or where there is not actual physical manifestation of the assault. The Government concedes that the section should be extended to include a step-parent. However, it opposes extension to a deceased victim's spouse or person living with a deceased victim's spouse and a child or stepchild of the deceased victim. The child or stepchild of the deceased victim will be compensated as a close relative to the victim as provided elsewhere in the Act, provided that they are dependants of the primary victim. It is inappropriate that they also automatically qualify as secondary victims.

Children or stepchildren and spouses or persons living as a spouse will be compensated as secondary victims if they establish the elements of nervous shock, which I have already described. For them to be able to claim simply because they have had a relationship of some sort with the primary victim, without having to demonstrate the elements of nervous shock could result in a system of hand-outs to extended families. These people are adequately provided for in the Act by having to establish that they have suffered injury arising from witnessing the act of violence or the physical harm or as a dependant of close relatives. The Government opposes the amendment. It is prepared to provide compensation but only to people suffering injury arising from witnessing the act, the violence or the physical harm, or if they are dependants or close relatives, but it is not prepared to embrace the hand-out approach adopted by the Australian Democrats.

Question - That the amendment be agreed to - put.

The Committee divided.

Ayes, 19

Mrs Arena	Miss Kirkby
Dr Burgmann	Mr Macdonald
Ms Burnswoods	Mr Manson
Mr Dyer	Mr Obeid
Mr Egan	Mr O'Grady
Mr Enderbury	Mr Shaw
Mrs Isaksen	Mr Vaughan
Mr Johnson	<i>Tellers,</i>
Mr Jones	Mrs Kite
Mr Kaldis	Mrs Walker

Noes, 19

Mr Bull	Mrs Nile
Mrs Chadwick	Revd F. J. Nile
Mr Coleman	Dr Pezzutti
Mrs Evans	Mr Pickering
Mrs Forsythe	Mr Samios
Miss Gardiner	Mrs Sham-Ho
Dr Goldsmith	Mr Rowland Smith
Mr Hannaford	<i>Tellers,</i>
Mr Jobling	Mr Moppett
Mr Mutch	Mr Ryan

Pair

Mrs Symonds	Mr Webster
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The CHAIRMAN: The numbers being equal, I give my casting vote with the noes and declare the

question to have passed in the negative.

Amendment negatived.

The Hon. ELISABETH KIRKBY [12.17 a.m.]: I move:

No. 14 Page 20, Schedule 1(37), line 22. After "may", insert "in its discretion".

The bill states that the Victims Compensation Tribunal may make a determination for restitution against a person convicted of an act of violence in which compensation has been awarded. For reasons that I fail to understand, the Victims Compensation Tribunal interprets "may" as "must". This certainly does not happen in any other jurisdiction, and we have had many arguments in this Chamber when the Australian Democrats have requested that the word "may" be replaced by "shall". This amendment would give the Victims Compensation Tribunal a discretion to accede to representations, for example, on behalf of a child victim who has resumed living with a parent offender of modest means who is supporting the child. I hope that this amendment will be supported.

The Hon. R. D. DYER [12.18 a.m.]: The Opposition supports the amendment.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [12.18 a.m.]: The Government opposes the amendment because it is
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meaningless. It is clear that "may" indicates that the court shall have a discretion. The amendment proposes that the section will effectively say that the court in its discretion may make a determination. That is meaningless.

Amendment negatived.

The Hon. ELISABETH KIRKBY [12.19 a.m.], by leave: I move the following amendments in globo:

No. 15 Page 21, Schedule 1(37). After line 6, insert:

(5) In determining whether to make a determination for restitution against a person, the Tribunal is to have regard to whether the costs of a recovery action (including the costs of obtaining and enforcing judgment under section S8) are likely to exceed the amount (if any) recoverable from the person, having regard to his or her financial means.

No. 16 Page 22, Schedule 1(40). After line 13, insert:

(2) In determining whether to make a determination for restitution against the defendant under subsection (1)(b), the Tribunal is to have regard to whether the costs of a recovery action (including the costs of obtaining and enforcing judgment under section 48) are likely to exceed the amount (if any) recoverable from the defendant, having regard to his or her financial means.

There has been a great deal of publicity about this amendment. It will allow the Government to write off recovery actions in which good money is thrown after bad. I have been informed that the Opposition does not intend to support me on this amendment, and I certainly shall not call a division on it. It is extremely strange that in the *Sydney Morning Herald* of 18 April - less than three weeks ago - the Opposition Waste Watch Committee spokesman, Mr Michael Knight, accused the Government of throwing good money after bad in pursuing people who have no hope of ever paying what is sought. It had been determined by the Waste Watch spokesman that the Crown Solicitor had spent over \$629,000 chasing people who had injured others. But up to December 1993 it had recovered only \$157,000. Indeed, the Government is still owed more than \$29 million from 3,592 cases.

Mr Michael Knight was not the only member to attack the Government in this regard: a Liberal member, Mr Brad Hazzard, on behalf of a constituent strongly attacked his Government's policy of recovering money from offenders. He questioned why the Government was pursuing a 23-year-old single mother living in government housing accommodation in respect of \$2,000 awarded to a policeman she assaulted when she was 17. Mr Hazzard wrote to the Attorney General and Minister for Justice saying, "It seems extraordinary to me that the Crown is seeking to recover from her this amount when it recognises on the other hand that she is in need of housing assistance and social security". Mr Knight said, "Everyone wants to see the guilty punished, but it's just plain stupid to waste large sums of public money chasing people like single mothers and penniless prisoners who will never be able to repay their debt".

I believe that the Government should not insist on having legislation which does not allow it to write off recovery actions when there is obviously no hope of it ever getting any money out of people who are impecunious and on social security benefits or are totally unable to pay. I realise that it is a laudable aim that people who have committed an assault or caused injury to others should be penalised financially, if possible, for that assault. In some cases that will be totally impossible. That is why I have moved this amendment.

The Hon. R. D. DYER [12.24 a.m.]: The Opposition indicates its inability to support the amendments moved by the Hon. Elisabeth Kirkby. I simply state at this stage that the Opposition believes, as a matter of principle, that persons who commit criminal acts should remain liable for restitution. For that reason, we are not willing to support the amendments.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [12.25 a.m.]: The Government opposes the amendments moved by the Hon. Elisabeth Kirkby. The Democrat amendments provide for the tribunal to have regard to whether the cost of a recovery action is likely to exceed the amount recoverable from an offender, having regard to his or her financial means, when making a determination for restitution. One of the great improvements made by the Government in recent years in the operation of the Victims Compensation Act and for a lot of victims of crime is the establishment of workable restitution proceedings. It is a policy of this Government that an offender shall contribute to the cost of compensation of their unfortunate victims. The obligation on offenders to make restitution to victims of crime should apply across the board, regardless of varying financial means.

If an offender commits a horrendous crime, for which generous compensation is paid to his victim, he should be pursued regardless of his financial means at a particular point in time. The question of whether he should be pursued should not be predicated on financial or cost expediency. As a matter of justice all offenders should be pursued for restitution, regardless of their means. If the subjective circumstances of the offender were taken into account at the point of the institution of the proceedings a severe inroad into recovery would be created. That does not mean that the Government and the tribunal do not exercise discretion in relation to the circumstances of particular people if consideration is justified.

The Hon. Elisabeth Kirkby draws upon the comments made by Michael Knight, but his comments have been discredited. In his announcement he relied on two instances, but if he had bothered to check more closely he would have found that the tribunal, only the week before, had already reviewed the circumstances of those two people and had waived recovery against them because of their circumstances.

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That illustrates that the tribunal exercises discretion in appropriate circumstances. Therefore, the Government insists on the bill in its current form.

The Hon. ELISABETH KIRKBY [12.27 a.m.]: I thank members of the Opposition for their support for my amendments tonight and for working so closely with me at such short notice. I certainly have appreciated that. I would have moved the amendments anyway, but it would have been more difficult. I

thank the Leader of the Government for the time he has spent on rebutting my arguments. Although I do not agree with his conclusions, I am happy that we have been able to debate this bill so fully.

Amendments negatived.

Schedule as amended agreed to.

Bill reported from Committee with amendments, and report adopted.

ADJOURNMENT

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [12.30 a.m.]: I move:

That this House do now adjourn.

MUNDARRA ABORIGINAL YOUTH REFUGE

The Hon. J. F. RYAN [12.30 a.m.]: This evening I wish to defend an Aboriginal youth refuge from an outrageous attack launched on it by the Labor member for Londonderry, Mr Paul Gibson. In the 20 April edition of the *Mount Druitt-St Marys Standard* Mr Gibson sought and got front page banner headlines for a litany of serious allegations levelled against the Mundarra youth refuge at Hebersham. Mr Gibson's allegations were, in the main, outrageous, untrue, years old or gross distortions of the truth. The allegations included: that \$22,000 worth of funds had disappeared; that children were left in the refuge overnight unsupervised; that a resident with a broken leg had been evicted; and that one of the staff was a child molester. There were many more allegations.

The source of the claims was said to be "members of the local Aboriginal community". In the small amount of time I have to speak this evening I would like to respond to at least a few of the claims. The claim that \$22,000 disappeared is totally unfounded. Mundarra's financial records are complete, have been audited by chartered accountants and have been certified to be in order. In other places the claim of misappropriation of funds has been embellished to suggest that the annual report showed that the refuge owned four cars but only one could be located. The claim evidently arises from a misreading of the report - confusing a note referring readers to page 4 to be a suggestion that the centre owned four motor vehicles.

The claim that a youth with a broken hip had been evicted was a distorted partial truth. A young resident who was still nursing a fairly minor injury from a motor bike accident was evicted, but only after he had become violent and thrown a chair at another resident. It was not unreasonable that he was returned to the care of his mother. A further claim was that one of the employees was a child molester - again, another distortion of a partial truth. A person who was employed to do office work was dismissed after allegations of child abuse had been made against that employee. This happened four years ago and action was taken as soon as the allegations became known to management. All the allegations came not from concerned and dispassionate members of the local Aboriginal community but from disgruntled employees and former employees who are currently engaged in an industrial dispute with the management of the refuge.

Staff from the centre were outraged at Mr Gibson's unfounded allegations. They informed me that at no time did Mr Gibson approach management of the youth refuge with his information and consult the management before going to the press. I am sure all members of this House would agree that the clients of the refuge, who are homeless Aboriginal young people in the western suburbs of Sydney, would be among the most needy and vulnerable people in this State. The least we would expect from a member

of Parliament seeking to raise serious allegations in the press about an agency seeking to serve such people would be checking of the facts. The agency, not unlike many agencies providing services to disadvantaged Aboriginal people, has a few problems. In the main they stem from a long industrial dispute. But I think it is a very low act for a member of Parliament to seek to exploit the unhappy circumstances of the refuge at this time to grab a cheap headline.

This is yet another example in a long line of allegations that are frequently made by the honourable member for Londonderry on health, environment, and law and order matters. It appears that every time Mr Gibson receives a constituent in his office who makes a scandalous allegation his first action is to run to the press. The result of this is that he has no credibility. He has cried wolf far too often. It must be getting to the point at which even the local press is beginning to doubt whether any claim of the member can be believed. In this case he has sought to attack an Aboriginal youth refuge. I hope members opposite will suggest that he be pulled into line and exercise a little more understanding of an agency which is trying to do a good job on behalf of disadvantaged Aboriginal young people in Sydney's west.

UNITED STATES HEALTH CARE REFORMS

The Hon. FRANCA ARENA [12.35 a.m.]: I want to relate to the Chamber an interesting debate I witnessed last week at the United States Information Service in Sydney on the subject of "The Clinton Health Care Plan. Where does it stand?" There was a debate by satellite between Washington and Sydney. Mr Greg Lawler, the White House health care company co-ordinator, and Congressman Ben Cardin,

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a medical doctor and member of the House subcommittee on health, were in Washington and in Sydney were Dr Lesley Russell, a former congressional staffer on health policy now working in Sydney, and Dr Peter Botsman, Executive Director of the Evatt Foundation. It was interesting to hear of the unsatisfactory condition of the health system in the United States and the difficult task President Clinton, Hillary Clinton and five committees and several subcommittees are undertaking to achieve an equitable system like our Australian Medicare system.

The health care reform debate in America has gone on for nearly 60 years, because of the powerful opposition of the American Medical Association, vested interests and the deep distrust that Americans have of their Federal Government, but there has not been much success. Americans, I have learned, in the main are opposed to a single approach, so it is very unlikely that they will end up with a system like Medicare, despite the fact that figures show that there is a lot of money to be saved from a uniform system - in the United States as in Australia. The fear in the US is that they will end up with various State systems, which will mean that people in Michigan, for instance, will have a much better health system than people in Alabama. Such discrepancies could have occurred in Australia if the Whitlam Government had not had the foresight to introduce Medibank, which became Medicare, a system which is not perfect but one of which we can be terribly proud.

The Medicare debate is often dominated by relatively short-run issues which reflect the immediate issues of the major players: the Government, doctors, private health funds and hospitals. When we place Medicare in a broader, international perspective we can have little doubt that it is a good scheme. Its most obvious weakness - the instability of private health insurance - may lead to substantial structural change, but this is not inevitable. Some people say that Medicare is too expensive, but I believe that Australians can be proud knowing that nobody goes without health cover in Australia, whilst in the richest country in the world, the US, more than 39 million people are not insured. We should not think that Americans are more selfish than Australians because, when asked whether they would be willing to pay more in insurance premiums or taxes so that everyone could get health coverage, 65 per cent of those polled by the Harvard Public Health School last year said yes and 30 per cent said no.

In a recent poll conducted by the University of Cincinnati Institute for Health Policy and Health

Services Research only 48 per cent of those answering a similar question said yes while 40 per cent said no. The White House remains convinced that it has solid support for the new insurance purchase requirement on business and for the broader goal of universal coverage. I wish the people of the United States of America well in this difficult task to find and fund a universal health system. They hope to have a bill in the Congress and the Senate by the end of May and the bill should be out of the House by September to be signed by the President. I can only quote the words of one of the speakers on the panel, who said, "If every American criminal is entitled to a lawyer, every American worker is entitled to a doctor". Let us recognise how important and valuable Medicare is for Australian families and let us defend Medicare from the greedy members of our society.

I am grateful to the United States Information Service for giving me the opportunity to listen to and participate in a small way in this very interesting debate. The more we know about issues the more informed can be the decisions we make. Since last year American doctors have spent \$15 million on television advertisements asking, "Do you want the Government to choose your doctor?" They promoted, and still promote, fear and insecurity. We spend 8 per cent of our gross national product on health while the Americans spend 14 per cent of their GNP on health, and the cost is rising. Of course, we must recognise that it is easier to run a system for 17 million people than it is to run one for 280 million but the richest country in the world cannot hold its head high in the world community when 39 million of its population are not insured.

HELENSBURGH LAND ZONINGS

The Hon. R. S. L. JONES [12.40 a.m.]: A proposed commission of inquiry into zonings of land surrounding the southern Sydney township of Helensburgh must be seen as a most cynical and politically motivated action by the Government. Announced two weeks ago, it has already been branded by the mayor of Wollongong, one of the major State regional municipalities, as a State Government propaganda exercise and another direct and contemptuous threat to local government decision-making powers. Successive Wollongong councils have spent more than \$1 million over 10 years in one of the most exhaustive regional planning exercises in this State's history. That figure does not include the enormous time and expense invested by other public and private parties. This planning has followed State and local government statutory requirements, following terms of reference virtually the same as those in the present inquiry.

Extensive submissions from Lady Carrington Estates were made as long ago as 1986 and were the subject of careful consideration by public and council planners for well over four years as part of a Helensburgh plan before being opposed by the council. A major push for the present inquiry has come from a principal of this private development proposal, who has simultaneously launched Supreme Court writs against three key local environmental spokespersons. This action, which is arguably rarefied and vexatious, will not be heard at the time of the inquiry. Another action involving the council, the same Carrington principal and two of the defendants is to be heard only days following the commencement of inquiry hearings. The intimidatory effect of such measures has been profound in the community and the defendants themselves are unable to speak without incrimination at the hearings.

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I have briefed the Minister on this matter in recent weeks, before he announced the inquiry. He did not answer my questions before calling the inquiry. Through the haste of the Minister's announcement and the progress of the inquiry in June it would appear that he is trying to avoid parliamentary inquiry. In my earlier submission I set out clearly the vexed history of parties whose representations are now supported by the Minister. These include what I termed a regime of intimidation and threats and legal action against members of the public, councillors and State members. Investigatory actions by the Independent Commission Against Corruption, government departments and the Ombudsman and by previous Wollongong councillors have taken place. Why is the Minister responding to representations

from such people in order to overthrow the decision-making of a major and reputable regional local government? Does the reason bear any relationship to political donations?

Successive environmental and planning Ministers, Premiers and members from both parties are on record as supporting environmental zonings for these small parcels of rural land situated on top of one of the world's premier escarpments and directly within the main catchment area of the principle watercourse of the Royal National Park, the Hacking River and, from it, Port Hacking. A year ago the Minister himself went on record offering non-interference with council decisions in this matter - indeed, he rejected calls for a self-promoting so-called independent councillor to reverse those as "over the top". Why has he now, following representations, reversed his previous decision?

Helensburgh is not Campbelltown. After 10 years of continual public inquiry we do not need another inquiry to tell us that. The sensitive and

narrow topography of the northern Illawarra will never solve Sydney's housing needs. The Department of Planning and the Minister should not seek to overturn the decisions made by democratically elected councillors. Why is the Minister directly intervening on behalf of a few private interests? Why should the inquiry not be seen as a form of direct propaganda for Liberal Independents in next year's council elections? Is the Minister deliberately trying to destabilise a well-run council by this action? Why is he risking his reputation and the reputation of his Government for a few hundred housing lots?

It is onerous to expect interested parties to prepare further detailed submissions after the years of debate. The recent development submissions mainly postdate the conclusion of submissions to council, which was three years ago. Why set deadlines and schedules for local planning if they are to be overruled at the whim of the State Government and through the pockets of private interests? Rather than being the subject of special attention and inquiry, recent consultancies and submissions should be ruled out of order and date. Many local residents fear with good reason the harassment, legal incrimination and threats to personal safety that will be involved in free or outspoken participation in this inquiry. That will be a shameful episode in public consultation in this State. The inquiry is a cynical exercise in State interference in local government. The Government should immediately stop the inquiry and avoid further scandal and broken promises.

Motion agreed to.

House adjourned at 12.45 a.m., Wednesday.
