

LEGISLATIVE COUNCIL

Wednesday, 4 May 1994

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

The President offered the Prayers.

PETITIONS

Anti-Discrimination (Homosexual Vilification) Legislation

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because the homosexual vilification amendments to the Anti-Discrimination Act censor criticism of homosexuals, they be repealed, received from **Reverend the Hon.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

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**.

CONSTITUTION FURTHER AMENDMENT (REFERENDUM) AMENDMENT BILL

Bill introduced and read a first time.

COURTS LEGISLATION (CIVIL PROCEDURE) AMENDMENT BILL

Bill introduced and read a first time.

COURTS LEGISLATION (MEDIATION AND EVALUATION) AMENDMENT BILL

Bill introduced and read a first time.

CRIMES (FEMALE GENITAL MUTILATION) AMENDMENT BILL

Bill introduced and read a first time.

CRIMINAL PROCEDURE (INDICTABLE OFFENCES) AMENDMENT BILL

Bill introduced and read a first time.

JUSTICES (FINE DEFAULT) AMENDMENT BILL

Bill introduced and read a first time.

MOTOR ACCIDENTS (AMENDMENT) BILL

Bill introduced and read a first time.

ANTI-DISCRIMINATION (AMENDMENT) BILL

Bill introduced and read a first time.

Second Reading

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [2.45]: I move:

That this bill be now read a second time.

The Anti-Discrimination (Amendment) Bill constitutes the first significant overhaul of the provisions of the Anti-Discrimination Act since its introduction in 1977. The bill is the result of extensive consultation with a wide cross-section of disability, industry, community, religious and government organisations, as well as individuals, both prior to and following the release of the Government's draft Anti-Discrimination (Amendment) Bill 1993 in June of that year. The New South Wales Government has a proud record in the area of human rights, and the provisions of this bill will further the human rights agenda in this State by ensuring that the remedies, procedures and philosophy of the original Act are brought up to date and are responsive to the needs of today's community. Although the primary focus of the bill is upon disability discrimination, the amendments in the bill are divided into five distinct categories, and I propose to deal with the major features of each schedule to the bill in turn.

Schedule 1 to the bill contains amendments relating to the definition of race contained in the Anti-Discrimination Act. Section 4 of the Anti-Discrimination Act will be amended so that the existing definition of race will include concepts of descent and ethno-religious origin. The first amendment will confirm that persons who experience discrimination on the basis of descent may utilise the racial discrimination and racial vilification provisions of the Act. The amendment would operate, for example, to provide a remedy where a Malaysian person of Chinese descent is discriminated against on the basis of his or her Chinese descent only. The effect of the latter amendment is to clarify that ethno-religious groups, such as Jews, Muslims and Sikhs have access to the racial vilification and discrimination provisions of the Act. At present, it is not clear whether such groups are covered by the racial vilification and discrimination provisions, although this would appear to be the position at common law. The amendment will make it clear that vilification or discrimination against a person on the basis of ethno-religious origin falls within the protections against racial discrimination and racial vilification currently contained in the Act. The amendment is in line with

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existing judicial authority from both New South Wales and overseas which indicates that ethno-religious background is included in the legal concept of race.

I should make it clear to honourable members that this amendment is not intended in any way to interfere with religious freedoms, and that the extension of the Anti-Discrimination Act to ethno-religious groups will not extend to discrimination on the ground of religion. At present, section 56 of the Act specifically exempts religious practices, in accordance with the Government's policy that anti-discrimination laws should not interfere with fundamental religious freedoms. The proposed amendment to the definition of race will not allow members of ethno-religious groups such as Jews, Muslims and Sikhs to lodge complaints in respect of discrimination on the basis of their religion, but will protect such groups from discrimination based on their

membership of a group which shares a historical identity in terms of their racial, national or ethnic origin. Accordingly, the amendment will not prevent religious schools, for example, from employing suitable staff on the basis of their membership of a particular religion.

Section 20D of the principal Act will also be amended to increase the individual penalty for the offence of serious racial vilification from 10 to 50 penalty units to indicate the seriousness with which this Government views serious acts inciting racial hatred and violence. Schedule 2 to the bill creates a new offence and ground of complaint in relation to vilification of persons living with HIV and AIDS. People living with AIDS are subjected to substantial disadvantages in our society. Such people regularly experience discrimination in public life and are often subjected to vilification and indeed violence from others which stems from fear and ignorance concerning the HIV-AIDS virus. The Government has, from the outset, recognised that the suffering of people living with HIV-AIDS is a matter for the whole community, and the amendments contained in schedule 2 to the bill provide protection for people with HIV-AIDS from attack in the community.

The amendments are based on the existing racial vilification provisions in the Act. Accordingly, the vilification of people living with HIV-AIDS must involve a public act, as defined in proposed section 49ZXA. Proposed section 49ZXB provides people who are subject to vilification on the ground of their HIV-AIDS status, or because they are wrongly presumed to be HIV-positive, with a ground of complaint to the Anti-Discrimination Board. This will enable the Anti-Discrimination Board to apply its extensive conciliation processes in the resolution of HIV-AIDS vilification complaints, in the same way that it attempts to resolve racial vilification complaints. The provision is intended to protect those with asymptomatic HIV as well as those who have contracted AIDS. The proposed section also provides clear exceptions in relation to fair reporting, acts subject to absolute privilege in defamation proceedings, and public acts done reasonably and in good faith.

I should note that this last category of exceptions specifically provides that, among other things, public acts done reasonably and in good faith for the purposes of religious discussion or instruction are not subject to the HIV-AIDS vilification provisions. This exception reflects the Government's stated philosophy that religious bodies and schools should be free to propagate religion in accordance with religious doctrine and without legislative interference. Proposed section 49ZXC creates an offence of serious HIV-AIDS vilification, which is based on the existing offence of serious racial vilification. This offence, which carries a maximum penalty of \$5,000 or six months' imprisonment for individuals and \$10,000 for corporations, is intended to apply only in the most serious cases of incitement or threatened violence and, accordingly, prosecutions may proceed only with the consent of the Attorney General.

Schedule 3 to the bill contains a number of amendments to the Anti-Discrimination Act relating to disability. The primary purpose of these amendments is to merge the existing grounds of physical and intellectual impairment currently contained in the Act into a single ground of complaint in relation to disability. The present approach to impairment in the Act means that conditions which originate from the brain such as stuttering, epilepsy, cerebral palsy and multiple sclerosis are characterised as intellectual impairments. People suffering from those conditions are understandably offended by the label and have questioned the Act's credibility. It is proposed to create a single definition of disability so that people do not have to be identified as being either physically or intellectually impaired.

In the course of merging the two grounds of complaint, the Government has taken the opportunity to redraft the provisions of the Act to achieve, whenever possible, consistency with the provisions of the Commonwealth Disability Discrimination Act 1992 which came into effect on 1 March 1993. Other provisions contained in schedule 3 to the bill are identical to existing provisions in the Anti-Discrimination Act relating to physical and intellectual impairment, apart from minor changes to reflect the adoption of the new term "disability" and to ensure gender-neutral language. I will deal in turn with each of those provisions in schedule 3 which constitute substantive changes to the Anti-Discrimination Act.

Section 4 of the Act is to be amended to provide a wide-ranging definition of disability which is based upon that contained in the Commonwealth Disability Discrimination Act. The scope of the definition is such

that it will confirm the existing application of the Anti-Discrimination Act to protect persons living with asymptomatic HIV-AIDS, as well as persons suffering from other asymptomatic conditions, such as asymptomatic hepatitis B, and those with other conditions which manifest themselves in disease or illness. The definition is also wide enough to cover mental illness, persons with learning difficulties and other forms of physical and intellectual disability protected by the existing provisions of the Act. In order to provide the fullest possible protection for

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people from disability discrimination, proposed section 49A specifies that the term "disability" includes a past or presumed disability, or one that it is thought a person will have in the future.

Neither the existing definition of physical impairment nor that of intellectual impairment covers a disability which existed in the past but which has now ceased to exist. Many people are discriminated against, especially in employment, because of previous disabilities such as heart conditions, cancer or mental illness from which they have fully recovered. The definition of disability is to be amended to also include a disability which a person had, even if he or she did not have it at the time of the alleged discriminatory act. Similarly, many people are treated less favourably because they are wrongly presumed or perceived to have a disability. The provisions of the proposed section 49A will ensure that persons who are discriminated against because they are wrongly perceived to have a disability can lodge a complaint with the Anti-Discrimination Board in respect of such discrimination. The new section will also provide protection against discrimination against a person on the basis of a disability that person may have in the future. This amendment will protect persons who are discriminated against on the basis of their family medical history, for example.

Proposed section 49B, which sets out the behaviour which constitutes discrimination on the ground of disability, is substantially the same as the equivalent provisions currently in the Act in relation to physical and intellectual impairment. Honourable members should note, however, that the section clarifies that persons who are accompanied by a guide dog because of a disability relating to vision, hearing or mobility will be protected by the Act. At present, the Anti-Discrimination Act only protects persons from discrimination on the basis that they are accompanied by a guide dog where the person suffers from a visual impairment. Proposed sections 49C to 49O of the bill deal with the particular areas of public life in which disability discrimination is unlawful, that is, employment, education, provision of goods and services, accommodation and registered clubs. These areas reflect the areas of discrimination which are currently unlawful under the Anti-Discrimination Act in relation to the existing grounds of physical and intellectual impairment.

Although I do not propose to comment on these provisions in detail, there are some substantive changes to relevant defences contained in the bill. Each relevant area of disability discrimination contains a new defence, that is, that employment, education, goods and services, accommodation or access to registered clubs could not be provided to a person without unjustifiable hardship. The term "unjustifiable hardship" is defined in proposed section 49C of the bill to include, in the circumstances of the particular case, factors such as financial circumstances and the cost of making accommodations to ensure that a person with a disability is not discriminated against. For example, an employer who refuses employment to a person on the ground of disability would need to establish, to make out the defence, that the applicant was unable to carry out the inherent requirements of the job or, that in order to carry out these requirements, the employer would need to make accommodations in the workplace that would impose an unjustifiable financial burden or other unjustifiable hardship.

In other areas, such as the provision of education or accommodation, the new defence would operate so that a person with a disability may only be refused access if the person would require special services or facilities which would impose an unjustifiable hardship, such as an unreasonable financial burden, on the educational authority or person providing accommodation. An additional exception is provided in proposed sections 49L, 49N and 49O which enables educational authorities, charitable or other bodies providing accommodation or registered clubs to provide their services only to persons who have a particular disability. These exceptions will enable organisations to provide specialist services to meet the needs of people with particular disabilities without infringing the provisions of the Anti-Discrimination Act. Division 4 of schedule 3 provides for three general exceptions to the disability provisions, each of which are based upon exceptions

contained in the Commonwealth Disability Discrimination Act.

First, proposed section 49P provides for a specific public health defence. The defence will ensure that infection control procedures which are objectively required for the protection of public health cannot give rise to complaints of discrimination on the ground of disability. The Commonwealth Disability Discrimination Act 1992 includes a provision to this effect. The defence provides that it is not unlawful for a person to discriminate against another person on the ground of the other person's disability if the person's disability is an infectious disease and the discrimination is reasonably necessary to protect public health.

Second, proposed section 49Q combines the existing superannuation and insurance exemptions in the Act in relation to physical and intellectual impairment. The new provision will ensure that discrimination provisions in superannuation and insurance agreements are exempted only if they are reasonable and can be justified by actuarial or statistical data or, where no such data exists, where they are reasonable in all the circumstances. Similar changes have been made to the superannuation exemptions in sections 36 and 49 of the Act. This approach is consistent with the existing approach to insurance exemptions in the Act, and the approach taken in Commonwealth discrimination legislation.

Third, section 49R provides a new exemption to disability discrimination in sport. At present the Act provides an exemption in the areas of race, sex and physical and intellectual impairment in relation to sport. The exemptions are primarily intended to preserve the principles of fair sporting competition. As presently drafted, the exemption has the effect of

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excluding people with disabilities from participation in competitive sport, even if they are capable of playing the particular sport.

In order to overcome this difficulty, the Act is to be amended to adopt the exceptions in the Commonwealth Disability Discrimination Act 1992, which exempts discrimination in sport where the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity; or where the persons who participate or are to participate in the sporting activities are selected by a method which is reasonable on the basis of their skills and abilities relevant to the sporting activity and relative to each other; or where a sporting activity is conducted only for persons who have a particular disability and the first-mentioned person does not have that disability. This approach is more specific and addresses the problem of the existing exemption without detracting from the protection of the principle of fair sporting competition.

Schedule 4 to the bill contains a number of miscellaneous amendments to the Anti-Discrimination Act. Some of the amendments included in schedule 4 constitute significant policy changes, while other amendments merely reproduce or make minor technical changes to existing provisions. For the benefit of honourable members, I will briefly deal with each of the significant changes to the Act contained in schedule 4. First, the terminology of the Act is to be changed to replace references to, and the definition of, trade unions with the term "industrial organisation" to accord with the wording contained in the Industrial Relations Act 1991.

Other changes to the definitions section of the Act are consequential or clarifying in nature, apart from the insertion of definitions of the terms "associate" and "relative" in section 4. The purpose of the new definitions is to extend the coverage of the Anti-Discrimination Act to people who experience discrimination because of their relationship or association with another person who is a member of a group protected by one of the existing grounds of the Act. The new definitions will allow a relative or associate of a person of any particular race, sex or marital status, or relatives or associates of persons with a disability or of persons who are homosexual, to also have the standing to lodge a complaint.

This is an important extension as the Anti-Discrimination Board has, for example, received complaints from individuals who are associated with or accompanying people of particular races and are discriminated against because of that fact in the provision of education, goods and services and accommodation. The proposed amendments were also recommended by the Anti-Discrimination Board in its 1992 report on HIV-AIDS discrimination entitled "The Other Epidemic".

It is also proposed to insert a section 4A in the Act, which will clarify circumstances where there may be more than one reason for a discriminatory act. The Anti-Discrimination Act requires that the relevant act of discrimination occur "on the ground of" a person's status, sex or race. In order for an unlawful act of discrimination to have occurred, the ground or characteristic in question - that is, the complainant's sex, race, et cetera - must be the cause of the decision to commit the discriminatory act. An aggrieved person has to be able to show a relationship of cause and effect between the relevant characteristic and the action of the person who commits a discriminatory act.

This proposal seeks to extend the definition of "on the ground of" to include discriminatory acts done for more than one reason. Presently, unlawful discrimination under the Act is described as being "on the ground of" race, sex, marital status, physical impairment, intellectual impairment or homosexuality. The proposed amendment will allow the expression "on the ground of" to include a reference to the doing of an act for two or more reasons, provided that the reasons for doing the act or acts include a discriminatory reason or ground. Proposed section 4A provides that where there is more than one reason for the act complained of, and the dominant ground or reason is unlawful discrimination, the Anti-Discrimination Act will apply.

A minor change has been made to section 7 of the Act, which deals with discrimination on the ground of race, to take account of the protection to be given to relatives or associates, which I have already mentioned. Similar amendments are also made to sections 24, 39, 49B and 49ZG to deal with discrimination on the grounds of sex, marital status, disability and homosexuality respectively. The Act is also to be amended to extend its coverage to protect local government members from discrimination which they may experience in the course of their official duties. At present the Act does not cover honorary participation of councillors in local government as an area of unlawful discrimination.

The unpaid work of councillors does not fall within the areas of employment, provision of goods and services or any other areas provided for by the Act. The Anti-Discrimination Board has received complaints of sex and race discrimination from councillors which it has been unable to deal with. Proposed sections 10B, 27B, 42B, 49H and 49ZKA will make unlawful discriminatory conduct by fellow councillors on the basis of a councillor's race, sex, marital status, disability or homosexuality. The amendments will not provide for complaints to be made in relation to discrimination on the ground of political conviction.

There are also a number of amendments to increase maximum penalties for various offences under the Act. These amendments will increase, to \$1,000 in the case of individuals and \$5,000 in relation to corporations, penalties in relation to existing offences involving discriminatory advertising, under section 51; failure to comply with a notice to attend a conference, under section 92(3); failure to comply with a direction for an equal opportunity tribunal inquiry to be held, under section 101B(5); failure to comply with a non-publication order, under

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section 110A(3); failure to comply with an order of the equal opportunity tribunal, under section 116; and obstruction, under section 124.

These proposals will bring penalties in the New South Wales legislation into line with similar offence provisions under the Commonwealth Sex Discrimination Act 1984 and the Racial Discrimination Act 1975. The bill also reworks the existing provisions in the Anti-Discrimination Act in relation to the vicarious liability of employers for the unlawful discriminatory acts of their employees. Existing sections 52 and 53 of the Act aim to impute liability of agents to principals to cover cases of aiding and abetting. In *Leves v. Minister for Education*, Justice Matthews suggested that the sections should be redrafted as they have been rendered "virtually nugatory".

Section 52 states that it is unlawful if a person causes, instructs, induces, aids or permits another person to do an act that is unlawful under the Act, and provides that both persons will be jointly and severally liable. Section 53 of the Act deems an act by an agent or an employee to be done by the principal and the employer as well, unless specifically not authorised by the principal or the employer. The problem arises because a literal

interpretation of these sections produces a circular situation.

An action cannot be unlawful under section 52 of the Act or done in contravention of section 53 of the Act, unless it was done by the body or person who, under the Act, is the proper respondent. The amendments to sections 52 and 53 will clarify the vicarious liability provisions by providing that as long as the principal or employer is a person who is subject to the Act, it is not necessary that the employee or agent also fits that description. The existing requirement that the employer must, either expressly or by implication, authorise the unlawful act has been retained in the new provisions.

Section 54 of the Act is to be amended to remove the current exemption relating to discriminatory provisions in industrial agreements. Section 54 of the Act currently exempts industrial agreements from the operations of the Act. At the time the exemption came into force Parliament required the Anti-Discrimination Board, by virtue of section 121 of the Act, to promptly review all industrial awards for discriminatory provisions. The board's review was published in 1978.

From 1987 to 1989 the women's directorate of the Department of Industrial Relations and Employment reviewed discriminatory provisions in awards. Recommendations by the women's directorate on 300 awards in nine industries have been referred to the relevant parties for action. It is both illogical and unjust for workers in New South Wales who are covered by awards and enterprise agreements to be unable to take complaints to the Anti-Discrimination Board in relation to discriminatory provisions which appear in awards and enterprise agreements. The removal of the exemption is governed by clause 7 of the savings and transitional provisions in the bill, which provides a one-year period of grace within which discriminatory practices in existing awards and agreements will have to be rectified, before the amendment comes into operation.

A minor amendment is to be made to the religious exemptions contained in section 56(D) of the Act so that its coverage is extended to include one-off acts of a body established to propagate religion which conform to religious doctrine. At present, the section only applies to "any . . . practice" of such a body. It seems anomalous that the Act exempts practices in accordance with religious doctrines, but does not clearly cover a single act done in accordance with such doctrines. Accordingly the bill has been amended to provide that section 56 will apply to any "act or practice" of a religious body which is in accordance with a religious doctrine. A further amendment is to be made to section 59 of the Act, which provides an exemption for establishments providing housing accommodation for aged persons. The current section 59 of the Act has unintentionally had the effect of preventing people in aged housing from gaining access to the complaint provisions of the Act.

A new aged housing exemption has been created in relation to admission to aged accommodation under the grounds of sex, race or marital status which is framed in such a way that it does not interfere with the right of residents to complain against discrimination which they experience in aged housing and nursing homes. The bill also contains amendments to the provisions of sections 87 and 88 of the Act, which deal with complaints by representative organisations. These amendments will allow community and ethnic organisations and other representative bodies with a proper and sufficient interest to lodge complaints on behalf of an aggrieved individual. The aggrieved party must consent to the commencement or conclusion of the proceedings, but the proceedings themselves would be conducted by the organisation.

At present, section 88(1) of the Act deals with the making of complaints and provides that a person can lodge a complaint on behalf of himself and other persons. It does not allow a person to lodge a complaint on behalf of another if that first person is not affected by the alleged discrimination. The amendments broadly reflect the principle of a "next friend" acting on behalf of an aggrieved individual and will include bodies such as community and ethnic organisations. A similar provision already exists for racial vilification complaints and complaints lodged on the ground of intellectual impairment. The amendments will also enable complaints to be made on behalf of a person with a disability where that person, the parent or guardian, or any other person who the president of the board considers has a genuine concern for the person's welfare consents.

The bill also proposes the introduction of a new section 90A to confirm that the president may decline a

complaint, and an amendment of section 111 to allow the Equal Opportunity Tribunal to dismiss a
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complaint, when the complainant lacks sufficient interest in the complaint or when the person aggrieved by an alleged discriminatory act withdraws or does not wish to proceed with the complaint. A further amendment to section 96 will allow the definition of "respondent" to include those parties joined to an inquiry by the Equal Opportunity Tribunal under section 98 and 100 of the Act. Finally, a new section 126A of the Act will provide a specific mechanism for the approval of special needs programs or activities in relation to sex, marital status, disability or homosexuality. At present the Act is based on the concept of equal treatment and does not recognise the special needs of particular groups except in the race provisions. The proposed amendments provide that actions which are prima facie discriminatory under the Act would nevertheless be justified as long as the material purpose is to bring about equality, such as programs including management skills for particular groups in the community, technical jobs for women and women's and Aboriginal housing co-operatives.

The amendment will enable the Minister administering a "special needs" program or activity, or in the case of private sector programs or activities, the Minister administering proposed section 126A, to certify that the program or activity is exempt from the provisions of the Act. This procedure recognises that positive actions aimed at meeting the special needs of persons protected by the Act should not be regarded as unlawful discrimination, and provides the safeguard of ministerial approval to ensure that only appropriate programs and activities are exempted. Turning finally to schedule 5, I merely note for the information of honourable members that the schedule contains amendments which redraft the Anti-Discrimination Act in gender-neutral language so that it is consistent with all legislation drafted since 1982. In conclusion, I note that the Anti-Discrimination (Amendment) Bill 1994 stands as a significant recognition of the right of all members of our modern community to live free from discrimination. The bill provides, for the first time in this country, protection to people living with HIV-AIDS from vilification and violence. The bill also substantially increases statutory protections in relation to racial vilification and disability discrimination and makes a number of other important changes. The bill is, in short, a demonstration of the Government's commitment to eliminate discrimination in all areas of public life. I commend the bill to the House.

Debate adjourned on motion by the Hon. Franca Arena.

CRIMES (DETENTION AFTER ARREST) AMENDMENT BILL

Second Reading

Debate resumed from 21 April.

The Hon. J. W. SHAW [3.16]: This bill gives the police the power to detain an arrested person while the police further investigate the offence involved and before they take the arrested person before a court. The bill therefore substantially alters the common law position. It substantially alters the statutory position under the Crimes Act as it currently exists and would also put into place a legal position which is inconsistent with that recommended by the New South Wales Law Reform Commission in its report of December 1990 on police powers of detention and investigation after arrest. Even what I have said so far makes it clear that it is necessary for Parliament to closely scrutinise the bill because of the significant changes it effects in the current legal position.

Legislation giving police the power to detain people for questioning has been introduced in various forms in other States and by the Commonwealth since 1986, when the High Court of Australia confirmed that police had no common law power to detain an arrested person for questioning and should take such a person before the courts instead. That decision of the High Court in *Williams v. The Queen* appears in volume 161 of the 1986 Commonwealth Law Reports, at page 278. The major question for debate that arises from this bill is how the Legislature should specify the period of detention which the police are allowed. The bill provides that police may detain a person for a reasonable time before taking that person before a court. That provision is contained in proposed section 235B of the bill. The alternative approach to saying that the period can be a reasonable

time is to impose fixed times for detention. These are the competing views. Should the law simply say that it is to be a reasonable time, thus leaving the police a wide discretion, or should there be specified a particular period which the Parliament thinks to be reasonable before a person is taken before a court or a justice?

The Hon. E. P. Pickering: Or effectively no time.

The Hon. J. W. SHAW: The common law position - I will come to this in a little more detail - requires that the police act as soon as is practicable to get the person before the court. Although that does not mean literally no time, it certainly means that from the time when the detention commences the police should be taking steps to place the person before a justice and not detaining the person simply for the purposes of investigation or interrogation. The Law Reform Commission report of December 1990 came down on the side of a specified or fixed or determinate period, rather than leaving the matter at large to be governed by the notion of reasonable period. The idea of a fixed period was implemented by the Commonwealth Parliament in changes it made to the Commonwealth Crimes Act in 1991. When the New South Wales Law Reform Commission and the Commonwealth Parliament opted for a fixed-time period of detention, so-called time out - time that cannot be profitably used by the police, for example while the police are waiting for interpreters to arrive - was excluded from that period.

Reasonable-time provisions for detention operate in Victoria and the Northern Territory. Fixed-time provisions operate in relation to Commonwealth offences, so New South Wales police already apply

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them for offences against the Commonwealth law. Fixed-time provisions for detention apply in South Australia and the Australian Capital Territory. The common law provision, as has been explained by the High Court in the Williams case, still applies in Western Australia, Tasmania and Queensland. Provisions for fixed detention time are supported by, amongst others, the New South Wales Law Reform Commission, the New South Wales Law Society, the New South Wales Council for Civil Liberties, the Legal Aid Commission, public defenders, Crown prosecutors, the Law Council of Australia and the Australian Law Reform Commission. Reasonable time for detention is, it is understood, supported by various police forces.

Opposition members suggest that there is a strong case for rejecting the bill and reconsidering the matter, particularly in conjunction with Commonwealth authorities, in order to have consistency between Commonwealth and State law in this respect, since it is clear that State police officers must implement and deal with both Commonwealth and State law. On the face of things, it is unsatisfactory to have the police applying different methods of detention and the like when those same officers are required to deal with both Commonwealth and State statutes. The provisions of part 1C of the Commonwealth Crimes Act are of particular relevance. The Opposition takes the view that it would be more desirable to prescribe fixed periods of detention for both adults and juveniles, with court supervision after four hours for adults and after two hours for juveniles and Aborigines. There also ought to be a right of access to lawyers and family, not restricted by the two-hour waiting limit prescribed by this bill. Those time periods could be extended in particular cases, provided such extension is carefully prescribed and regulated. Some aspects of the bill ought to be preserved. In this regard, I have in mind regulations providing for the creation of special custody officers and the publication of police codes of conduct.

I shall now attempt to summarise the advantages of providing for a fixed detention time. First, there is certainty from the point of view of both the investigating officers and the detained person. Second, the rules can be enforced contemporaneously, at the time of the detention, so that it is clear that there is a four-hour period; rather than some court in the distant future having to determine whether the period that someone was detained was reasonable. In other words, a reasonable period is an indeterminate factor that has to be decided by a court at some future date. Third, there is uniformity. New South Wales police already administer a fixed-time detention period when investigating Commonwealth offences. If provisions for reasonable time were introduced under New South Wales law, the police would operate under two different codes, depending on the offence charged.

Fourth, there is the advantage of the facility to introduce special rules to protect vulnerable persons, such

as limited time for detaining juveniles and Aborigines, and special rules for interviewing them under the Commonwealth Crimes Act. It must be emphasised, of course, that these provisions will apply not only to adult persons but also to juveniles and to other disadvantaged persons. Fifth, flexibility is enhanced. Within the structure of the fixed-time detention period there is considerable flexibility to allow for reasonable time out - waiting time - to be taken into consideration when estimating the period of detention, to await the arrival of legal advisers and family. This provision gives greater protection to persons detained in remote country areas or outside office hours than does the two-hour waiting period provided in the bill. Sixth, practical experience shows that empirical evidence shows that fixed time periods provide sufficient time for police interrogation.

The bill also contains provisions relating to the investigative procedures that may be performed by police during the period of detention without court oversight. The provisions are contained in clause 356D and include: searching the person, taking fingerprints, taking photographs, filming, video taping, examining the person's body, obtaining blood, urine or other bodily samples, conducting identification parades, taking voice samples, taking handwriting samples, and the like. The list of investigative procedures that the police are empowered to take is a cause for some concern, particularly if the period remains indeterminate - that is, without any finite limits - and is simply defined by what is a reasonable time. The range of powers available to the police during the detention period make it all the more important for us to provide adequate safeguards in relation to the permitted length of detention.

I should like to refer to two cases relevant to the consideration of this matter. I have already mentioned Williams' case, which was decided by the High Court in 1986 and expressed the common law position that the police must act to bring a person who is detained before a justice as quickly as is reasonably practicable. That case involved consideration of the common law and provisions of the relevant State Crimes Act. In the judgment of Mr Justice Mason, the Chief Justice of the High Court, His Honour emphasised the critical importance of the right to personal liberty. His honour quoted earlier judges as saying that the right to personal liberty was the most elementary and important of all common law rights and he referred to the great legal writer Blackstone saying that the right to personal liberty was an absolute right vested in the individual by the immutable laws of nature that had never been abridged by the laws of England without sufficient cause. The judgment also referred specifically to section 352 of the New South Wales Crimes Act and referred back to a judgment of the former Chief Justice of New South Wales, Sir Frederick Jordan, in 1935, who referred to this very provision of the Crimes Act, which was a statutory power in relation to statutory offences as well as felonies. Sir Frederick Jordan said:

The statute, like the common law, authorises him -

That is, the constable:

- only to take the person so arrested before a justice to be dealt with according to law, and to do so without unreasonable delay and by the most reasonably direct route.

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... Any detention which is reasonably necessary until a magistrate can be obtained is, of course, lawful, but detention which extends beyond this cannot be justified under the common law or statutory power.

That is the position as it still stands in New South Wales. The High Court had cause to consider this again much more recently in the case of *Foster v. The Queen*, a judgment of the court of 19 May 1993. The case arose under the New South Wales Crimes Act and involved the arrest of a 21-year-old Aborigine who was arrested and accused of lighting a fire at the Narooma high school in August 1987. The High Court was caustic in its comments about the way that this matter had been dealt with by the criminal administration in New South Wales. In particular, the High Court said that the nature of the police infringement of the appellant's rights had been both serious and reckless.

That observation is sufficient to indicate to this Parliament the need for carefully constructed safeguards on the police power of detention as distinct from an untrammelled right to form a discretion about a reasonable period, or even a discretion governed by specific criteria. But that is largely left open by the bill. Though the

bill lists various criteria that the police are to apply, it also indicates that they can take into account considerations not specifically mentioned in the bill. The High Court continued:

The courts of this country have been at pains to stress that the right to personal liberty under the law is, in the words of Fullagar J, "the most elementary and important of all common law rights". It is "beyond question that at common law" neither a member of the police force nor any other person "has power to arrest a person merely for the purpose of questioning him". Nor was there any statutory provision which even arguably conferred a power upon the police, in the circumstances of the present case, to arrest the appellant otherwise than for the purpose of taking him before a "Justice to be dealt with according to law".

The High Court made it crystal clear that there was a breach of the relevant laws in that particular case. The High Court observed:

. . . it was clear from the police evidence that the unlawful arrest and detention of the appellant had been for the purpose of questioning him in an environment from which he had no opportunity of withdrawing. Thus, in the transcript of evidence on the committal proceedings, [a detective] had made clear that, notwithstanding that there was insufficient evidence to charge the appellant, he was not prepared to release him on the basis of his repeated denials of his involvement in the fire at the Narooma High School.

An excerpt from the cross-examination of the police officer at the committal proceeding is as follows:

Q - What was your attitude to how long he would remain at the police station? A - He was interviewed in relation to all the evidence that I was in possession of, that I was aware of and questions were put to him along those lines and he would have remained there until I had put to him all the information that I had.

Q - He had remained there for as long as you liked is that the case? A - Until I had finished.

Q - For as long as you liked is that the case? A - Yes.

That is eloquent evidence of the need for legislative constraint on the period of detention. That constraint should not be in the form of some vague and amorphous concept such as reasonable time; it should be in the form of a specified length of time as the Commonwealth Crimes Act approaches the matter. I shall briefly comment about the report of the New South Wales Law Reform Commission published in December 1990, which in its recommendations is antithetical to this bill. In other words, the Government has rejected the recommendations of the expert Law Reform Commission, which had carefully considered this very matter.

The chairman of the commission was the Hon. R. M. Hope, Q.C., former justice of the New South Wales Court of Appeal and, of course, an eminent royal commissioner in a number of circumstances. Other eminent members of the commission dealing with the particular reference included then Associate Professor David Weisbrot, now the Dean of the Faculty of Law of the University of Sydney, Professor Fisse and Mr Ronald Sackville. This is one of the most carefully written and powerfully argued Law Reform Commission reports that I have seen. Its thoroughness, attention to detail, balance and disinterestedness are all features that make it a model of the task of the Law Reform Commission.

Though it is certainly true that a parliament is not bound to adopt the view of the Law Reform Commission, in a technical area dealing with basic rights one would consider there was a powerful argument for adopting the views of the Law Reform Commission in the absence of overwhelming reasons to reject them. The Law Reform Commission found problems with the common law. It saw that the law as explained in Williams' case, though it was a strong restatement of the traditional concern about the liberty of the individual, nevertheless had problems about it. The commission report said:

As a matter of practice, however, the decision does little else, since the grand rhetoric of the common law has never been matched by detailed and *enforceable* rules and procedures which would give real meaning to the "rights" and safeguards.

In other words, the Law Reform Commission's report is a case for legislative intervention. However, the commission recommended that there should be a fixed period of detention following arrest. By

recommendation 3.1 it suggested that there should be detention for a reasonable period up to four hours so that there was a limitation on the period of detention before the person is brought before a justice. There is detailed argument in favour of a fixed limitation period. It would be tedious to refer to the detail of that argument, suffice it to say that the case is put on a rational and persuasive basis that some ceiling or limitation is needed on the reasonable period for detention. I quote some excerpts that give the flavour of the reasoning of the Law Reform Commission. Paragraph 4.7 of the report stated:

The solution, in the opinion of the Commission, lies instead in designing a system which authorises some custodial investigation as part of a more clearly and closely regulated system of criminal investigation, while at the same time enhancing the safeguards available to persons in custody to ensure that they are not treated unfairly or oppressively.

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The commission considered the option of a reasonable time without any upper limitation and said that this was the favoured approach of the police and prosecuting authorities. However, it pointed out that that places all operational discretion and, therefore, power in the hands of those agencies, that is, the police and the prosecuting authorities, with only loose statutory guidance and little in the way of accountability or review mechanisms. In paragraph 4.10 of the report the commission said:

The "reasonable time" formula without any fixed limits or presumptions is much too uncertain to regulate an area which touches on the fundamental liberty of the individual. A person in custody would have no idea when he or she is likely to be released, or whether the detention is even lawful. The uncertainty is probably as detrimental to the person's state of mind as the length of detention in many cases.

My final reference to the commission's report is the argument in favour of the other option, that of a fixed time system for custodial investigation. The Law Reform Commission report said:

Under our proposals, the police would be able to detain a person for up to four hours for the purpose of investigation if it is reasonably necessary to do so. The four hours is actual investigation time - travelling and waiting time is excluded from the calculation in most circumstances. In more complex cases, police may apply to a court or to a justice . . . for a detention warrant authorising an additional period of up to eight hours of custodial investigation. The fixed-time regime is easily coupled with an array of procedural and evidentiary safeguards.

Hence the forceful, eloquent argument in favour of a fixed time limitation and not simply leaving the question of detention to a broad and widely exercisable discretion. It is that absence of certainty, both from the point of view of police officers and the persons being investigated, that is really the central deficiency with this bill. That is the heart of the reason that the Opposition opposes the bill.

The Hon. E. P. PICKERING [3.40]: I support the bill. As an engineer I am, of course, the first to recognise that I cannot claim much in the way of expertise, and I certainly defer to the undoubted wisdom and legal training of the Hon. J. W. Shaw. I first became aware of Williams' case, as it is known in policing circles, shortly after my appointment in 1988 as Minister for Police in New South Wales. At that time Commissioner Avery drew to my attention that police in New South Wales saw the strict implementation of the provisions of Williams' case as so stringent that it made practical policing in this State virtually unworkable. It would be fair to say that Commissioner Avery was greatly concerned about the possible implications of the impact of Williams' case.

I note that Williams' case occurred in 1986 and the matter was being raised with me, as the Minister responsible, in 1988. By that time Williams' case had had an impact for a couple of years on the real policing world. The matter had come to a head, and some squads within the New South Wales police department - particularly the drug squad - were most concerned about the implications of the common law. As my learned colleague the Hon. J. W. Shaw said, there are three alternatives apparently open at law with regard to the extraordinarily complex events that may occur post-arrest. In effect, provision is made for a fixed time, during which police are able to conduct investigations into other matters before presenting a person before the court, a

reasonable time, which clearly is a matter to be defined in each individual case by a court of law, and what one might call, in a simplistic way, virtually no time at all - in the sense that once a person is arrested police are obliged to proceed with all reasonable haste to the court.

I recognise that for a variety of reasons detention after arrest is enormously complex. First, the nature of the circumstances that can arise range from very minor matters to extremely complex matters. Could any reasonable member of this House believe that the results achieved by the police investigating the Father's Day massacre could have been achieved in New South Wales had a strict application of Williams' case applied at the time? I think the answer to that question would be no. Again, it is complex, and quite properly so, because, as a society, we ought to treasure as fiercely as we can the rights of citizens to enjoy their lawful independence.

The act of arresting a person should always be seen by this Parliament as one of enormous responsibility. People should not be arrested without having significant safeguards as to their rights. I suppose everyone could say that in a fairly trite way, but one would really understand it if one were arrested. The complexity of the matter becomes clear when one contemplates the way in which various jurisdictions in this country have dealt with the problem. It is fair to suggest - as the Hon. J. W. Shaw did - that there is a wide range of results in the different States of the Commonwealth. In some States there is reliance upon the common law. Victoria and the Northern Territory have adopted what this bill would seek to achieve - a reasonable time. The Commonwealth, South Australia and the Australian Capital Territory have fixed times. I am conscious of the fact - and I am sure my colleague would accept - that Victoria legislated for a fixed time, but after gaining experience decided it had been an inappropriate step and has now legislated for a reasonable time. That might give some indication of why this legislation is before us today.

I hesitate to trivialise the debate by trying to inject an example that the common person could understand, but it is probably wise to do so. We in New South Wales should understand that police in this State can approach a person they suspect of having committed a criminal act and attempt to question that person. Under the law that person has a perfect right not only to refuse to speak to police officers but also to refuse to give the police officers his or her name. We strenuously uphold that right. In those circumstances, the police, based upon evidence to hand, may feel it proper to arrest the person. The person may then elect to take an entirely different view of the proceedings and may well say to police,

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"Now that you have arrested me and you are obviously taking the matter seriously, I can give you a world class alibi with regard to this offence".

If that person provides an alibi to police to indicate, in a proper way, that he or she was in no way associated with the crime, under the current law police are required to proceed to the court and charge the person because no time is allowed under the current law to test the alibi. I think honourable members would agree that that is stupid and illogical, but it is the impact of the current law. As I say, I am an engineer and it may well be that someone could say, "That is just nonsense", but it is the sort of thing that police officers explained to me during the years I was Minister for Police. I believe the proposed legislation provides the best balance, because clearly there has to be a balance between the rights of the individual to be properly protected during the investigative and arresting process and the rights of the community to be protected from the villains of this world. As members of Parliament we have an awesome responsibility to ensure that those rights are in place.

I note with some fascination that when jurisdictions play with rights, for what are apparently considered at the time to be good reasons, they open up a Pandora's box. I refer to the draconian steps taken by the British Government to deal with the Irish Republican Army. From memory, suspects can be detained for days for questioning. That was graphically illustrated in the film currently on exhibition entitled, "In the Name of the Father". The Guildford Four were subjected by police to the most horrific experience, largely because of the draconian laws that provide the police with far-reaching powers that I could never support in this State. I question the validity of those laws even in the difficult circumstances confronting the British Parliament with regard to the activities of the Irish Republican Army.

Reverend the Hon. F. J. Nile: They are emergency powers.

The Hon. E. P. PICKERING: They are emergency powers, but as happens frequently when powers are extended, they are abused. I raise this matter only to point out that this Parliament, if it agrees to the concept of reasonable time, will always need to be vigilant - as, indeed, will the courts - to ensure that the term "reasonable time" does not eventually translate into unreasonable activities associated with the conduct of police.

The Hon. Elisabeth Kirkby: It will happen without our knowledge.

The Hon. E. P. PICKERING: I have been around the police traps long enough to know that the honourable member is not incorrect when she says, "It will happen without our knowledge". That is why I said that this Parliament and the courts will need to be vigilant. However, I assure honourable members that the same problems will occur if they legislate for, say, four hours, because a person can be thumped or have as many terrible things done to him in four hours as in "a reasonable time". So honourable members are confronted by the same problem. In that respect, I give credit to the Attorney General. At long last he has been able to put a legislative solution to this problem before the Parliament. Both of his predecessors and I, as Minister, failed dismally in that regard, but he has moved to provide a resolution. I commend him also for including in this legislation provision for a new designation of police officer who will be responsible within the police station for the care, welfare, supervision and security of prisoners. That is an important new concept and I am not aware whether the Hon. J. W. Shaw spoke about it in his contribution.

The Hon. J. W. Shaw: I did mention it; I said it was a good aspect.

The Hon. E. P. PICKERING: I am sorry. My attention was probably diverted at the time. Honourable members who are devoted to watching the television show "The Bill" will know that the custody officer, who is responsible for the prisoners, is often highlighted in that television series, and the value of such an officer is often brought to the fore. That type of officer is desperately needed in New South Wales, and the Attorney is to be commended for introducing the concept. Undoubtedly the introduction of the concept is timely, because if we are to go beyond the common law as expressed in Williams' case and enhance to some extent the powers of the police by providing them with a reasonable time, it is appropriate that the rights of prisoners should be properly protected by a police officer who is duly appointed by the Parliament to be so responsible.

On many occasions the custody officer will have awesome responsibilities. As honourable members know, it is a sad fact of life that far too many citizens die tragically while in police custody. I support the legislation; it is long overdue. I am disappointed that the Labor Party has not seen fit to support the bill. As Minister, I did much to attempt to obtain a bipartisan approach to the bill. At the time I resigned from the ministry I thought that I had almost put such an approach in place. It is sad that that has not been achieved. I hope there may be time for reconsideration because I fear that if the matter is not resolved appropriately, the effectiveness of the New South Wales Police Service will be seriously reduced. That will, of course, be to the detriment of the vast majority of the citizens of this State who are decent, honest and law abiding.

The Hon. ELISABETH KIRKBY [3.54]: The Australian Democrats oppose the Crimes (Detention After Arrest) Amendment Bill. At the beginning of my remarks I should like to comment briefly on two statements made by the Hon. E. P. Pickering. He talked about the example in Great Britain of the Guildford Four, and of course the Birmingham Six and probably many others could be added. However, New South Wales is not living in a state of emergency and its citizens are not threatened, as are the citizens of the United Kingdom by Irish Republican Army terrorists. That sort of emergency legislation,

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however draconian it may be, can perhaps be understood in a time of national emergency, but I do not believe New South Wales is in that situation. Therefore, I do not believe we should be going down that road.

The Hon. E. P. Pickering: I did not suggest that.

The Hon. ELISABETH KIRKBY: The Hon. E. P. Pickering is quite right. He used the analogy but he did not make the suggestion. In his closing remarks he said he was sorry that this House had not been able to adopt a bipartisan approach to the bill. I assure the Government that if it had redrafted the bill using part 1C of the Commonwealth Crimes Act as a model, it would certainly have had the support of the Australian Democrats. However, that is not what the Government decided to do. Not only do the Australian Democrats believe that it is better if the majority of Commonwealth legislation is mirrored by State legislation, but in relation to this bill, which deals with the powers of the police to detain a person after arrest, I certainly believe that we should be using the Commonwealth Crimes Act as an example and model. I am sorry that the Government decided not to adopt that course. As the Hon. J. W. Shaw has already pointed out, when the New South Wales Law Reform Commission released its report entitled "Police Powers of Detention and Investigation After Arrest" in 1990, it came to the following conclusion:

The broad common law principles and discretions affecting criminal investigation, as applied in practice do not meet the needs of modern society . . . Despite the law's stated concern with the liberty of the individual, the common law fails in practice to secure meaningful rights and safeguards for persons in police custody.

That statement can be found at page 12 of the commission's report. It is obvious from the report that legislative reform is required, but unfortunately I do not believe that the legislative reform proposed by the Government is the correct reform. Indeed, I believe that the bill is seriously deficient. I am sustained in that belief by all major law authorities in this State. The power to detain persons for the purposes of investigation needs to be balanced with the rights of the individual. The Law Reform Commission emphasised that a comprehensive package of measures was necessary to address the problems, and the problems have been skilfully clarified by the Hon. E. P. Pickering. The following statement appears on page 29 of the commission's report:

The recommendations which follow have been designed both to meet the needs of proper law enforcement in a democratic society and to safeguard the position of individuals held in police custody, and are presented as an integrated set. The Commission believes that any partial implementation of the package which dispenses with the notional protections afforded by the common law, while increasing police powers to detain persons in custody, would run contrary to the spirit of this Report.

Unfortunately, that is exactly what the Government has done. The bill seeks to increase police powers and dispense with notional protections. There are many serious omissions, which I will now deal with one by one. The first serious omission deals with the period of detention. The bill will give the police the power to detain persons after arrest "for a reasonable time for the purpose of investigating the person's involvement in the commission of an offence" I am concerned, as was the Hon. J. W. Shaw, by the use of the term "reasonable time". I know that the bill lists criteria for determining what constitutes a reasonable time. These criteria include age, physical capacity and condition, mental capacity and condition, intellectual capacity, and the number, seriousness and complexity of the offences under investigation. These criteria are listed in proposed new section 356C(2) and are in line with the recommendations of the Law Reform Commission.

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

QUESTIONS WITHOUT NOTICE

BLUE MOUNTAINS CITY COUNCIL BOMBING

The Hon. M. R. EGAN: I ask the Attorney General and Minister for Justice in his own capacity as well as representing the Minister for Police and Minister for Emergency Services whether he is aware that in relation to a child sexual assault case at Katoomba, the Ombudsman has informed the honourable member for Heffron:

The issue of complaint, namely, that Detective Sergeant P. Gaspert and Constable First Class J. A. Middlemass of Katoomba police station failed to properly investigate a complaint made by . . . in relation to the alleged sexual assault upon her daughter has been found to be sustained.

Why did the Ombudsman also say:

A matter arising from the investigation, that Detective Sergeant P. Gaspert was untruthful to Detective Inspector J. P. Glasheen during the course of this investigation in relation to the execution of the search warrant, has been found sustained also.

Was Detective Sergeant Gaspert involved in the investigation of the Blue Mountains bombing and other bombing and death threats? Will the Minister assure the House that those investigations have been conducted without political fear or favour?

The Hon. J. P. HANNAFORD: As to the latter, yes. As to the first question, no, I am not aware. As to the second question, I do not know why he said it. As to whether he was involved in the investigation, I have no idea.

HAWKESBURY-NEPEAN VALLEY FLOOD MANAGEMENT PROGRAM

The Hon. D. J. GAY: Will the Minister for Planning and Minister for Housing inform the House of the action being taken by the Government to mitigate flooding in the Hawkesbury-Nepean valley?

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The Hon. R. J. WEBSTER: In February the Government announced a major flood management program for the Hawkesbury-Nepean valley. This program is the culmination of many years of studies and reviews that commenced in the mid-1980s. The central part of the program is the proposed upgrade of Warragamba Dam by raising the dam wall 23 metres. The dam currently provides minimum flood protection to 50,000 people living in the Hawkesbury-Nepean valley. When the upgrade is completed, flooding risks and levels throughout the valley will be substantially reduced. On average, the dam upgrade will reduce both small and large floods by about four metres throughout the valley. For example, a one in 100-year flood at Penrith would reach a height of 26.1 metres, whereas the upgrade will reduce this probability to one in 1,000 years.

When the review process first began under the previous Labor Government, there was no intention to provide flood protection to residents living in the valley. The sole aim was to protect Warragamba Dam and Sydney's water supply. In contrast, the Liberal Party-National Party Government wanted to be completely sure that the possible maximum flood predictions were accurate. It established an interdepartmental committee to confirm the rainfall and flooding predictions. Three independent, eminent, international experts in meteorology and hydrology were engaged to substantiate the credibility of the new rainfall and flooding predictions. There is now absolutely no doubt that these figures are accurate. Since then, various flood mitigation options and their impacts both upstream and downstream of Warragamba Dam have been examined.

The Water Board is currently preparing an environmental impact statement for the upgrade which will go on public display in the next few months. The care and time taken by this Government to establish accurate predictive data about the probability of flooding and its impacts, as well as careful review of solutions, is justified. Not only has this Government supported the need to reduce the flood risk in the valley by raising the height of Warragamba Dam, but it has also recognised the need for comprehensive and effective evacuation plans to be implemented and for a flood management plan to be developed. These are all under way and they ensure an integrated response to flooding impacts and future urban development in the valley.

The Government established an interagency committee, known as the Hawkesbury-Nepean valley flood awareness committee, to co-ordinate a public awareness campaign in relation to all flood matters in the valley. A fully staffed office and a 008 telephone line have been set up to answer questions from the public. The scope

of this interagency committee means that all issues of interest - including dam safety, planning matters, evacuation and emergency services, et cetera - are covered. This action will ensure that the community is well informed about the possibility of flood events and their potential to cause damage, as well as what is planned to minimise problems and to protect lives and property in the valley. This addresses concerns identified in past surveys of residents in the valley.

The committee held a press conference in February to appraise local councils of the plans to reduce flooding in the valley. It has also briefed banks and financial institutions. The only barrier or delay to flood mitigation works in the valley now would be a lack of bipartisan political support. As I have stated previously, this initiative deserves bipartisan support because it will save the people of New South Wales and Australia hundreds of millions of dollars. It will protect lives and property, as well as Sydney's water supply, and it will provide great benefits to the people of the Hawkesbury-Nepean Valley.

For this reason this Government is negotiating with the Federal Government to contribute to the funding of the mitigation dam, given the cost impacts of possible flooding not only on Commonwealth assets in the valley, but as a consequence of the impacts of severe flooding in this significant part of Australia. I trust that the Opposition will not oppose this initiative and will join with its Federal colleagues in giving this issue the serious consideration it deserves.

SMALL BUSINESS FUNDING

The Hon. B. H. VAUGHAN: My question is directed to the Minister for Planning and Minister for Housing, representing the Minister for Small Business. Given the recent study by the Bureau of Industry Economics, which cited the lack of available finance as a major obstacle to the growth of small businesses, and the fact that most finance came from owners' funds or related earnings, will the Minister urgently support current consultations with the banking industry with a view to establishing finance through proposed cash flows as a viable alternative for funding small business expansion?

The Hon. R. J. WEBSTER: No government in the history of New South Wales has done more to help small business than this Government. The Government has done that not by providing small business with subsidies that merely prop them up, but by providing a climate and a framework within which small business can grow and prosper.

The Hon. B. H. Vaughan: Does the Minister understand what cash flow financing is?

The Hon. R. J. WEBSTER: The Deputy Leader of the Opposition belongs to a party which, throughout Australia, has been disgraced over the past decade for the profligate way in which it has wasted taxpayers' money.

[Interruption]

Honourable members opposite do not like it, but I am going to give it to them, because I well recall that when this Government was elected in 1988 Premier Nick Greiner decided to sell the New South Wales Investment Corporation as one of his first

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priorities. The Investment Corporation was the Opposition's answer to picking winners in the business community. The people of New South Wales should be very grateful that the Government sold that business because once the recession started to bite, the unfortunate people who purchased some of the companies in that investment portfolio very quickly found out just what poor backers of winners Opposition members were.

Thank God that the Government did sell that investment corporation. Obviously there is a need to provide venture capital for small business; there is a need to assist small business through the banking sector, and this Government has contributed more than any other government in Australia to reducing inflation which, of

course, reduces the pressure on interest rates. Sydney - and New South Wales - now has the lowest inflation rate of any city in Australia, a pretty big achievement when one considers that Sydney is the biggest city with the greatest number of cost pressures of any city in Australia.

The Hon. J. R. Johnson: Are you taking credit for that?

The Hon. R. J. WEBSTER: We certainly are. It is no coincidence. The last jobs survey showed that of the 158,000 jobs created in Australia during the survey period, 98,000 were created in New South Wales. That is no coincidence either. We have gone from being the highest taxing State, when Labor was in power, to the second highest taxing State. New South Wales has a triple-A State-credit rating, and Queensland is the only other State with such a rating. These things do not just happen out of the blue. They happen because of the deliberate policies of this Government. As I have said before, we are now in the second half of our first decade in office. I assure all honourable members that when the Leader of the Government in this House addresses the Parliament just prior to the Olympics in the year 2000, he will be saying exactly the same things about our fine economic record.

All I can say to the Deputy Leader of the Opposition is: of course I am sure my colleague in another place is doing all he can to ensure that the banking sector is providing adequate finance to small business. If he is insinuating through the tone of his question that we are somehow going to go out and start picking winners and offering finance to companies that cannot stand on their own two feet, he is sadly mistaken. The way to assist small business is not to load it up with costs or additional taxes - that is what the Labor Party's mates did in Canberra. The Federal Government was not going to introduce a capital gains tax, but it did; it brought in a fringe benefits tax - in the 10 years it has been in office, it has brought in just about every form of tax ever thought of. This Government has reduced electricity charges in dollar terms every year for the last three years and water charges to businesses came down by 30 per cent last year in dollar terms. That is what small business needs to keep afloat; that is what small business needs as an incentive. That is the way to encourage small business in New South Wales, not by trying to prop it up.

SMALL BUSINESS FUNDING

The Hon. B. H. VAUGHAN: Mr President, I ask a supplementary question. Is the Minister for Planning and Minister for Housing aware that funds are loaned to small business on cash flow projections in Austria, Sweden and the Netherlands?

The Hon. R. J. WEBSTER: The answer is no.

Mr RODNEY JOHNSTONE BURWOOD ACTION GROUP

Reverend the Hon. F. J. NILE: My question without notice is directed to the Minister for Planning and Minister for Housing, representing the Minister for Energy and Minister for Local Government and Co-operatives. Is it a fact that one of the key witnesses at the Department of Local Government public inquiry into the operation of the Burwood Council was Mr Rodney Johnstone of the so-called Burwood Action Group? Is it a fact that evidence was produced by handwriting experts on "A Current Affair" last night showing that the offensive graffiti placed on the residence of Rodney Johnstone was allegedly placed there by him? Will the Minister request the police to investigate Mr Johnstone's activities at Burwood, which involve serious allegations of bribery, threats and bashings against Councillor John Fisk, as well as Mr Johnstone's questionable activities in other suburbs of Sydney, such as Manly?

The Hon. R. J. WEBSTER: I will refer the question of Reverend the Hon. F. J. Nile to my colleague the Minister for Energy and Minister for Local Government and Co-operatives and seek a prompt answer.

PRISONER BEHAVIOUR

The Hon. S. B. MUTCH: Will the Attorney General, Minister for Justice and Vice President of the Executive Council inform the House whether the Department of Corrective Services has carried out any recent studies on assaults and incidents of misconduct in New South Wales gaols. If these studies have been carried out, will the Minister inform us of the results?

The Hon. J. P. HANNAFORD: The Hon. S. B. Mutch has shown a continuing interest in issues relating to justice. It is an unfortunate fact of prison life that assaults between inmates do and will continue to take place. It is also a fact of life that in the gaol environment inmates who are given certain instructions refuse to comply in some cases. These circumstances take place in every day life between people in the community, so honourable members will understand that when people who have committed violent crimes are put into an atmosphere where they are mixing with other people who have committed

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violent crimes there will always be some degree of tension. The Department of Corrective Services keeps records of all assaults and misconduct allegations within gaols.

The definition of these incidents range in degree from actual fights to pushing and shoving in the exercise yard. Misconduct can also range from inmates refusing to leave their cells for muster, theft, property damage, and refusal to provide things such as urine samples, through to abusive behaviour such as throwing items at prison guards. The majority of incidents which are reported in the prison system are at the lower end of the scale, with only a few serious episodes taking place. Much of the credit for keeping tempers and the natural inclinations of some inmates under control must go to the prison officers who work with these people every day.

It is to the credit of these prison officers that they have become the ultimate experts in human management and can often step in to advert serious arguments between inmates. It must also be recognised that what constitutes misconduct for one officer would not be considered serious enough for another to report it. In the area of discipline the department has found that the reporting of misconduct charges has fallen by more than 300 cases from 1991-92 to 1993-94. The total number of charges per 100 inmates decreased from 153 in 1992 to 143 in 1993.

The Hon. Franca Arena: Are they all men, or are there women as well?

The Hon. J. P. HANNAFORD: Both men and women. I will come to the two categories shortly. When looking at these figures we must bear in mind that in almost all cases inmates who have misbehaved can have up to 12 charges against them. Charges against order has also decreased from 41 to 37 per 100 inmates, as did charges against muster, which fell from 24 to 19 per 100 inmates. It was to be expected that an increase in abusive behaviour - from 23 to 26 incidents per 100 inmates - would take place at Long Bay hospital where the majority of forensic patients, people with a mental illness, are kept. The next highest was the Tamworth Correctional Centre where a total increase of 16 cases was reported. The number of charges against good order was highest at Newnes, which has since closed, then at Mulawa and Maitland.

I have publicly acknowledged that there are some behavioural problems at Mulawa. The department has also recognised this. It is working at putting in place an action plan for women. I have spoken to the commissioner about this matter and he believes that the initiatives that will be put in place as a result of the action plan for women will dramatically reduce the behavioural problems we are experiencing at Mulawa. The department has also informed me of steps it is taking at Maitland in order to cut down the behavioural problems which are experienced there. Honourable members must understand that some of the most serious criminals in New South Wales are housed at Maitland and violence and non-compliance is a way of life to many of them. Overall, the reporting of misconduct has fallen; that is the reports of misconduct, rather than the action that may have been taken in relation to the misconduct. This is due to the gradual introduction last year of area and case management programs.

As case management programs become commonplace throughout the prison system and more industry and

education programs are introduced to each gaol, the department expects the incidence of misconduct and assault to significantly decrease. The number of assaults in correctional centres has remained steady since 1992. Any increase appears to have been of a minor nature, with no first-aid being required for either party. It appears that Tamworth had the highest rate of assaults. I indicate that new initiatives and a recent change in the physical area of the Tamworth prison have, in a short time, gone a long way to reducing the tension which existed. I discussed this matter with the commissioner only yesterday. I am pleased that a number of structural changes have occurred to that prison since I visited it last year. Those changes will further redress the problems I have identified.

Many institutions have not experienced any assaults whatsoever, while others which house the inmates convicted of the most serious crimes have experienced, as I indicated, up to 12 assaults in any one year. The women's prison at Mulawa had a reduction in assaults from last year, as did Cessnock, Goulburn, Long Bay hospital, Silverwater and Parklea. While the areas of misconduct and assaults have dropped or remained steady, the department will continue to take action to reduce them even further. As I said, the introduction of area and case management, the implementation particularly of the women's action plan, and the increase in industry and educational programs in our prison system will all go a long way toward reducing the incidence of violence in our gaols. It is incumbent on both sides of the House to remember the type of people who are in our correctional centres and to accept the fact that the very nature of prison means that unless we put every inmate in solitary confinement there will always be some level of disruption within the centres. But I hope that I will be able to continue to report to the House that there has been an improvement in the level of disruption within our prisons.

PARENTS AS TEACHERS PROGRAM

The Hon. ELISABETH KIRKBY: My question is directed to the Minister for Education, Training and Youth Affairs. Is it a fact that the Department of School Education has been collecting data to evaluate the parents as teachers program? If so, will the Minister advise who is evaluating the program, what sort of data is being collected and what criteria have been set? Is it the Minister's intention to continue the pilot programs throughout the 1995 school year? If so, have the staff involved been informed of this decision? If not, when will they be told?

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The Hon. VIRGINIA CHADWICK: The Hon. Elisabeth Kirkby has asked a most interesting and important question. All honourable members and many people elsewhere who have had the opportunity to learn a little of the parents as teachers pilot programs would be very excited about and supportive of the philosophy behind the program and the work that has been achieved to date. The Government initiated pilot programs because, in a sense, we imported the program from elsewhere and had to train our teachers and work very assiduously to ensure that our programs reached the very high standard of accreditation which would allow us to use the very proud title of the parents as teachers program. The program has reached the end of its pilot period. By definition, pilot programs are reviewed or evaluated to see whether their goals have been met.

The decision as to the future of the program could take a number of forms. For example, if a program is found at the end of the pilot period to be not suitable in New South Wales circumstances, the pilot period has afforded us the opportunity of trialing the program and then going on to try to meet our goals in other ways. That is not the view that I have taken about the parents as teachers program. The purists would suggest that I should look at the review to determine whether the program should continue in New South Wales. For right or wrong, I have already made the decision that the program will continue. Therefore, the schools that have done such fine work in developing the program and moving it out to parents in the community are under no threat as to their future. I have nothing but praise for the pioneering that has been achieved in this State.

However, the review or evaluation process under way will be valuable - not in determining whether the program continues - because elements of the experience of the last few years will be valuable in guiding us in

regard to future developments of the parents as teachers program and other forms of programs to link parents, particularly first time parents, and those who can provide support and guidance to them. My only concern about the parents as teachers program is that, as sadly is often the case, a very high cost is attached to the program. Working from memory - I would not in any way wish to mislead the honourable member - the cost is of the order of \$320,000 to \$350,000. Extending the program to a system of 2,500 schools would be very expensive.

I find it very interesting that as a result of the formal parents as teachers programs representatives of schools from other regions have visited and seen what has been happening with the programs and have developed their own local initiatives involving similar programs. They have adapted some of the philosophy and elements of the parents as teachers program to their own circumstances and regional budgets to produce highly valued and effective programs. While not in any way trying to prejudge or pre-empt what might happen at the end of the day, I strongly suspect that a number of variations of the program could be spread statewide rather than the formal parents as teachers program being available in every school in the State. That may be the development in the short term.

I am given heart in making that statement by very effective programs in the South Coast region which are local initiatives and programs in the Hunter, particularly those that have been developed by Dr Wendy Schiller of Macquarie University and Di James of the Homelink Foundation. In their work with itinerant families in the Hunter and their parenting and community support groups they are running very effective parenting and community based programs. In essence, a departmental review of evaluation is under way, which is right and proper at the end of a pilot program. The future of our pilot programs is under no threat. I will be happy to make public any evaluation of those programs which will help inform the education community of New South Wales of the findings which will assist other schools in the State to develop programs aimed at trying to support parents and to fulfil our role within education of acting as, I guess, co-parents; as responsible professionals to help parents.

The Hon. Dr Marlene Goldsmith: Helping parents to be their children's first and best educators.

The Hon. VIRGINIA CHADWICK: Indeed.

BUREAU OF STATISTICS CRIME AND SAFETY SURVEY

The Hon. Dr MARLENE GOLDSMITH: My question without notice is directed to the Attorney General and Minister for Justice, representing the Minister for Police and Minister for Emergency Services. Will the Minister inform the House of the results of the latest Australian Bureau of Statistics national crime victims survey?

The Hon. J. P. HANNAFORD: The Hon. Dr Marlene Goldsmith is chairman of the Standing Committee on Social Issues, which has been involved in several inquiries about the subject of violence. I am certain that the honourable member has a great deal of interest in the release of the most recent statistics because of the current survey being conducted by the committee. The results of the 1993 crime and safety survey reflect some important facts about the improvement in safety in New South Wales under this Government. In 1983, 6.1 per cent of Australian households were the subject of break, enter and steal offences. Under the Labor Government of the day, New South Wales was well above that national average, with 6.7 per cent of households being the victims of such offences. Now, a decade later, the national average has increased to 6.8 per cent, but the rate in New South Wales has decreased from 6.7 per cent to 5.7 per cent. Those figures should be read not only in the context of the national average but also in the context of the achievements made by the New South Wales Police Service over this period, a period in which this Government has devoted considerable energy to the issue of law and order.

The survey contains another important statistic regarding the offence of assault. Despite any belief to the contrary, the rate of assault in New South Wales has declined from 3 per cent to 2.6 per cent over the past decade. Those figures give the lie to the knee-jerk approach taken by the Leader of the Opposition, who is desperately attempting to score points on talkback radio and is promising more and more gimmicks in law and order. When honourable members recall that there has been a decline in the number of incidents of assault in the past decade from 3 per cent to 2.6 per cent they should also bear in mind that an incredible campaign has been maintained in order to get women in particular to come forward and be prepared to acknowledge and to report incidents of domestic violence.

The Hon. Franca Arena: Still only a third of such incidents are reported.

The Hon. J. P. HANNAFORD: Notwithstanding that statistic, the fact that the community is now prepared to report incidents of domestic violence and the fact that the actual number of incidents, both on a national basis and on a State basis, has decreased in the past decade indicate the dramatic way in which the issue of assault has been addressed. The people of this State want firm and fair laws and they want top-quality policing. That is what they are getting under this Government, and the proof lies in the results I have just outlined. I am also able to report that the incidence of sexual assault has remained relatively stable in both New South Wales and the rest of Australia.

Combating offences such as assault, sexual assault and break and enter and steal are at the core of the Government's law and order policy. The Government, the Police Service and the community have worked hard to stop the escalation of such crimes. The work is rewarded by the figures that have been released. Those figures show that the Government is delivering the quality of life that citizens of this State demand. I commend to the House an article appearing in this morning's *Sydney Morning Herald*. All members of the House should read this article, which is headed, "The shocking truth of falling crime" and is written by Ross Gittins. I wish to bring to the attention of the House a few of the paragraphs contained in that article, which stated:

In NSW, the rate of actual or attempted breaking and entering has fallen each year since 1990 and is now lower than it was in 1983. The rate of robbery is a little higher than in 1983, but has fallen since 1990. The rate of assault has fallen a little since 1983 and the rate of sexual assault is essentially unchanged.

The article goes on to state:

The prevalence of crime in NSW is probably a lot lower than many people imagine.

And:

People's worries about crime rest not only on the perception that the prevalence of crime is high and rising, but also on the perception that crime strikes at random - that each of us is equally at risk. This is a line pushed hard by the extreme feminists in their (justified) crusade against domestic violence and sexual assault.

But the Statistician's survey gives the lie to this perception . . . In NSW, women are 25 per cent less likely than men to be the victims of personal crimes (robbery, assault and sexual assault).

When it comes to perceptions, I am sure we all take the view that in our community women are much more susceptible to crime -

The Hon. Virginia Chadwick: As victims.

The Hon. J. P. HANNAFORD: - as victims. It is worth noting these figures, for in a moment I shall inform the House and reassure women that the statistics are not as they are painted by the popular media. The article went on to state:

And the people who seem to worry most about crimes (the elderly) are the ones least likely to be the victims,

This is another important point, because the elderly are also very concerned about crime. Ross Gittins continued:

whereas the people who seem to worry least (the young) are the ones most likely to be victims.

We should all pay particular attention to the article to which I have referred. I assure the House that while the results of the recent survey are gratifying there is no room for complacency. In the coming months the Government will continue to develop strategies to make New South Wales a safer place. Members can be assured that these policies will centre on real law and order initiatives; they will not be gimmicks such as those paraded by the tired and desperate Opposition.

In the past few months many of us have wondered why Bob Carr was taking a great interest in law and order issues. It is now obvious that Bob Carr knew for a long time that Anderson was going to go, that Whelan was going to go and that he would have no one to deal with law and order issues. He needed to try to take some position on law and order issues. It is obvious that the Leader of the Opposition had the Hon. R. D. Dyer lined up to go, in order to put other people in this House. At least the Hon. R. D. Dyer is able to stand up and say, "I'm saved for the moment". Government members do appreciate the Hon. R. D. Dyer in this House. We appreciate his qualities, even though his leadership does not appear to appreciate them. Government members have absolutely no doubt that the issue of law and order will be pursued by this Government -

The Hon. Judith Walker: I think the Attorney General and Minister for Justice should lay some accolades on John Avery and his community policing.

The Hon. J. P. HANNAFORD: I agree, absolutely. The police have been doing a magnificent job in community policing. The House should also recognise that the former Minister for Police, the Hon. E. P. Pickering, in the first few years of the present administration increased both the total number of police and the number of police taken from desk duties and put out to policing. Those measures led to the downturn in crime that has occurred since 1990.

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APPOINTMENT OF CHILD ADVOCATE

The Hon. R. D. DYER: I wish to ask a question of the Minister for Education, Training and Youth Affairs, representing the Minister for Community Services, Minister for Aboriginal Affairs and Minister for the Ageing. I preface my question by saying that I have no immediate intention of departing this House.

The PRESIDENT: Order!

The Hon. R. D. DYER: By immediate, I mean today.

The PRESIDENT: Order! The honourable member will ask the question, not make statements.

The Hon. R. D. DYER: Has Dr Ferry Grunseit been appointed by the Government as New South Wales child advocate? Has the position been established on an honorary rather than a remunerated basis? If so, what are the reasons for this? Will the Minister obtain information from her colleague, the Minister for Community Services as to the duties, functions and purposes of this position?

The Hon. VIRGINIA CHADWICK: I am unaware whether Ferry Grunseit has been appointed to the position outlined by the honourable member. I will most certainly seek advice from my colleague in another place. One of the more interesting and rewarding experiences of my life has been working alongside Ferry Grunseit in child protection. He is a man with great wisdom borne of many years of professional experience, and with a personal quality that makes him a living treasure in New South Wales, particularly in the protection

and care of children and children at risk. I would be thrilled if he has been appointed to such a position. Indeed, it is gratifying news, as is also the comment now recorded in *Hansard* that the Hon. R. D. Dyer intends to remain a member of the upper House, for now. However, I remain nervous about that because, as Peter Anderson and others have learned, a day is indeed a long time in politics.

HIV-AIDS TEACHING RESOURCE KIT

The Hon. ELAINE NILE: I ask the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister assisting the Premier a question without notice. Is it a fact that a new teaching resource kit to assist with AIDS and HIV education in schools has been released by the Minister's department? Could copies of this new kit be made available to interested members of this Chamber? Is it a fact that this kit includes instructions for condom demonstrations in year 9 for mixed male and female classes in which students are required to practise putting a condom on a plastic penis contained in a plastic banana? Does the Minister agree that this explicit condom activity is an invasion of privacy, especially for female students? Has the Minister received any feedback from students and or parents about this embarrassing situation?

The Hon. VIRGINIA CHADWICK: It is my understanding that with the assistance of the Federal Government such a kit is available in our schools. I repeat what I have said in this Chamber and elsewhere on many occasions: we teach personal development, health and hygiene, and those issues are handled sensitively within our schools. If a school desires to introduce matters that may be deemed controversial in the nature of the school community, consultation occurs with parent groups who, of course, have the right to decide the elements of the material that should be included in the personal development course.

It is not true that modules of that kit or any other kit would be used universally in schools. The kit is as the honourable member described. If the kit was a matter of concern to any student or to the parent body of the school, or was felt to be an invasion of privacy or that the material was being imposed upon students, it should first be taken up with the school; if that does not resolve matters satisfactorily, I would welcome their contacting me. To date I have not received such contact.

PUBLIC HOUSING TRANSFER POLICY

The Hon. PATRICIA FORSYTHE: My question without notice is directed to the Minister for Planning and Minister for Housing. Has the Department of Housing introduced a system that allows public housing tenants to transfer to more suitable accommodation? Can the Minister inform the House how the system operates and what benefit it provides to public housing tenants in New South Wales?

The Hon. R. J. WEBSTER: I thank the Hon. Patricia Forsythe for her great assistance in representing me last weekend at a Spanish community function in Wollongong, where on my behalf she accepted a magnificent trophy. I thank the Spanish community for that lovely gesture. In June 1993 the Department of Housing commenced its new computerised mutual exchange scheme, set up on the department's sophisticated VAX computer system, which was designed to assist public housing tenants who wish to move into different sized accommodation or to a new location.

The computerised system replaced the old manual system that required tenants to put their name into a registration book and to have the matching done by hand. That system was found to be completely inadequate, particularly after the department reviewed its transfer policy which had involved the department moving existing tenants into vacant dwellings. This had proved to be a drain on the resources of the department and strict limitation was placed on it. However, it was recognised that many tenants would not qualify for the new transfer policy but would still want to move to alternative accommodation.

The mutual exchange program is the obvious solution for those tenants, who are encouraged by the department to register their names on the computer together with details of their existing dwelling size,

location and features such as modifications or other special items. They also enter details of the type, size and location of the accommodation they are seeking. I am pleased to advise honourable members that the department's tenants are taking up the offer and are registering their details at the rate of an average of 660 per month. Twice a week the computer runs through the details on the register of some 8,470 applicants and matches each individual against the rest to draw out the highest number of possible exchanges that it finds. For some tenants there can be in excess of 20 matches on each run of the computer.

Since its commencement 3,354 offers have been made and more than 730 public housing tenants have satisfied their need for new accommodation through the mutual exchange program. A good example of the mutual exchange program can be seen in a recent match between an elderly tenant living in a one-bedroom apartment in Tweed Heads and another tenant living in Campbelltown. Both tenants wanted accommodation in the other's area. The elderly woman in Tweed Heads wanted to be close to her family in Campbelltown, and the Campbelltown tenant wanted to live on the North Coast. The mutual exchange program provided an ideal solution to both of their housing needs.

I should emphasise that when the department allocates a dwelling to an applicant, it is done on the basis of what the applicant has stated in the application as the location, size and type of dwelling he prefers. The department offers accommodation that best matches those requirements. Some reasons given by tenants who later wish to move to new premises include a wish to be near their workplace or to enhance their prospects of finding employment, to be near a hospital or medical provider, to be near family, to be near their children's school, or to avoid troubles from former partners.

It must be emphasised that this program is not a waiting list. If there is a match on the run of the computer, the department will write to the individual tenants involved, advising them to contact the other matched tenant. If the respective premises are suitable to both parties, the exchange will be facilitated. Of course, the exchange will not go ahead if there are rental arrears, the property is not in good order or there are other encumbrances to the tenancy arrangement. The advantages to the State's public housing tenants provided by the new mutual exchange program include the removal of the need for tenants to travel from one regional office to another, to enter their details in a book and to look for another dwelling.

The system is simple. There are no restrictions on the number of offers that can be refused by tenants; the system is easily accessed by tenants; the data can be manipulated to create further matches; and it contains up-to-date information. All these advantages make the new computerised mutual exchange scheme a very positive system for housing tenants who wish to move within the public housing system without drawing heavily on the resources of the Department of Housing. It is another initiative involved in the reforms that I have made in the Department of Housing over the past two years.

CAMPBELLTOWN COURT HOUSE REFURBISHMENT

The Hon. P. F. O'GRADY: I direct my question without notice to the Attorney General and Minister for Justice. In 1991 the Minister for Justice promised that the old Campbelltown court house would be refurbished for use as a children's court by December 1992. In light of the fact that that promise has been abandoned, what will the Attorney General do about the untenable situation wherein children are forced to attend courts for adults and mix with adult offenders?

The Hon. J. P. HANNAFORD: The position as to the refurbishment and construction of Campbelltown court is still on the capital works agenda of the department.

WATER BOARD PUBLIC MEETINGS

The Hon. R. S. L. JONES: I ask the Minister for Planning and Minister for Housing whether the

Premier consulted the Minister about his decision that Water Board meetings be held in secret? Did the Minister consult with Paul Broad and the Water Board before this decision was imposed upon them? What reaction did Paul Broad have to the imposition of the secrecy requirement? What was the Premier afraid would come out of the board meetings if they were made public?

The Hon. R. J. WEBSTER: I think the answer that the Premier gave to this question in the lower House yesterday was adequate and I commend to the Hon. R. S. L. Jones a reading of the *Hansard* from the Legislative Assembly.

LEGAL REFORM PROGRAMS

The Hon. J. M. SAMIOS: My question without notice is addressed to the Attorney General, Minister for Justice and Vice President of the Executive Council. What is being done to help smaller legal firms and sole practitioners adjust to the increased competition that will flow from the commencement of the Legal Profession Reform Act on 1 July 1994?

The Hon. J. P. HANNAFORD: The honourable member is a former legal practitioner and he should understand the pressures which are being experienced by small businesses in this State, particularly involving legal services, as a result of the downturn in the economy. As honourable members will be aware, the Fahey Government has successfully brought about the most significant reforms to the way in which legal services are delivered to the people of New South Wales. With the passing of the new Legal Profession Reform Act last year, its commencement date being 1 July, the people of this State will finally be able to obtain almost a trifecta of legal services - that is, legal services that are accessible, affordable and accountable.

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Colleagues will appreciate the magnitude of this achievement by the Fahey Government, given that the reforms deal with a profession that more than any other is steeped in tradition and is most resistant to change. Those reforms will result in the needs of all interest groups - clients, practitioners and the community - being best met. Restrictive and anti-competitive practices have been removed. This means that the whole culture of the legal profession is being forced to change. The legal profession must adapt its modus operandi to suit the new well-informed, competitive market that will result from the reforms. The smaller firms and the sole practitioners will feel more than most the impact of greater competition. The question rightfully arises, are they being helped to adapt their business practices to the new milieu?

I am pleased to inform honourable members that in the past couple of weeks I launched, jointly with the Law Foundation of New South Wales and the New South Wales Law Society, a program of activities that will have far-reaching implications for the future delivery of legal services. For the benefit of the House, I note that the Hon. R. D. Dyer is a member of the board of the Law Foundation and makes a very considerable contribution to the operation of that foundation. I commend him for the work done and the reputation that he has in that area.

The program "Tomorrow's Legal Services" is an initiative of the Law Foundation of New South Wales. "Tomorrow's Legal Services" will take the framework of reform implemented by the Fahey Government, and will help the legal profession adapt to the new competitive legal services environment. Now that the legislative framework is in place, legal practitioners must address how they can change their approach to providing legal services. This is being done through proposals for research, innovation and support contained in "Tomorrow's Legal Services". Just as we see investment in research and development in the mining and agricultural industries, so too do we need investment in research and development in the legal industry.

In New South Wales 90 per cent of legal services are provided by small legal practices. These small practices do not have the resources available to invest in research and development. "Tomorrow's Legal Services" is aimed at these smaller firms. Through research and development, the smaller providers of legal

services will be able to develop better and cheaper ways of looking after their clients. The proposals will include pilot study concepts that will be tested by certain firms. The expertise developed from the pilot study will be available generally for application to other legal practices.

The legal profession has been slow to innovate service delivery in new ways. This has been because the cost of innovation is beyond the reach of small firms. We cannot run twenty-first century legal practices in a nineteenth century environment, with antiquated procedures. I have been pleased to be involved in the Law Foundation's consideration and adoption of this project. It is fundamental to the development of a modern and innovative legal profession in New South Wales. The legislative reforms implemented by the Fahey Government last year, coupled with the practical programs outlined in "Tomorrow's Legal Service", will lead to real improvements in access to the legal system. Access to justice needs to be facilitated by ensuring that the legal profession is competitive and meets the real needs of its clients.

The first step, the legislative framework, is there. The second step requires that practitioners must have good quality information about their market-place and the products they provide. I am able to inform the House that the Law Foundation has allocated \$750,000 a year for the next three years for development of this program. I commend the Law Foundation for this particular initiative. It is an innovation in Australia.

JERVIS BAY PLANNING POLICY

The Hon. HELEN SHAM-HO: Will the Minister for Planning and Minister for Housing inform the House what steps are being taken to ensure the proper management of the Jervis Bay area on the New South Wales South Coast?

The Hon. R. J. WEBSTER: The Hon. Helen Sham-Ho has a continuing interest in the environment, which I know is shared by all members on this side of the House. The Government has agreed to the preparation of a regional environment plan as part of an integrated management strategy prepared by my administration for Jervis Bay. The regional plan will provide a framework to guide future planning decisions for this highly significant area. The Department of Planning will be preparing the draft regional plan in close consultation with the Shoalhaven Council and the local community. In fact, I will be setting up an advisory committee to assist with the process, to ensure that all government, community, business and environmental interests are involved, as they have been to date.

The management strategy for Jervis Bay is the most comprehensive approach taken by any government to future management of such a unique natural area. The strategy, as reflected in the discussion paper, "Jervis Bay Our Heritage Our Future" was developed following extensive community consultation. It is made up of four key components: the establishment of a national park - which was announced by my colleague the Minister for the Environment last week - and an aquatic reserve; the preparation of a catchment management plan and the preparation of a regional environmental plan. A decision on the aquatic reserve and the catchment management plan will be made soon.

For some decades there have been calls for a vast range of conflicting proposals for the bay. These have ranged from a nuclear power station to a national park over the whole of Jervis Bay, rather than those areas with a high conservation value. My goal has been to find a solution which satisfies all key interest

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groups. The management strategy will provide a framework through which the special cultural and natural qualities of Jervis Bay can be protected by a balanced approach to development and conservation. The implementation of the strategy will provide certainty to all who have an interest in the area, whether they be government, business, landowners, residents or visitors.

The successful outcome of the Jervis Bay planning exercise is the product of this Government's deliberate approach to include all stakeholders in the process. The original advisory committee was set up with representatives of the three levels of government and key community, environmental and business groups. In

all, there were 17 representatives, all with a different view about how Jervis Bay should be managed. It was only when the committee had reached agreement on a common vision for future management of the bay with the help of an independent facilitator, that progress started to be made. The agreed vision was the key to establishing constructive dialogue between all parties. Through this advisory committee the community was consulted at all stages of the planning exercise.

The discussion paper which I have already mentioned, "Jervis Bay Our Heritage Our Future", was prepared by the Department of Planning in association with the Shoalhaven Council and with the assistance of the advisory committee. The discussion paper, which suggested a strategy to guide future management of the bay, was placed on public exhibition. More than 600 submissions and a 10,000-signature petition were received, reflecting strong support from the community for the management strategy.

A major concern arising from the consultation process is the future of paper subdivisions in rural zones. I have separately asked the Department of Planning to assess the issue and provide a report to me on the most appropriate measures to deal with the problem of premature subdivisions. I will receive that report in the near future. Owners of land affected by the proposed habitat corridor system are also concerned. I understand that most of those concerned are owners of land in the paper rural subdivisions. There is a rather special case which will be addressed by the Department of Planning when it reports to me on those subdivisions. The success of the Jervis Bay management study lies in an integrated approach to its implementation. This Government has set the framework for this goal to be achieved. It is a process I am proud to have been involved in, as I consider it the best way to plan for the environmentally and ecologically sustainable development of the bay. It will ensure that present and future communities will be able to enjoy the rich cultural and natural resource available to us.

KILLARA PRIMARY SCHOOL DAY CARE SITE

The Hon. FRANCA ARENA: With your indulgence, Mr President, may I state that if I am offered a Senate seat or an ambassadorship in Rome I am prepared to go. I ask the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier a question without notice. Is it a fact that Killara Primary School is to be sold so that a commercial long day care centre -

The Hon. Virginia Chadwick: I am sorry, will the honourable member repeat that.

The Hon. FRANCA ARENA: Is it a fact that Killara Primary School is to be sold so that a commercial long day care centre and a Japanese language and cultural centre can be sited in its place? Does the Minister think that is an appropriate use of a school site worth \$10 million to \$15 million in an area of cul-de-sacs where traffic congestion would be horrendous, particularly as the Japanese centre is for high school students, with overnight accommodation? When will this change take place and why?

The Hon. VIRGINIA CHADWICK: The reason I asked the Hon. Franca Arena to repeat the first part of her question was that I thought I had misheard her words. Obviously the fairly stressful and difficult personal and professional time she has experienced recently is taking its toll on her judgment. In relation to her suggestion that she may be available to go to the Senate, if Michael Easson cannot get into the Senate, I do not fancy the chances of the Hon. Franca Arena. The queue for the Senate is getting a little long and a little crowded.

I say absolutely and categorically that it is not and never has been my intention to close Killara Primary School, which is a fine school. I should like to make one or two remarks about the two other matters referred to by the Hon. Franca Arena. The first relates to early childhood education and the second to the Japanese centre.

The Government is presently asking schools if they are interested in allowing surplus space or spare accommodation to be used for early childhood education. That seems to me to be a sensible proposition because early childhood education is a good use of school sites, particularly in small schools or schools with

declining populations. It is a great way of bringing people into the area and attracting children to that primary school. Every decision in that regard is taken by the local school community, not by me. It would be a little odd, would it not, to site a long day care centre in the grounds of a school that the honourable member alleges I intend to close? That is a ridiculous notion. The Killara school community, a progressive and dynamic school community, is keen to have this long day care centre in the school grounds. The project is being driven by the school community.

The Hon. Franca Arena: How much money are they getting for it?

The Hon. VIRGINIA CHADWICK: To the best of my knowledge the negotiations to confirm this arrangement have not yet been completed, but this is a school community initiative. The Hon. Franca
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Arena may want to play the female version of God by making judgments about what is fair, right and proper for a school, but that is certainly not a role I would adopt. If the Killara school community believes it is good for the local community and the local children to develop such an initiative, I will do nothing but support the community in its endeavour. There has been a great deal of scaremongering abroad in relation to the Japanese cultural centre. Last night a parent from the Killara school community told me that she was in despair because of what she regards as the selfishness and xenophobia of some of the local people, who wish to deny children in that area access to a generous offer. I have even heard that the Japanese education centre will be some sort of bed and breakfast establishment for Japanese businessmen. The Hon. Franca Arena is now touting a story that the centre will provide overnight accommodation for high school students. It will be neither. I have also heard that it will be a geisha house. Some generous people and organisations are keen to provide at their cost -

The Hon. Franca Arena: On public land.

The Hon. VIRGINIA CHADWICK: - an education facility. It is a generous donation.

The Hon. Franca Arena: On public land.

The Hon. VIRGINIA CHADWICK: I hope Hansard has recorded those remarks, because this is a generous donation -

The PRESIDENT: Order! Honourable members will allow the Minister to answer the question.

The Hon. VIRGINIA CHADWICK: - to the Department of School Education to assist the children of this State in the pursuit of excellence in the acquisition of the Japanese language. I for one have nothing but thanks and gratitude for that co-operative and generous offer. I absolutely and totally reject the comments of the Hon. Franca Arena.

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL

Bill received and read a first time.

Suspension of certain standing orders agreed to.

CRIMES (DETENTION AFTER ARREST) AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. ELISABETH KIRKBY [5.10]: Prior to question time I was referring to the period of detention. I drew the attention of the House to proposed new section 356C(2), which deals with the criteria for determining what constitutes reasonable time and is in line with the recommendations of the Law Reform Commission. However, the Law Reform Commission also recommended a reasonable period with a set maximum of four hours actual investigation time - that is time spent on an investigation, not time spent waiting for an interpreter or a relative of an arrested person to attend a police station - with the possibility that police officers could apply to a court for a further four hours. The Government has failed to set this limit.

As has been pointed out, and even the Hon. E. P. Pickering admitted that he was not surprised, the reasonable time approach is favoured by police officers. I do not think that would surprise anyone. However, what penalty, if any, would be imposed on police officers who acted unreasonably? Courts are not well placed to be the principal regulators of police conduct; they do not see that as their role. Police practices may not be highlighted in defended cases because of tactical or other considerations, making it difficult for trial judges to decide whether to exclude incriminating evidence improperly obtained.

If police officers act improperly it could be many months, if not years, before the Parliament would learn of it. All honourable members know from reports made by the Ombudsman - one was adverted to earlier by the Leader of the Opposition by way of a question - that many things about police officers may be reported to the Ombudsman, but members of Parliament know absolutely nothing about them. By the time any improper conduct was brought to the attention of the Parliament, a great injustice might have been done.

It is useless to pretend that injustices do not occur. Recently it was necessary for the State Government to pay out a very large sum of money to Mr Edgar Azzopardi. For many years he was harassed by the police, resulting in a cost to the taxpayers of this State. A private member's bill is before the House because Harry Rendell was accused wrongly and charged with a murder he did not commit. In the events leading up to his pardon by the Governor it became quite obvious, and it is not in dispute, that the evidence given by police officers in his case was incorrect.

A further private member's bill in another place deals with a criminal matter involving Ziggy Pohl - a case where restitution will probably have to be made by the State. It is ridiculous to pretend that police officers are right on every occasion, that on occasion they do not enter the witness box and perjure themselves and that they do not follow improper practices. It is regrettable, but the Ombudsman would not be needed to oversight the actions of the police if it had not been proved that some police officers sometimes act improperly. As the Law Reform Commission has pointed out, the reasonable time formula is subject to discretion, but it is too uncertain.

That uncertainty will affect a person's state of mind, particularly the state of mind of a young person, someone of a non-English speaking background or, more important, Aborigines, who are

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overrepresented in our gaols. If Aborigines are picked up by the police for questioning and they do not know how long they will be detained and do not know their rights - an ordeal for anyone - that will affect them adversely and leave them in a state of terror and possibly despair. The Hon. J. W. Shaw mentioned the 1986 judgment of *Williams v. The Queen*, which was the basis of putting the common law rights relating to detention and arrest into a legislative scheme. That judgment sounded a cautionary note against a too open-ended system of detention. It states:

To countenance a period of detention in police custody after arrest, without specific limits, for such time as might be reasonably necessary to enable the police to obtain the evidence upon which to charge the suspect, is unacceptably open ended and quite contrary to what was (and in Australia, in our view, still is) the law.

The judgment continues:

If the law requires modification, then it is better done . . . by legislation. For there must be safeguards, if necessary in the form of time limits, and they must be set with a particularity which cannot be achieved by a judicial decision.

All honourable members should appreciate that the New South Wales police already operate under a fixed time regime when investigating Commonwealth offences. If they can conduct investigations of Commonwealth offences under a fixed time regime, there is absolutely no reason why they cannot operate under the same regime when investigating offences against the State. I do not think anyone can dispute that that is a logical and fair assessment. It is certainly not putting the New South Wales police under any undue duress.

I am considerably worried about the effect of this proposed legislation upon Aborigines. There is no doubt that they will be adversely affected by this bill. During the period of detention there will be no allowance for court supervision of the defendant. Under the Commonwealth Crimes Act, Aborigines and juveniles may be detained for only two hours before the detention must be terminated or the person brought before the court. As has been pointed out by previous speakers, the reasonable time scheme operates in Victoria and in the Northern Territory, but fixed time operates in relation to Commonwealth offences, in South Australia and in the Australian Capital Territory.

The common law applies in Western Australia, Tasmania, and Queensland. I do not understand why the Government has seen fit to attempt to change the legislation in this State. Fixed-time schemes have numerous advantages, including certainty, contemporary enforcement of the rules, uniformity of Commonwealth and State laws and the ability to introduce special rules to protect vulnerable groups, who are people from a non-English speaking background and Aborigines.

I have a problem with deemed arrests. The bill assumes that deemed arrests do not occur. That can be found in proposed section 356(2)(f). This is a totally untrue assumption. People often accompany police officers to the police station for questioning and very frequently they believe that they must stay in police company even though they have not been formally charged. Again, this is a deficiency which is particularly of concern with Aborigines. As I have pointed out, the Commonwealth Crimes Act covers persons intimidated into remaining in police custody. There is no doubt that the Aboriginal community in Australia as a whole, not only in New South Wales, is, and traditionally has been, intimidated by the police.

Another concern I wish to place on the record is fact that police should be held expressly responsible for persons in their custody. Indeed, the Royal Commission into Aboriginal Deaths in Custody recommended that police officers be made expressly responsible for the safety and well-being of all persons in their custody. The royal commission also recommended that any breach of the legislation or codes of practice should constitute a disciplinary offence. There is no mention of this in this legislation. If we are supposed to be implementing the recommendations of the Royal Commission into Aboriginal Deaths in Custody, that is a most serious omission.

Another concern relates to the admissibility of evidence obtained in breach of the rules. Proposed section 356(2) provides that part 10A of the Act does not affect the discretion of a court to admit or exclude unfairly obtained evidence, or the discretion of a court to admit or exclude evidence obtained improperly, in contravention of a law, in consequence of an impropriety, or in contravention of a code of conduct. This discretion remains, and rightly so. However, I believe that there should be guidelines for the court on this matter.

The Law Reform Commission suggested that the court should take into account such matters as the probity value of the evidence, the importance of the evidence in the proceedings, the nature of the relevant offence or defence, the gravity of the contravention or impropriety, whether the conduct was contrary to or inconsistent with the human rights of a person, codes of practice regulating police treatment of persons in custody, or any other applicable human rights legislation, whether any other proceeding has been or is likely to be taken in relation to the conduct concerned, and whether the evidence could have been obtained in some other and possibly more proper way.

Another worry I have is that there are no special rules for children, Aborigines and other vulnerable persons. The Law Reform Commission specifically recommended that there should be special rules regarding the detention of children, Aborigines and other vulnerable persons. There is absolutely no provision for this in the bill. The failures of the bill in this regard have been brought to my attention by Ms Beverly Schurr of the Public Defender's Office. Apart from the problems posed by the fact that there is to be no court supervision of Aborigines in custody, and the failure to recognise deemed arrest, there is

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also no duty on arresting officers to notify an Aboriginal legal aid organisation of the arrest of an Aborigine. This is a most serious omission.

Under section 23H(1)(b) of the Commonwealth Crimes Act the arresting police officer must not only notify an Aboriginal legal aid organisation immediately after an arrest, but also inform the arrested Aborigine that they will be doing so. There is no such provision in this legislation. Furthermore, there is no duty under the bill to have an interview friend with the arrested person when that person is an Aborigine and is being questioned. Section 23H(2) of the Commonwealth Crimes Act requires that an interview friend be present when an adult Aborigine is interviewed. Under section 23J the Federal Minister must establish and distribute a list of interview friends and interpreters to assist Aborigines.

I am concerned also that the right to legal advice is qualified by a two-hour time limit, within which the legal representative must arrive. This two-hour limit also applies to access by family and friends. That is, if they do not arrive within two hours police may commence questioning. It should surely be clear that the reasonableness of time taken to arrive obviously will vary between a city area and a country area. In a country area it may take much longer for the friend or legal adviser of the arrested person to get to the police station where the person is being held. They may not have public transport and may have to look to assistance from friends, neighbours or other relatives to take them to the place where their relative or friend is being held. This may take up a considerable amount of the two-hour period. They may be at work and have to obtain permission from their employer to go to the assistance of their friend or relative. There are all sorts of reasons why that two-hour time limit should not be so strictly imposed.

What I find even more amazing, particularly as we are supposed to be improving the system of juvenile justice in this State, is that there are no special provisions for the presence of others during the questioning of juveniles. Section 13 of the Children (Criminal Proceedings) Act will still apply to render inadmissible statements made by a juvenile in the absence of an adult. Section 23K of the Commonwealth Crimes Act requires the presence of an interview friend during the questioning of a juvenile, subject to urgency requirements. I do not see why that provision should not have been included in this legislation.

Another matter of worry is the right to an interpreter. I do not believe that the wording of the provision relating to the right of the detained person is strong enough. The Law Reform Commission argued that police must make arrangements for the presence of a competent interpreter and defer questioning or investigation until the interpreter is present, where an interpreter is requested by the person in custody, or when it is apparent to the police officer that the person does not have a sufficient knowledge of the English language to understand the questioning, to answer the questions or to make a statement. The wording in the bill is far weaker.

I suggest that honourable members look at proposed new section 356I. It is for the custody officer to decide whether an interpreter is needed. Factors to be considered include a request by the person in custody - who may not even know his rights; English language ability; the difficulty of obtaining an interpreter - depending on the time, there could be a difficulty; and the urgency of the investigation. I have a particular problem with the difficulty of obtaining an interpreter being a factor affecting whether a person has an interpreter. Access to an interpreter, if one is required, should be a right. The police should ensure that they have access to sufficient interpreters. There may be insufficient interpreters for some languages. However, in our multicultural society there are people of wide backgrounds, and it should not be beyond the bounds of possibility for the police to have a list of interpreters who have a wide range of languages and are available at any time when their services are required.

There is also a need for a follow-up empirical study of custody records. This also was pointed out by the Law Reform Commission. The commission believed it was necessary to have an empirical study of custody records and the operation of the Act. In particular, the commission believed there is a need to monitor the length of custodial detention, the mechanism for extending the initial period of detention, and the effective provision of safeguards for persons in police custody. There again is no provision for this in the bill, and this is a very serious omission given that the bill before the House is codifying some very important rights and almost certainly will need fine-tuning down the track.

Finally, I should like to deal with investigative procedures during detention. The list of investigative procedures that may be carried out during detention is disturbing. Procedures include examining a person's body, taking blood, urine and other body samples, all without court oversight. It is quite possible that a procedure will be done without the person arrested having an interview friend or a relative present and certainly it could happen without the person having a legal adviser present. Honourable members had a lengthy debate on this during the days when the Hon. John Dowd was the Attorney General when we talked about the taking of intimate body samples. That was a most contentious piece of legislation. It was strongly opposed at the time because there were not sufficient safeguards in the taking of these body samples, yet we find now that it has been introduced into the legislation before the House and it will be part of an investigative procedure.

If the police are determined to arrest for further investigation any suspect who they are certain has committed a crime, they should not only arrest that person but they should ensure that before they take body samples and grossly invade the person's privacy they have at least sufficient evidence against that person that would allow the person to be charged before the court. I do not believe they should commence to carry out procedures if they do not have

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enough evidence to lay a charge before a court. If a time limit is not imposed police should not arrest and hold a person in detention for the purpose of carrying out further investigations without sufficient evidence to proceed to a charge. It is a gross violation of an individual's human rights, and I am convinced it is against international covenants. The Commonwealth legislation varies so much from the legislation the House is now debating because the Commonwealth Government follows the international covenants. Procedures to examine a person's body and take blood, urine and other body samples may also be carried out on juveniles.

I do not deny that in some cases it may be necessary for juveniles to undergo such procedures. I am not so foolish as to believe that juveniles do not commit violent assaults or rapes; they most certainly do. However, if these investigative powers are to be given to the police, those procedures should not be carried out on juveniles during detention without court oversight. If it were possible to amend the bill I believe the Attorney General could and should have accepted such an amendment. The bill, of course, provides for a number of regulations to be made. The regulations include the code of practice relating to arrested persons and they require police officers to observe any such code of practice and, of course, to keep records relating to detention. However, I do want to make the point that the wording of the bill only requires that the regulations may be made and not that they should be made. I find that puzzling because I believed that almost every piece of legislation had regulations and I do not understand why there is discretion in this case for the use of the word "may" instead of the use of the word "should".

The bill does have a few welcome developments. One of the most valuable is the use of custody officers to operate the proposed custodial scheme. Such a position should have been created many years ago. I am glad the Attorney General has now seen fit to introduce this measure, but to my mind the innovation is far outweighed by the serious and basic flaws in the bill. I do not believe they can be corrected by way of amendment, even if it were possible to get the amendments through this Chamber. Reverend the Hon. F. J. Nile would almost certainly vote with the Government, as is his wont; he does that in every case.

Reverend the Hon. F. J. Nile: Not every case.

The Hon. ELISABETH KIRKBY: Earlier the Hon. E. P. Pickering said that as the former police Minister he had wished that this legislation could have received bipartisan support. I should like to repeat what

I said at the beginning of my remarks: if the bill had been redrafted using the Commonwealth Crimes Act part 1C as a model, I feel certain that it would have enjoyed bipartisan support and the Australian Democrats would not be placed in the position of having to oppose the bill outright. I realise that it is necessary to have further codification of police procedures and individual rights but, regrettably, this is not the way to do it and I have no alternative but to oppose the bill outright.

Reverend the Hon. F. J. NILE [5.38]: I am pleased to speak on behalf of the Call to Australia group in support of the Crimes (Detention After Arrest) Amendment Bill and to correct the statement of the Hon. Elisabeth Kirkby that Call to Australia votes with the Government in every case. The honourable member knows that is not correct. I could take time in the House to indicate the number of bills we have voted against.

The Hon. Elisabeth Kirkby: I could count them on the fingers of one hand.

Reverend the Hon. F. J. NILE: The honourable member said "in every case", which is not correct. The Call to Australia group has opposed alcohol bills, gambling bills and racing bills. I object to the misrepresentation by the Hon. Elisabeth Kirkby. I strongly object to any implication that the Call to Australia group will support this bill because it is a Government bill. If Call to Australia formed the Government, it would have introduced this bill long ago. Call to Australia has strong policies and has always been concerned about lax police operations. In Victoria and in countries that have strict time limits the police feel that they have to release the person before they lay charges.

There is clear evidence that guilty persons have been released because of the application of a strict time limit. The provision of a strict time limit does not work in the interests of victims, in the interests of law and order, or in the interests of justice. The Hon. Elisabeth Kirkby put very clearly the views represented by what I call the civil liberties unions - the Council for Civil Liberties and similar groups. She reflects the views of those groups in this Parliament very accurately. In the United States of America civil liberties organisations have had a tremendous influence on the law. Laws have been introduced that have virtually tied the hands of the police and have prevented them from carrying out their lawful duties. Those laws have favoured the criminal. That is one of the reasons, I believe, that in the United States there is clear evidence of a dramatic increase in crime.

In Australia we have to be concerned not to repeat the serious mistakes that have been made in the United States as a result of legislators overreacting to pressure brought about by civil liberties unions. Whether or not it was the intent, laws have been introduced that favour criminals and do not allow the police to carry out their duties. I object to the implications made by previous speakers, particularly the most recent speaker, the Hon. Elisabeth Kirkby, that the Police Service cannot be trusted. I believe that the police should be trusted to carry out their duties according to the law.

The Hon. Elisabeth Kirkby made a strong argument about the Aboriginal issue, which argument was also taken up by Opposition members. I believe that their argument promotes the false view that there is widespread racism on the part of all police officers within the New South Wales Police Service. There

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are always some exceptions, but the criticism, either implied or explicit, overlooks the dramatic changes that have taken place in the Police Service to combat racism and provide for fair treatment of Aboriginal persons, male and female, young and old. If there were evidence that the bill could in some way be used as a weapon against Aboriginal people, I would be the first to object to it. I may be idealistic, but I do not believe that will happen. I am sure that if any instances of racism did occur they would very promptly be brought to the attention of the Parliament and the news media.

This bill is needed. Reference has been made to Federal offences. So far as I am aware, the number of Federal offences that State police are sometimes called upon to enforce is limited. Also, Federal offences do not relate directly to the criminal area in which this bill is concerned; they are a different category of laws. As legislators we cannot simply adopt provisions relating to Federal laws and decide that because something is required under Federal legislation it should also work in the State of New South Wales.

Those who have criticised the bill seem to have overlooked the increased tactical skills of lawyers, particularly lawyers who represent criminals. I do not want to name lawyers in Parliament, but honourable members would know of some of them. In many court cases nowadays lawyers who represent a person whom I would believe guilty of an offence argue on technicalities. They spend hours trying to prove, for example, that a search warrant was not signed correctly. There may be little doubt that the person charged is guilty of the offence. The lawyer realises that because he cannot prove the client's innocence he will have to find some technical point to undermine the prosecution case. Lawyers spend hours checking search warrants. They check whether warrants were signed, the way in which they were signed and when they were signed. They check the wording of the charges laid.

The point I am trying to make is that police officers, being aware of practices followed by lawyers, are now much more nervous and hesitant about putting pen to paper. They know that search warrants have to be absolutely accurate, that they cannot afford to be careless. Great care has to be taken in the laying of charges. During the 22 years I spent in the Army Reserve a great amount of time used to be taken up in finding the correct wording under which to charge a person who was thought guilty of an offence under army regulations. Trying to match an offence with a charge is not as simple as lay people may think. A range of charges can be used by the police. Police officers need time to make sure that the charges laid are accurate and will stand up in court.

Even in recent days a case was dismissed because of a fault in the charge that was laid. The defendant would have been found guilty if a different charge had been laid. The bill is important, it is necessary and it will tilt the scales. Perhaps it may tilt the scales slightly to assist the police in carrying out their duties. When Justices Mason and Brennan made a joint judgment on the question of people being held in custody before the laying of charges they said:

The jealousy with which the common law protects the personal liberty of the subject does nothing to assist the police in their investigation of criminal offences.

That quotation is very important. I am certainly in favour of the common law protection of civil liberties but I also want laws that enable the police to be effective in their investigation of criminal offences. We would be fooling ourselves if we tied the hands of the police and made it difficult for them to carry out their duties. There is also the risk of loss of morale and loss of initiative, resulting in police just marking time and not carrying out their duties with enthusiasm and drive. I have read about persons being released in other countries, especially in the United States, because the imposition of strict time limits meant that charges could not be finalised.

The bill contains perhaps not excessive but certainly detailed requirements as to the determination of reasonable time. Proposed new section 356B makes certain provisions regarding reasonable time. It is stated that a police officer may detain a person after arrest only if that is necessary for any one of several specific purposes. One of those purposes, set out in proposed new section 356B(2)(a), is the establishment of the identity of the person. As I have said before, it is not unusual for individuals to do all they can to block the police proceeding by not co-operating - not giving so much as their name and address. Some legal aid services print cards, designed for use by juveniles especially, that point out that individuals should not co-operate with the police, should not give their name or address. How are the police to proceed if they cannot so much as be sure of an individual's correct identity?

I stress the importance of police being sure that they have the correct identity of a suspect. In some cases, and particularly when the police raid illegal gambling centres in Sydney, police are given false identities. It is very difficult to establish someone's identity if he or she does not want to co-operate. How much time would be taken by someone who was not helpful and did his or her best to be obstructive? How are the police to charge an individual if they have not been able to find out his or her name and address? Proposed new section 356B(2)(b) provides that a person may be detained after arrest if it is necessary to conduct any further inquiries that are reasonably necessary to confirm or dispel any reasonable suspicion as to a person's involvement in the

commission of an offence, including an offence other than that for which he or she was arrested. The remaining two purposes for which a police officer may detain a person after arrest are detailed in proposed new sections 356B(2)(c) and 356B(2)(d), which read:

(2) A police officer may detain a person after arrest only if it is necessary for any of the following purposes:

(c) to conduct any further inquiries that are reasonably necessary to determine whether a prosecution against any person will be commenced;

(d) to complete any necessary documentation relating to the investigation that requires the person's presence;

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I have mentioned how the paperwork must be completed in an accurate way and that there have been accidental situations where a clever lawyer has been able to identify an unintended loophole to assist his client to evade charges. Under paragraph (e) of proposed section 356B a police officer may detain the person only if it is necessary "to conduct an investigative procedure". These matters are quite clear and fair. Proposed section 356C(2) provides in detail the circumstances that must be taken into account in determining reasonable time for detention after arrest, which include age and the following:

(b) whether the presence of the person is necessary to the investigation of the offences concerned;

(c) the number, seriousness and complexity of the offences under investigation;

(d) whether the person has indicated a willingness to make a statement or to answer any questions;

These circumstances then continue through the alphabet to the final paragraph, which states:

(o) the time during which the questioning of the person or the conduct of any other investigative procedure in which the person is to participate is suspended or delayed because of the person's intoxication due to alcohol or another drug, or both.

Those requirements also make the bill fair. Paragraph (a) to paragraph (r) of proposed new section 356D list all investigative procedures to be carried out during the detention of the person. If members of this House add up the time that would be taken to carry out all those procedures, it is obviously foolish to suggest that if a person is not charged within four hours they must be released. The additional procedures that may be conducted by the police - we have heard about obtaining blood, urine and other body samples; taking of photographs and video taping interviews - would take quite an accumulation of time. The bill provides the best solution to the difficult issue of police detaining people. For that reason Call to Australia supports the bill. As I said, if Call to Australia were in government, the bill would have been introduced before today.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [5.52], in reply: I thank honourable members for their contributions to the debate on this important piece of legislation. I have detailed comments to make about the proposal. The reason for the Government's departure from the recommendation of the New South Wales Law Reform Commission that a fixed time be adopted is that a "reasonable time" enjoys distinct advantages. It allows the police greater flexibility in investigation commensurate with the gravity and complexity of the offence. A fixed detention period is unresponsive to the demands of particular cases - for example, the arrest of a number of persons engaged in the manufacture of a prohibited drug, necessitating the analysis, seizure and labelling of a large quantity of chemicals and glassware.

A fixed detention period imports the concept of "time out"; that is, when the suspect is still in police custody but the investigation is unable to proceed because the accused is in transit, is affected by alcohol and or drugs, or is receiving medical attention or for some other reason. Administrative burdens associated with the recording of "time out" periods and the technical court challenges that would arise are obviated by the bill. A

fixed detention period may compromise the integrity of the investigation by a lack of continuity. The experience of other jurisdictions - notably Victoria, which adopted and then abandoned a fixed time approach in 1989 - confirms that the Government's decision is the most appropriate one.

The Northern Territory has also adopted a reasonable time for the purposes of the detention period, and Tasmania, which has yet to legislate in this area, has received the same advice from its Law Reform Commission. The Hon. J. W. Shaw seemed to rely upon the decision of the High Court in *Foster v. The Queen* to support his argument. However, the nature of the police conduct that led to the quashing of the conviction was a false representation by the police to the accused that two other persons had implicated him in the commission of the offence. As the Hon. E. P. Pickering has indicated, police conduct of this nature may occur within a fixed time as much as within a reasonable time.

The Opposition's approach to this bill demonstrates a fundamental flaw in its reasoning; namely, that wrongful police conduct towards arrested persons is necessarily a product of the length of detention. Moreover, to claim, as the Hon. J. W. Shaw did, that empirical evidence shows that a fixed time is sufficient to conduct police investigations is to fly in the face of the Victorian experience. It is quite wrong to suggest that the bill allows police to carry out investigations beyond the scope of the present law. The investigative procedures in proposed section 356D do not allow police to carry out any investigative procedure that is not authorised by law. This is provided for in proposed section 356(1)(c).

The purposes for which police may detain a person after arrest but before charge, as set out in proposed section 356B(2), are to establish the identity of the person; to conduct any further inquiries that are reasonably necessary to confirm or dispel any reasonable suspicion as to the person's involvement in the commission of an offence, whether or not that is the offence for which the person was arrested; to conduct any further inquiries that are reasonably necessary to determine whether a prosecution will be commenced; to complete any necessary documentation that requires the person's presence; and to conduct any of the investigative procedures referred to in section 356D.

This is but one of the provisions in the bill that strikes a balance between the exercise of police powers and the rights of the arrested person. Indeed, part 10A of schedule 1 to the bill is headed "Detention and rights of persons after arrest". When these provisions are taken together, it is apparent that any claims that the bill will facilitate abuses of those rights are unfounded. The courts will continue to play a supervisory role in their adjudication on

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individual cases, where evidence is challenged because of non-compliance with the bill. The rights of all persons will be protected under the bill, including those who may be vulnerable because of an intellectual disability, their youth, or their Aboriginality.

The bill provides that all the relevant circumstances of a particular case must be taken into account when determining what is reasonable time for detention. Without limiting those circumstances, specific criteria must form part of the determination. A number of these criteria allow for vulnerable persons, including the age, the physical capacity and condition, the mental capacity and condition, and the intellectual capacity of the person; the time taken for the person to communicate with a friend, relative, guardian, independent person or legal practitioner, and the time taken for that contacted person to arrive at the place where the person is being detained; the time during which the investigation is suspended or delayed to allow the person to rest or receive medical attention; and the time during which the person is in the company of police before and after arrest.

In addition, there is a right to medical assistance where the person requests it on reasonable grounds and where the custody officer, who must keep records on the detention of arrested persons, forms the view that the person needs it. A separate clause allows for the provision of interpreting assistance if the person has a physical or intellectual disability. Where the custody officer arranges for that assistance, he or she must ensure that any questioning of the person is delayed until the assistance is provided. Finally, I refer to one provision in the bill that no member has commented on. The most important aspect of the bill from the perspective of the rights of arrested persons is the absolute prohibition on any questioning of the person or any investigative

procedure in which the person participates for a period of up to two hours where the person has arranged for the attendance at the police station of a legal practitioner.

The bill will enshrine in the law a right that arrested persons do not enjoy at present. It demonstrates this Government's commitment to the protection of such rights, while at the same time ensuring that police are able to carry out effective investigations of criminal offences. The Hon. Elisabeth Kirkby made a number of comments on which I wish to comment in detail. However, as I wish to deal with those comments with some particularity, I trust that the House would not object if I were to adjourn this bill to a later hour of the sitting to allow those comments to be made.

Debate adjourned on motion by the Hon. J. P. Hannaford.

VICTIMS COMPENSATION (AMENDMENT) BILL

Bill read a third time.

[The Deputy-President (The Hon. D. J. Gay) left the chair at 6 p.m. The House resumed at 8.15 p.m.]

CONSTITUTION FURTHER AMENDMENT (REFERENDUM) AMENDMENT BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing), on behalf of the Hon. J. P. Hannaford [8.15]: I move:

That this bill be now read a second time.

The purpose of this bill is to minimise voter confusion at State referenda. The bill will achieve this aim by making the method of voting at State referenda consistent with the method of voting at Commonwealth referenda. Further, by adopting the Commonwealth practice, the bill also seeks to more clearly differentiate voting provisions with respect to Legislative Assembly elections from voting provisions relating to referenda. In 1990 this Government amended the Parliamentary Electorates and Elections Act such that now, in order for a vote to be formal in an election for a member of the Legislative Assembly, generally the figure 1 must be placed in the square opposite the name of one candidate. If the voter wishes to allocate preferences, he or she may place consecutive numbers starting with the figure 2 opposite the names of some or all of the other candidates named on the paper. The allocation of preferences is not mandatory. A tick or cross on a Legislative Assembly ballot-paper by itself is currently not a valid first preference.

In contrast to the provisions relating to the election of members to the Legislative Assembly, the Constitution Further Amendment (Referendum) Act currently provides that, in order to cast a valid vote in a New South Wales referendum, the voter must mark his or her vote on the ballot-paper - first, if he or she approves of the bill, by placing a tick in the square opposite the word yes; or, second, if he or she does not approve of the bill, by placing a tick in the square opposite the word no. This issue of a divergent voting method became a matter of concern after the 1991 general election, which was held in conjunction with a referendum. In that election the rate of informal voting increased from 3 per cent to 9 per cent on a statewide basis. According to some reports, the relatively high number of informal votes was due in part to voters marking their Legislative Assembly ballot-papers with a single tick or cross.

It has been argued that the concurrent referendum, with its different voting requirements, led to the increase in informal votes, particularly in those electorates where there was a two-candidate contest and the ballot-paper therefore resembled in some way the referendum ballot-paper. This argument is supported by the experience in the seven by-elections which have been held since the 1991 State general elections. The level of informal votes experienced in those by-elections reverted to the usual level of around 3 per cent.

The Commonwealth practice for voting in referenda is different again. Under the relevant Commonwealth Act, the Referendum (Machinery Provisions) Act 1984, electors voting in
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Commonwealth referenda are to record their vote by writing yes or no in a single square on the ballot-paper. There will be at least two referenda held concurrently with the next general election on 25 March 1995. One of those referenda proposes the entrenchment of the independence of the judiciary, and the other proposes the establishment of fixed four-year parliamentary terms. The Government believes that it is desirable to amend the relevant legislation prior to March 1995 in order to minimise voter confusion.

The amendments to the Constitution Further Amendment (Referendum) Act which will be effected by this bill will require voters to write either the words yes or no on the referendum ballot-paper in order to record a valid vote. This will clearly distinguish referendum ballot-papers and voting requirements from those relating to the Legislative Assembly. In addition, this amendment will bring voting provisions for New South Wales referenda in line with voting provisions for Commonwealth referenda. By amending the New South Wales referendum voting requirements, the Government believes that the level of informal votes in Legislative Assembly elections, especially in two-candidate contests, should reduce from their recent high levels. I commend the bill.

Debate adjourned on motion by the Hon. K. J. Enderbury.

COURTS LEGISLATION (CIVIL PROCEDURE) AMENDMENT BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing), on behalf of the Hon. J. P. Hannaford [8.22]: I move:

That this bill be now read a second time.

This bill will amend the Supreme Court Act 1970, the District Court Act 1973 and the Jury Act 1977 to permit civil proceedings to be tried without a jury except in certain circumstances; and, where there is a jury, to give the court a discretion to discharge the jury and determine issues of fact if the parties agree. Legislation to limit the use of jury trials in civil proceedings has been introduced on previous occasions in conjunction with previous efforts to increase the efficiency of our civil justice system. The Courts Legislation (Civil Procedure) Amendment Act was passed in 1991, and further amendments were introduced in the Courts Legislation (Civil Procedure) Further Amendment Bill 1991. That bill lapsed when Parliament was prorogued. Such reform efforts have been successful in reducing delays in the system and delivering justice to litigants. In order to continue to reform our system in favour of litigants it is now necessary to focus once again on civil jury procedure.

Both the Supreme Court Act and the District Court Act lay down a general rule that civil proceedings shall be tried without a jury unless the court orders otherwise. However, this rule is characterised by numerous exceptions, and exceptions to those exceptions. The result is an unnecessarily complex and technical legislative arrangement for what should be a simple area of procedural law. Indeed, the courts have displayed some difficulty in reconciling the seemingly contradictory provisions in the Supreme Court Act which relate to jury trial and civil matters. Their difficulty was compounded in 1987 by an amendment made by the previous Government to section 89 of that Act to provide the court with a discretion to order trial without a jury for most common law claims. It should be noted that it was clearly the intention of that amendment to provide the court with an overriding discretion for the court to order trial without jury for any common law claims other than fraud, defamation, malicious damage, false imprisonment, and some other infrequently used causes of action. Section 89 was challenged, however, in the matter of *Pambula District Hospital v. Herriman*.

In 1988, the Court of Appeal, by majority decision in *Pambula District Hospital v. Herriman*, restricted the application of this discretion to special circumstances, and it reached this decision in an apparent attempt to reconcile the varying provisions surrounding it. The court urged a review of the legislation to provide the Supreme Court with a wider discretion to dispense with juries than it believed was permitted by section 89 on its interpretation of the Act. In making this recommendation for legislative change, the court expressed strong support on policy grounds for substantially limiting the right to a jury in civil matters. It acknowledged the many general advantages of having civil matters heard by a judge alone.

Prompted by the decision in *Pambula District Hospital v. Herriman* the then Attorney General, the Hon J. D. Dowd, Q.C., commissioned a discussion paper on civil procedure to examine possible reform to the administration of civil justice through the courts. One of the issues examined in the discussion paper was the use of juries in civil proceedings, and a range of options for reform in the use of civil juries was canvassed. The discussion paper indicated that its preferred option was to require that all civil matters be tried without a jury, provided that the court may order a jury to hear issues of liability where a cause of action based on a charge of fraud or a claim in respect of defamation, malicious prosecution, or false imprisonment is involved, or where the court considers it is in the interest of justice to order a jury.

The proposed amendments in this bill are based on the discussion paper's preferred option. The Government's primary concern in reforming the law in this area is, first, to give effect to the original purpose of section 89, and, second, to remove the potential for unfairness which results from inconsistencies generated by two modes of trial, jury and non-jury, co-existing in the same jurisdiction. The choice of jury trial by one party also has an impact on litigation costs, because jury trials are substantially longer and they are more costly to the

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parties - and to the public - than non-jury matters. Where jury trial is imposed on one party by another, the accessibility of the justice system is diminished by increased costs and delay. It is thus clear that the interests of justice would be served by simplifying the law in this area and eliminating the inconsistencies to which I have referred.

A civil justice system, which has as its central objective the settlement of disputes peacefully and fairly by the consistent application of legal principles, should not countenance the maintenance of dual procedures providing inconsistent outcomes and which by their existence encourage manipulation. Moreover, in personal injury litigation, where the defendant is usually an insurer, plaintiffs are generally disadvantaged from the outset through inequalities between the parties as to need, resources, access to information and experience. This inequality must affect negotiations and settlements to the detriment of plaintiffs, and those plaintiffs on whom jury trial is imposed are even more disadvantaged than other plaintiffs. Inherent in this dual system is the opportunity for abuse by a party to proceedings gaining a strategical advantage over the other party. This is most likely in personal injury cases where the plaintiff is in a vulnerable position which may be exploited by the defendant.

In past years there have been complaints against defendants using delaying tactics in matters relating to dust disease cases and especially in mesothelioma cases. More recently I have received complaints from lawyers representing plaintiffs in the Hunter region where a major defendant has been insisting that matters it is involved in should be heard by a jury, thus causing delay in resolving the matters. This potential for abuse of the system should be abolished. In his second reading speech in the Legislative Assembly on 16 September 1987, when introducing legislation to give judges a discretion under section 89 of the Supreme Court Act, the then Attorney General, Mr Terry Sheahan, said:

The courts of New South Wales are alone in not having a broad discretion to dispense with civil juries where that would be in the interest of justice.

He went on to quote His Honour Mr Justice Clarke in *Peck v. Email*, a mesothelioma case, when he said:

... I am informed that there are a large number of cases presently awaiting trial in which the plaintiffs are dying or very ill. In most of these cases, the defendants have applied for juries. As I have said the pressures of the business of the court make it extremely difficult

for the court to provide expeditious jury trials for the concerned parties. It is far easier to order urgent hearing for trial by a judge sitting alone given the greater flexibility of this mode of trial and the judge's ability to adjourn the case from time to time. In these circumstances, there is a need . . . for judges of the court to be given an unfettered discretion to order trial by judge alone . . . to accommodate cases in need of urgent hearing.

Mr Sheahan indicated that the bill was intended to give the courts that discretion. However, as shown by the decision in the Pambula case, the amendment did not succeed in giving courts an unfettered discretion. In relation to the use of juries, the general view until recently has been that jury verdicts tended to be lower than judicial awards. However, on the basis of a number of recent cases, this would appear to be not necessarily so. It is argued, however, that jury awards are less consistent. This is attributable to a large extent to differing deliberative processes and facilities for assessment of damages applying to the different modes of trial. The most obvious difference is that a jury's decision-making is presently limited to four to six hours, while a judge may consider a matter for however long that may be necessary. This is, of course a matter which is being addressed in this bill.

More important, in assessing damages, a complex area fraught with difficulty, juries cannot refer to awards in similar cases, nor is there any facility in jury trials to discuss appropriate ranges of verdict. Judges, by contrast, may refer to previous awards and may consider written and oral submissions as to quantum. Despite the differences between judges, indubitably they are assisted to arrive at reasonably consistent awards by reference to conventional figures derived from experience and comparable precedents. There is a corollary to this. There is no objective basis for predicting the range of quantum the jury will assess for particular injuries. The lesser degree of variance among judicial awards permits more informed judgments by litigants as to settlement offers and this factor takes on greater importance when payment into court or offer of compromise principles are considered. A plaintiff in a jury matter may be induced to accept unfavourable terms of settlement offered rather than risk incurring cost sanctions under these principles should a jury award less.

The purpose of these principles is to encourage fair settlement of claims out of court, but the degree of fairness may be dependent on which mode of trial has been elected. A plaintiff in a non-jury matter may more realistically assess the appropriateness of an offer of settlement. There is also a difference in capacity to sustain appeals from jury and non-jury verdicts. A judge is required to disclose the reasoning process behind a decision, both as to liability and to quantum, and the elements of an award, which may then be scrutinised on appeal. There is no such exposure of the deliberation process in a jury verdict with a consequent reluctance on the part of appellate courts to interfere with jury awards unless perversity can be established.

Juries, for all practical purposes, were abrogated in respect of motor vehicle accident matters in 1965 by insertion of a provision that such matters could be tried with a jury on the application of a party and must be tried with a jury on the application of all parties. There is no good reason for retaining any difference in the rules applicable to these cases and to other personal injury matters, and the same rules will henceforth apply to all personal injury matters no matter how the injuries were sustained. It is pertinent to note here that civil juries are almost unknown in comparative overseas jurisdictions and, indeed, in Australia outside of New South Wales. It is also

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important to acknowledge the vast numbers of civil cases that are disposed of without juries; for example, in the equity and commercial divisions of the Supreme Court.

It is therefore the Government's view that the automatic right of a party to requisition a jury in common law claims should be limited to actions involving questions of fraud, reputation, free speech and personal liberty. To do so would enhance rather than compromise our system of justice by facilitating more expeditious, less expensive and fairer trials having more consistent outcomes. This was acknowledged in most of the responses to the 1989 discussion paper. Those responses reflected strong support for the proposal to restrict the use of juries in civil matters, particularly from the judiciary, including the Chief Justice and the present Chief Judge in Equity, and the Law Society. Even a large insurer agreed that there is no justification for retaining the right to trial by jury in ordinary civil cases.

The Law Society in 1993 renewed its call for reform in this area, arguing that the delays and expenditure involved in jury trials demanded action. The Chief Judge at Common Law has also acknowledged the need for reform. The resolution of civil disputes is consuming large and increasing amounts of society's resources. The jury list components of the civil justice system requires a disproportionately higher application of resources, not simply to support the jury system administratively but to cover also the costs of additional hearing time required for jury trials. The use of juries to hear a relatively small but time consuming and costly number of civil claims must now be considered a luxury, the continuation of which must have a deleterious effect on other components of the civil justice system. Limiting jury trials in civil matters will assist in reducing further the general backlog in some jurisdictions.

The inconvenience and monetary loss to jurors who are compelled to adjudicate private disputes is also relevant. Jury fees are not, for the most part, sufficient to compensate jurors for lost working time and inconvenience. This financial loss and inconvenience is imposed on individual members of the public by the insistence of certain litigants on exercising a right to have a private controversy resolved by a jury without any demonstration that the public thereby benefits in terms of enhanced administration and delivery of justice. The bill therefore will provide a general rule that proceedings are to be tried without a jury but will give the courts an overriding discretion to order trial by jury when it is in the interests of justice to do so. It is unlikely that the special circumstances which might warrant the exercise of this discretion to order a jury will arise frequently, but it is important to accommodate such circumstances if and when they do arise. When, however, a cause of action is based on a charge of fraud against a party or a claim in respect of defamation, malicious prosecution or false imprisonment, the bill will provide that such proceedings are to be tried with a jury except in special circumstances; for example, when a jury cannot conveniently be used or when all parties consent to the matter being heard by a judge sitting alone.

The Government is of the view that the jury is still relevant in matters in which the basic liberties of an individual - for example, freedom of speech in defamation actions - may be restricted, for the same reasons that the jury is a necessary and valuable safeguard in criminal trials. This also applies to actions for false imprisonment and malicious prosecution, which provide a remedy against abuses perpetrated by those in positions of authority who may overstep their powers of arrest and prosecution. This reflects current legislation but clarifies it in one minor respect. For a jury to be used under this provision, the cause of action must be based on a charge of fraud or a claim in respect of defamation, malicious prosecution or false imprisonment. This will prevent juries from being requisitioned, for example, by a defendant in a personal injuries claim, simply by making an allegation of fraud in a cross-claim.

Under the new provisions relating to jury trial, motor vehicle accident matters will be treated in the same manner as common law claims. Moreover, the provisions of this bill will largely remove the patent incongruity of the current law in providing a general right to a jury trial in general common law claims, circumscribing that right within a subclass - motor vehicle accidents - and denying it in commercial and equity matters. The bill also contains a transitional provision which will ensure that the new arrangements relating to jury trial will apply from the date of commencement of the legislation. This will ensure that the benefits of the reforms will be felt by the courts and litigants immediately rather than only after the current delay periods applying in the District Court and Supreme Court have elapsed. Those parties whose matters are currently awaiting hearing and who have requested juries will have their jury requisition fees refunded to them.

The bill also will amend section 58 of the Jury Act to provide the judge with a discretion to discharge a jury and determine issues of fact, if the parties agree. This reform arose from the unreported case of *Morgan v. Fairfax*, a decision of the Court of Appeal, No. 40506 of 1989. The case concerned a jury trial for defamation in which the jury was unable to come to a unanimous verdict on specified questions. The jury were directed to bring in a general verdict, which they did in a majority verdict. The judge then decided the disputed issues of fact in relation to the defence of qualified privilege. There was, however, no consent by the parties to the judge deciding the disputed issues of fact. The Court of Appeal held the judge had no power to decide those issues of fact.

At present the Jury Act provides for a majority verdict in civil proceedings if four hours after having

retired the jury is unable to agree on the verdict. If after four hours the jury has not reached a unanimous verdict then the court may discharge the jury. If after

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six hours the jury cannot reach either a majority or unanimous verdict the court must discharge the jury. This amendment will provide greater flexibility for the court in resolving civil matters where a jury is having difficulty reaching agreement in a reasonable time. It will also be of advantage to the parties in that they will not be obliged to meet the additional costs of a retrial when the jury has not reached a decision in the time presently allowed.

The amendments to section 58 of the Jury Act will overcome the problems which arose in *Morgan v. Fairfax* and will remove the mandatory discharge requirement. If the jury is discharged, the court will have the ability, with the consent of the parties, to determine issues of fact that would otherwise be for the jury. The amendment to section 58 of the Jury Act will extend to proceedings commenced before the day on which the amendment comes into force. I commend the bill.

Debate adjourned on motion by the Hon. R. D. Dyer.

COURTS LEGISLATION (MEDIATION AND EVALUATION) AMENDMENT BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing), on behalf of the Hon. J. P. Hannaford [8.41]: I move:

That this bill be now read a second time.

This bill will amend the Compensation Court Act 1984, the District Court Act 1973, the Industrial Relations Act 1991, the Land and Environment Court Act 1979, the Local Court (Civil Claims) Act 1970 and the Supreme Court Act 1970 so as to enable the courts to establish alternative dispute resolution procedures for the mediation and neutral evaluation of matters arising in proceedings other than criminal proceedings. The purpose of the bill is to have umbrella enabling legislation that will provide broad parameters for individual courts to develop court annexed mediation and neutral evaluation, if they so choose.

This Government's interest in the topic of alternative dispute resolution, or ADR, arises from a commitment to improved legal services and greater access to justice. It is in this context that this bill has been introduced. Access to justice by all, regardless of gender, race, disability or religion, is an issue of concern shared by all those interested in a fair and equitable justice system. The issue of access is complex and needs to be addressed across a wide range of options and by all the various players involved in the delivery of services within the legal system. One of the great developments in access to justice, of course, has been the growth in alternative dispute resolution.

Whereas, in the past, adjudication through the courts - through the adversarial system once described as the Rolls-Royce of justice systems - was seen as the only means of access to justice, in recent times alternative dispute resolution has burgeoned. It is now recognised as an enhancement to the traditional system. Delay is recognised as one of the greatest barriers to access to justice in the legal system. However, it would be wrong to suggest that alternative dispute resolution is being adopted by the courts merely as a means of resolving any backlog of cases in New South Wales jurisdictions. I assure the House that it is being adopted as part of an attempt to provide effective and less expensive solutions to the provision of justice.

Alternative dispute resolution is a broad term covering a great variety of options for dispute resolution, including mediation and neutral evaluation. Currently ADR options are being explored as a means of resolving disputes and complaints in a wide range of situations and in a variety of forums. Neutral evaluation is a confidential process of evaluation of a dispute in which the evaluator seeks to identify and reduce the matters in

dispute, and to identify key facts. The evaluator's role includes assessing the relative strengths and weaknesses of each party's case, offering an opinion as to the likelihood of liability being found by the court and the compensation or damages that might be awarded. Parties who agree to neutral evaluation will benefit from an informed opinion on the respective merits of the matter early in the course of proceedings.

This will enable them to assess whether they wish to proceed with a matter or reach an agreed settlement. It may assist them in clarifying the realistic options available to them, and may assist in identifying more clearly the true nature of the matters in contention. The primary object of neutral evaluation is to provide the lawyers of each side with an early realistic assessment of their cases in circumstances where, because of the one-sided nature of the adversary process, a realistic perspective of the case as a whole is denied to lawyers early in the litigation process. The object of neutral evaluation is not necessarily to achieve settlement, but to provide useful information to facilitate negotiations towards settlement. Mediation is perhaps the most popular form of ADR being utilised at present. For the purposes of the bill, mediation means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute.

Many members will be aware of the history of the mediation alternative in New South Wales, and will know of the success of mediation processes in community justice centres under the Community Justice Centres Act 1983. Community justice centres - CJC's - were established to provide informal and accessible dispute resolution services by trained and supervised mediators. Over time, CJC's have developed as the leader in alternative dispute resolution in a wide range of matters involving neighbourhood, family, environmental and work based disputes. Mediators are selected from the community and are trained by centre staff. The Act does not seek to limit the nature of disputes which may be mediated in the CJC, and anyone can come to the CJC for mediation of appropriate matters.

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The Community Justice Centres Act has provided a model for much of this legislation. Since the mid-eighties a number of other organisations involved with ADR have been formed and the number of players in this field today reflects the increasing interest in and utility of ADR. In 1986 the Australian Commercial Disputes Centre was established by the New South Wales Government and it has become a highly respected provider of mediation and mediation training services. Following the Government's lead, the New South Wales legal profession took up the challenge. The Law Society has a policy of encouraging mediation where appropriate and since 1991 it has organised an annual settlement week which has proved to be most successful. LEADR, which is the acronym for lawyers engaged in alternative dispute resolution, is actively involved in training and promoting ADR.

More recently the national dispute centre has been established. The purpose of this centre is to assist the development and promotion of methods of resolving disputes both in conjunction with the courts and otherwise. In the development of alternative dispute resolution, and particularly mediation in recent years, certain facts have emerged. It has been noted by some jurists that mediation has a very high success rate. This is borne out in the Law Society's recent evaluation of the 1992-93 settlement week program. Some would say that this success rate is because mediation provides a safe, neutral, and confidential environment for the disclosure of the circumstances surrounding the dispute; or it may be that it is because the mediator does not impose a solution but, instead, helps the parties themselves to produce a workable result.

It could also be due to the fact that in the process of mediation many parties discover that their dispute in legal terms masks a different non-legal breakdown in their relationship. Others might say that it is because mediation provides the opportunity for the disputants themselves rather than their representatives to place the matter before an expert who will take the pressures off the parties at the earliest possible point. All will say that, unlike a litigated matter, the parties will have found a win-win solution at much less cost than the win-lose solution achieved when a matter has finally proceeded through the adversarial system. One fact that is noteworthy is that mediation brings a much earlier result than litigation. In court adjudications cases are often not prepared and issues are not fully explored until a hearing date has been allocated.

Only at that point will settlement be capable of being explored. By this time, of course, the parties will have invested a huge amount in legal costs and their positions will be entrenched. By contrast, mediation shifts the dispute resolution in less formal surroundings back to a much earlier phase. One reason for the high success rate of mediation may well be that matters are resolved at such an early stage. It is this feature which allows for the relationship between the disputants to be preserved after the matter is resolved. This aspect of mediation makes it so successful; whatever the nature of the dispute, the relationship may remain intact. This would be rare in the case of an adjudicated result. It is not the purpose of the bill to codify or set standards for mediation and evaluation or to define precisely who can mediate or evaluate a matter.

The flexibility of the mediation process in particular will be lost if it is attempted to legislate to control all eventualities. Rather, the bill will enable the relevant court, by order, to refer a matter arising from proceedings, other than criminal proceedings, for mediation or neutral evaluation if the parties to the proceedings agree. The parties must also agree as to who is to be the mediator or evaluator. Attendance at and participation in mediation sessions and neutral evaluation will be voluntary and a party can withdraw from a session at any time. The relevant court may make orders to give effect to any agreement or arrangement arising out of a mediation session. The enforceability of any other agreements or arrangements that may be made, whether or not arising out of a mediation session, in relation to the matters which are the subject of a mediation session, is not affected by the provisions.

The bill enables the chief justice, the chief judge or the chief magistrate, as the case may be, of the relevant court to compile lists of persons suitable to be mediators or evaluators for the purpose of these new provisions. Before a person is included in such a list, the person must agree to comply with the new provisions and any relevant regulations and rules of court. The lists may be amended or revoked and will be required to be reviewed every year. Individuals may put their names forward, or organisations and groups involved in the training and development of mediators and evaluators may nominate people, to the head of jurisdiction for inclusion on court lists. It must be remembered, however, that the provision of dispute resolution should remain open to all so that specialists in any field may provide mediation or evaluation to disputants.

In our complex and highly specialised world we can no longer think in terms of only lawyers providing such services. Accordingly, the bill does not attempt to set down qualifications or standards for mediators and evaluators. Instead, this will be a matter for each court to determine when accepting nominations for inclusion on a court list for mediators or evaluators. It should be noted that it is not the intention of this bill to prevent parties from seeking access to mediation or evaluation other than through a court order. Parties are free to avail themselves of these services at any time, if they so choose, without a court order. The privileges and protections provided under this bill will, however, apply only where the court has ordered mediation or evaluation under this part.

The bill gives the mediation and neutral evaluation sessions, and the documents and material produced for them, the same privilege with respect to defamation proceedings that judicial proceedings and documents produced in judicial proceedings have. Evidence of things said or admissions made at such

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sessions is not admissible in proceedings before a court, tribunal or body. Documents prepared for the purpose of, in the course of, or as a result of such a session are not admissible in evidence in proceedings before a court, tribunal or body. Such evidence and documents are admissible with the consent of the persons concerned or in proceedings relating to acts or omissions causing injury to any person or damage to property. The protection offered under these provisions is intended to ensure full and frank discussion of the issues in dispute without fear of repercussions.

The bill also specifies the only circumstances in which a mediator or evaluator may disclose information obtained in the administration or execution of these provisions. The circumstances include disclosure for the purpose of the administration or execution of the act and cases in which the mediator or evaluator has reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property. The bill also provides protection for mediators or evaluators on the relevant

court list from liability for things done in good faith for the purposes of carrying out a mediation or evaluation. Where parties request referral to a mediator-evaluator who is not on the court lists, the court may make an order referring the matter to that person, but this immunity will not apply in these circumstances.

It is not considered appropriate that a statutory immunity should apply to mediators and evaluators where the court has had no opportunity to vet such a person's qualifications or experience. In circumstances where the parties choose a non-court list mediator-evaluator, the parties are free to negotiate their own terms. The bill also provides a general power to each court to make rules in respect the practice and procedure relating to mediation and evaluation and for the making of any regulations necessary to give effect to these provisions. This bill has been prepared in response to initiatives by members of the judiciary for the provision of alternative dispute resolution. It is gratifying that members of the judiciary are embracing alternative dispute resolution. I commend the bill to the House.

Debate adjourned on motion by the Hon. R. D. Dyer.

CRIMES (FEMALE GENITAL MUTILATION) AMENDMENT BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing), on behalf of the Hon. J. P. Hannaford [8.54]: I move:

That this bill be now read a second time.

This bill will make the practice of female genital mutilation a criminal offence in this State. Female genital mutilation, or FGM, is the term used to describe a number of practices involving the mutilation of female genitals for traditional or ritual reasons. The practice involves the excision or removal of parts or all of the external female genitalia. The procedure is usually performed on girls of tender age. It has been estimated that FGM occurs in more than forty countries, and tradition is the major factor which contributes to its continuation. While the practice is often linked to certain religious communities, this view is in fact mistaken. The origins of the practice pre-date most major religions.

The procedure of FGM has no physical benefits and is associated with a number of health hazards. The immediate physical effects of FGM, particularly in its most severe form, can include haemorrhage, shock, infection, and damage to nearby organs. Pain is said to last for some weeks following the procedure and can recur throughout life. The practice has been condemned at an international level. The World Health Organisation has recommended that governments adopt clear national policies to abolish the practice. The United Nations Convention on the Rights of the Child provides that all effective action be taken with a view to abolishing traditional practices prejudicial to the health of children. The convention on the elimination of all forms of discrimination against women provides that all appropriate measures be taken to eliminate discrimination in the field of health care.

The declaration on violence against women specifically includes female genital mutilation as part of its definition of violence against women. Some countries have moved specifically to prohibit the practice. The United Kingdom, Sweden and the United States of America have expressly prohibited FGM by way of legislation. In France FGM is not specifically penalised but is actionable under the penal code, which punishes violence against children. The Family Law Council of Australia recently released a detailed report on FGM. The council strongly recommended the introduction of legislation to make clear that FGM constitutes a criminal act and a form of child abuse. The Family Law Council observed that the extent to which any form of FGM is practised in Australia is not known. There has not been an open inquiry into the practice of FGM in this country.

It was noted that the evidence relating to the incidence of FGM in Australia was mainly anecdotal. It is

not unreasonable, however, to infer that the practice may be occurring. As honourable members will be aware, there have been recent reports of two cases in Victoria involving two young girls aged 2 years and 4 years. Certainly such evidence would indicate that the practice does take place here. Of course, in New South Wales FGM could constitute an offence against the general assault and wounding provisions of the Crimes Act. However, the Government is of the view that a clear message should be sent to the community that the practice is not acceptable in this State. Such a message is given more clearly if there is a specific offence which expressly prohibits this conduct. Let it be made quite clear that in introducing this bill the Government is not intending to victimise or embarrass any particular

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group in our community. The bill has its roots in the protection of children from a practice that is extremely painful and has no beneficial physical effects.

I turn to the provisions of the bill. It will be an offence for anyone to perform FGM in this State. The three forms of FGM in order of severity are infibulation, clitoridectomy and sunna. The bill seeks to prohibit all of these various methods of FGM. It will be an offence to aid, abet, counsel or procure another to perform FGM. This will ensure that those who arrange for another person to perform FGM, or who are themselves present assisting at such an operation, will not escape the law. The provision will seek to discourage persons from making arrangements for the performance of FGM on a child. The bill follows legislation in place in the United Kingdom and the United States which are careful not to interfere with legitimate forms of surgery. The bill states that it will not be an offence to perform a surgical operation if that operation is necessary for the health of a person, is performed during or after childbirth for medical purposes or is sexual reassignment surgery.

The bill therefore makes necessary allowance for certain operations, such as those relating to cancerous or pre-cancerous conditions or other medical conditions which may arise during or after childbirth. In determining whether an operation is necessary for the health of a person, only factors relevant to the medical welfare of that person can be taken into account. Thus no account can be taken of the effect on that person of any belief that the operation is required as a matter of custom or ritual. Only medical factors relevant to a person's health can be taken into consideration. While sexual reassignment is a rare procedure, the legislation will be clear that it is permissible. It will not be a defence to the offence that a person consented to the performance of FGM. This provision will address the situation where a female may be coerced or pressured into having FGM performed upon her. A person charged with the offence will not be able to argue that the female upon whom FGM was performed consented to the operation.

The provision will also apply where a young female may seek FGM for herself. A person who performs the operation will not be able to argue that the female consented. The provision thus aims to prevent FGM from being practised at all in this State. The legislation will apply wherever the offence occurs if the person upon whom it is performed is ordinarily resident in New South Wales. The object of this provision is to protect persons from being removed from this State for the purpose of having FGM performed elsewhere. For example, if FGM is performed outside the State, action can be taken against those who performed the operation, provided of course that evidence is available to support the prosecution. The residence of the child in New South Wales is a sufficient nexus for prosecution. In addition, those who made arrangements from within New South Wales for the child's removal and for the operation to take place can be caught under the "aid, abet, counsel and procure" provision.

Finally, the offence will carry a maximum term of seven years' imprisonment. Such a penalty is necessary for the purpose of deterrence and to reflect the seriousness with which the offence is viewed. A legislative proposal to make clear that FGM is a criminal offence is obviously a sensitive matter. There are a number of serious issues to be considered. These range from matters of child protection to issues concerning women, health and human rights. The Family Law Council emphasised in its report that community education is an important part of any overall strategy to deal with FGM. The Government recognises that the legislation, although forceful in its delivery of a social message, must be complemented by a community education program. An inter-departmental committee on FGM has therefore been convened to deal specifically with the content and implementation of such a program.

The interdepartmental committee will be chaired by the Ethnic Affairs Commission. Other administrations represented on the committee are the Department of Health, the Department of School Education, the Department of Community Services, the Attorney General's Department, the Anti-Discrimination Board and the Child Protection Council. Each of these administrations will have a vital contribution to make in the area of community education and will ensure the formulation of a sound and strategic education program. It is anticipated that the program will be targeted at health professionals and the general community. In particular, the program will seek to ensure that the needs of relevant community groups are met. The necessity for consultation and co-ordination with agencies at a national level will also be examined. Ongoing research and assessment will be undertaken to monitor the program's effectiveness.

It is important to stress that in passing a law against FGM the Government is not seeking to attack the values of any particular group in the community. Cultural diversity has always been recognised and supported in New South Wales. However, the wider community should not tolerate a practice which results in detrimental and unfortunate long-term physical effects. This is particularly so where the rights of young children are at stake. As responsible members of the community, we should place our condemnation of FGM beyond doubt. The legislation may lend support and comfort to those within certain cultures who oppose the practice but feel constrained to allow it to continue. The introduction of the legislation will provide much greater support to people who do not wish this procedure to be practised. I commend the bill to the House.

Debate adjourned on motion by the Hon. Franca Arena.

JUSTICES (FINE DEFAULT) AMENDMENT BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing), on behalf of the Hon. J. P. Hannaford [9.3]: I move:

That this bill be now read a second time.

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The current fine enforcement system under the Justices Act provides a means of recovering unpaid fines and other monetary orders made by courts, and penalties imposed by way of infringement notices or enforcement orders. Fines and other monetary orders are enforced in a number of ways. First, fines relating to traffic offences are referred to the Roads and Traffic Authority for cancellation of licences or registrations. Second, fines for other offences and traffic fines that cannot be matched against the records of the Roads and Traffic Authority are enforced by the issue of warrants of commitment. Third, fines and other monetary orders owing to private payees or statutory bodies are enforced, at the option of the payee, either by the issue of a warrant of commitment or by civil enforcement methods.

When a warrant of commitment is issued by the Local Court, it is sent to the Police Service for further action. When a fine defaulter is located by the police, the police officer is required to give the person seven days' oral notice in which to choose one of the following options: first, pay the full amount outstanding; second, apply for time to pay; or, third, apply for a community service order. If at the end of the seven-day period the fine defaulter has not chosen any of these options, the warrant authorises the police to imprison the fine defaulter for the period stated on the face of the warrant. If the fine defaulter makes an application but then does not comply with the time to pay or community service order, a further warrant is issued. That warrant does not give the fine defaulter any options except to either pay the amount outstanding or be imprisoned for the period stated on the warrant.

Even though there are alternatives to full-time imprisonment, a proportion of fine defaulters still go to

prison for fine default. During 1992-93, 3,920 adult fine defaulters were received into New South Wales gaols. This number does not include a figure for fine defaulters who were held in custody in police lockups. There are no reliable figures on the number who were served warrants of commitment in this way. There are a number of possible reasons why some fine defaulters end up in gaol. A proportion choose not to pay their fines, either on principle or because they prefer to spend some time in custody rather than having to hand over their money. However, a significant number of fine defaulters find themselves in custody because they lack the financial means to pay and, for whatever reason, fail to take full advantage of the present alternatives to full-time default imprisonment.

That some fine defaulters find themselves in prison through poverty or an inability to pursue the alternatives is undesirable on several grounds. It is objectionable that a person should end up serving a term of imprisonment for an offence which does not carry a possible gaol sentence in the first place unless the person chooses that result by making an informed decision not to pay the fine and not to select any alternative method of satisfying the fine. It is a drain on the State's resources to have to provide space in gaols for fine defaulters at a time when prison accommodation is at a premium. There are also risks for fine defaulters in being confined in prison - though steps have been taken to minimise these risks - and there are difficulties for fine defaulters in rural areas if they are transported to gaols distant from their homes to serve time.

Notwithstanding these problems, it has been decided that it is not feasible to abolish default imprisonment altogether. Without that final sanction, there is no means to encourage fine defaulters to take advantage of the other options available to them. An effective means of fine enforcement is necessary to give force and credence to sentences of the court. However, it is plain that changes need to be made to the current system to ensure that fine defaulters are given every opportunity to avoid default imprisonment. The changes proposed in this bill include greater and more flexible availability of community service orders, access to periodic detention as an alternative to full-time imprisonment and the use of civil enforcement through the seizure and sale of property or the garnishee of wages as an alternative to custodial options.

By placing fine defaulters in periodic detention the Government will reduce the costs to the community by lessening the reliance of the offender and his or her family on social agencies, as well as allow the offender to remain in employment. Periodic detention provides lower cost staffing options commensurate with security status and requires a lower recurrent expenditure than full-time imprisonment. It also means that people in periodic detention can repay their debts to society by working on community projects during their time as inmates. Detainees are currently performing valuable community work and I have received reports that they have been involved in painting scout halls and mowing lawns for the elderly, and recently detainees had a high representation in the Clean Up Australia day. It is hoped that this package of reforms, coupled with a clear statement from the Government that default imprisonment is to be regarded as a last resort for the enforcement of fines, will result in a significant drop in the number of fine defaulters entering full-time custody, whilst maintaining the integrity of the fine enforcement system.

I turn now to the proposed changes. The Justices Act currently provides that a fine defaulter gets one opportunity to convert an outstanding fine into a community service order - that is, when the police officer gives seven days' notice of the existence of a warrant of commitment. If a fine defaulter selects the community service order option and then fails to complete the community service order for whatever reason, or if the fine defaulter selects the further time to pay option and does not pay, it is not possible for him to get a community service order at a later stage. There is also no provision for a fine to be converted to a community service order before the issue of a warrant of commitment. It is felt that the current system is too inflexible and that some fine defaulters are not taking the community service order option because it is simply not available at the time

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they decide they wish to pursue it. For that reason, it has been decided to make community service orders available at every stage of the process of fine enforcement until the fine defaulter actually enters custody, either for full-time imprisonment or periodic detention.

Under the new proposal, a fine defaulter will be able to convert a fine to a community service order both before and after the issue of a warrant of commitment by applying to an authorised justice. The granting of the

first application will be automatic. After that, the application will be assessed according to guidelines which will be published in the *Government Gazette*. It will be up to the fine defaulter to show that he or she comes within the guidelines.

Looking now at the proposals for periodic detention, if this bill is passed, a fine defaulter will be able to apply to an authorised justice for an order for periodic detention as a means of serving the time shown on a warrant of commitment. The application can only be made where there is a warrant in existence which has been issued after non-compliance with an earlier time to pay order or a community service order and where civil enforcement has proved unsuccessful. I will discuss civil enforcement in greater detail in a moment.

These restrictions are intended to ensure that fine defaulters are encouraged to take advantage of the non-custodial alternatives before opting for periodic detention. The only exception will be where the fine defaulter is already subject to a periodic detention sentence which has been imposed by a court as an alternative to full-time imprisonment. The fine defaulter will be able to apply to convert all fines to fine default periodic detention orders at any stage, as well as being able to call in all outstanding warrants of commitment and serve them on periodic detention, as is currently available.

Each fine default periodic detention order will be served cumulatively with any other fine default periodic detention order but will be able to be served concurrently with any periodic detention sentence. The option of periodic detention will not be available for fine defaulters who are under the age of 18 years at the time of making application for periodic detention or to fine defaulters who are unable to travel to one of the nominated centres.

Currently, there are 11 periodic detention centres in New South Wales. They are at Campbelltown, Emu Plains, Grafton, Malabar, Parramatta, St Heliers at Muswellbrook, Silverwater, Tomago, Windsor, Merinda at Parramatta - for women only - and Wollongong. This means that there will be a periodic detention centre accessible to a significant majority of the population. Persons serving fine default periodic detention orders will be subject to the same rules and regulations as other offenders serving court imposed periodic detention sentences with one or two minor exceptions as outlined in the bill.

Some miscellaneous amendments will also be required to introduce an effective scheme for fine default periodic detention. First, fine default periodic detention will not be available for fines which have been imposed for breaches under the Periodic Detention of Prisoners Act. It is considered necessary to exclude such matters so as to ensure the effectiveness of fines as a sanction for these matters. Otherwise, if the fine defaulter is still serving a periodic detention sentence at the time he or she is fined for the offences, he or she would be able to convert the fines immediately to fine default periodic detention orders and serve them.

A further major change to the fine enforcement system made by this bill is to introduce a scheme of civil enforcement, as mentioned above. This means that, in some cases, fines will be enforced by the seizure of the fine defaulter's property for sale or by garnisheeing wages or bank accounts. This will occur where the fine defaulter has previously failed to comply with a community service order or time to pay order. If the authorised justice believes that there is a good chance that civil enforcement will be successful, there are two possible choices of action. He or she may issue a warrant to the sheriff's officer to seize the fine defaulter's property for sale at auction. The cost of the sale will be added to the amount to be recovered. Any excess amount obtained through the sale will, of course, be refunded to the fine defaulter.

The authorised justice may also issue a garnishee order, if he or she has details of where the fine defaulter works or of bank or other accounts held by the fine defaulter. If need be, the authorised justice will also be able to require the fine defaulter to provide details of means and assets, to facilitate recovery action against him or her. If civil enforcement action is unsuccessful, the fine defaulter will have the option of applying to serve the time for the fine by periodic detention.

A last major change also relates to civil enforcement. The bill, if passed, will provide that no costs order which has been made against an individual in a private proceeding, whether the individual was the defendant or

the informant, will be enforceable by the issue of a warrant of commitment. The costs will only be able to be recovered under the Local Courts (Civil Claims) Act as if they were a civil debt. Other changes are proposed to make the fine enforcement system work more effectively and to ensure that fine defaulters are aware of their rights.

The proposal to require police to give fine defaulters seven days' notice on each occasion in order to elect an option that preserves the current arrangements in respect to first issue warrants of commitment but extends them to apply to subsequent warrants. There are situations, however, where the fine defaulter may wish to start serving the time shown on the warrants immediately. For example, he or she may be in custody and want to start to cut out the warrants as soon as possible. It is therefore proposed that the fine defaulter will be able to elect to waive the seven days' period by signing the appropriate form.

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The amendment to require that the police must give written notice in prescribed form to a defendant before the seven days' period begins to run alters the current requirement to give oral notice only. It is considered that, given the range of options which will be available to a fine defaulter if the amendments relating to periodic detention and increased access to community service orders are introduced, it is crucial that the fine defaulter has as much information as possible. The best way to ensure this is to provide that information in writing. The bill makes a number of other amendments. These are largely of a procedural nature, removing anomalies in procedures. I commend the bill to the house.

Debate adjourned on motion by the Hon. R. D. Dyer.

MOTOR ACCIDENTS (AMENDMENT) BILL

Second reading

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing), on behalf of the Hon. J. P. Hannaford [9.15]: I move:

That this bill be now read a second time.

The introduction of the Motor Accidents (Amendment) Bill follows the Court of Appeal's decision in *Marsland v. Andjelic (No. 2)*, which was handed down on 24 December 1993. The intention of the bill is to overcome the effects of the Court of Appeal's decision in that case, to reinforce the policy aims of the legislation, and to clarify the discretion of the court to award interest on damages for personal injuries sustained in motor accidents. I should mention in passing that the Court of Appeal decision in Marsland's case was by a majority of two to one. The dissenting judge, Justice Mahoney, found that there was a clear legislative intent contained in section 73 of the Motor Accidents Act, and applied that intent in his reasoning. The majority came to its conclusions by other means. Currently, section 73 of the Motor Accidents Act provides that interest on damages is only payable in very limited circumstances. Under the section, interest is not available unless:

1. the defendant has not taken reasonable steps to assess the merits of the claim;
2. the defendant has not made an offer of settlement where it would have been appropriate to do so;
3. the defendant has made an offer of settlement, but the amount awarded by the court is more than 20 per cent higher than the defendant's highest offer, and the court finds that the highest offer is not reasonable having regard to the information available to the defendant at the time the offer was made.

The clear intention of these provisions is to encourage insurers to take all necessary steps to assess the claim, and to make appropriate offers having regard to the circumstances of the claimant and the information available

in relation to the injuries and losses sustained in the accident. Consistent with this intention, courts have previously awarded interest where the insurer had failed to make a reasonable attempt to assess and settle the claim or had made offers which were not reasonable in the circumstances. Where the insurer had acted reasonably, interest was not awarded as an automatic right. However, in Marsland's case the Court of Appeal adopted a much broader interpretation of the section. This has now led to interest being available on more heads of damage and at a much higher rate than was previously the case. In addition, the court entirely overlooked those provisions in the legislation which provide for the indexation of damages awarded for past voluntary services and non-economic loss, also known as general damages.

In relation to voluntary domestic services, the bill restores the position to what was previously the case prior to the Marsland decision. Interest will not be awarded on this head of damages because there is no obligation on the plaintiff to reimburse any other person for domestic services provided gratuitously. In any event, as the value of damages for home care is constantly indexed at the level of average weekly earnings in New South Wales, the real value of the money is maintained over time, and interest is not required to achieve this purpose. Additionally, there will be no interest on compensation for non-economic loss. This is the current position for accidents which occurred between July 1984 and June 1987.

Since 1987, and prior to the Marsland decision, interest would have been awarded usually at a rate of 2 per cent. As a result of the decision in Marsland's case, it is being awarded at 10.5 per cent. Rather than restore the previous position prior to Marsland, the amendment makes a clear statement that there will be no interest on section 79 compensation for non-economic losses, such as pain and suffering. Whilst the High Court has allowed interest on this type of damages at nominal rates, currently 2 per cent, interest is not necessary under the Motor Accidents Act because the real value of the amounts awarded in this area are also maintained through annual indexation. Limiting interest on damages for non-economic losses and voluntary domestic services will overcome most of the cost pressures arising as a result of the Marsland decision.

In relation to other heads of damage, the bill reinforces the current tests which must be satisfied in order to qualify for interest. These tests clearly indicate that, in order for interest to be awarded, the claimant must have failed to comply with its statutory obligations to expeditiously assess the claim and make appropriate offers of settlement. The amendment also gives greater emphasis to the obligations on insurers to make reasonable and appropriate offers of settlement, and to keep those offers current in the light of further information which may be provided by the claimant. This will also underline the importance of plaintiffs providing full details of their case to the insurer at the earliest appropriate time. Further, interest will also be available if the insurer fails to make interim payments for reasonable medical, hospital and rehabilitation expenses, as required by section 45 of the Act. This is another key feature of the legislation, as it provides the means by which claimants can gain access to rehabilitation services prior to finalising their claims.

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The overall aim of the legislation is to have claims made quickly, assessed quickly and paid quickly once injuries have stabilised and damages can be properly assessed. Claimants who provide full details of their injuries and losses to the insurer should be able to expect a full and thorough assessment of the claim, and a realistic offer of settlement. If the insurer does not respond in this manner, they will face the prospect of an award of interest. This will protect the position of the claimant, and will provide the necessary incentive for the insurer to honour his obligations under the scheme.

When passed, the proposed legislation will largely restore the law to what was the case prior to the Marsland decision. For this reason, it will apply to all claims and proceedings not finally disposed of. Importantly, insurers have not calculated and collected premiums sufficient to fund the additional costs imposed by this decision. Failure to act in the manner proposed will result in additional liabilities being placed on insurers with little or no ability to recover those costs. Commencement by proclamation will enable notice of the effective commencement date to be given to the courts, the legal profession and the licensed compulsory third party insurers. In summary, the Motor Accidents (Amendment) Bill is designed to restore the position in relation to the awarding of interest to that which applied pre-Marsland. I wish to also take this opportunity to

make it clear that the Government is prepared to act when decisions are made which conflict with the policy aims of the motor accidents scheme and these are likely to have a substantial impact on premiums. I commend the bill to the House.

Debate adjourned on motion by the Hon. B. H. Vaughan.

CRIMINAL PROCEDURE (INDICTABLE OFFENCES) AMENDMENT BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing), on behalf of the Hon. J. P. Hannaford [9.23]: I move:

That this bill be now read a second time.

The law relating to the summary disposition of indictable offences is set out in the Crimes Act at sections 476, 495, 496 and 496A. Section 476 provides for a large number of indictable offences to be dealt with summarily at the discretion of the magistrate in a local court, provided the accused consents to that course. Sections 495, 496 and 496A also provide for the summary disposition of certain indictable offences at the discretion of the magistrate, although without the need for the consent of the accused. These sections extend the advantages of summary hearing to the accused and the Crown, thereby saving the considerable expense of a jury trial. In addition, the stress that is occasioned to witnesses and the accused by a jury trial is avoided and the matter is dealt with expeditiously. As a result, the District Court is left to preside over the prosecution of the more serious matters in the criminal calendar.

Since its introduction in 1900, the scope of section 476 has been enlarged on a number of occasions on a piecemeal basis. For example, in 1983 and 1987 certain property offences were added to section 476, largely as a result of increasing the value of the property which was the subject of the offences to \$10,000 and \$15,000 respectively. However, these changes did nothing to address some very basic anomalies which continue to this day. Certain fraud offences committed by agents come within the operation of section 476 if the value of the property does not exceed \$15,000, but comparable offences committed by a company director are also within the operation of the section, regardless of the value of the property involved.

Offences against the person are likewise not treated with any consistency under section 476. The offence of malicious wounding is capable of summary disposition under section 476, whereas the offence of maliciously inflicting grievous bodily harm is not, despite both offences carrying a seven-year maximum penalty. At no time has there been an attempt to rationalise the inclusion of some offences and the exclusion of others in any sort of systematic way, either by reference to maximum penalties or the value of the property involved in the commission of offences.

Moreover, there is a lack of uniformity among magistrates as to when to exercise the discretion to offer the accused summary jurisdiction. The law presently allows for the exercise of the discretion at the close of the prosecution case and at the close of the case for the accused. This uncertainty is compounded by the fact that summary jurisdiction may be offered and accepted at the close of the accused's case, only to have the offer withdrawn as soon as the magistrate becomes aware of the accused's criminal history. In order to exercise the discretion judicially, a magistrate must have regard to salient features of the accused's criminal history, such as the fact that the accused was subject to a good behaviour bond at the time of the commission of the offence.

At the same time, it is fundamental to the integrity of our criminal justice system that the trier of the facts not be privy to that information before arriving at a verdict, so that undue prejudice does not flow to the accused. This conundrum places magistrates in an impossible position. The prosecution and the accused are in a far better position to determine the prospects of summary jurisdiction. The bill recognises this fact by removing from the magistrate any discretion relating to the choice of jurisdiction.

A decision to commit the accused for trial or sentence to the District Court has far-reaching consequences in terms of resources, both for the parties and the jurisdiction itself. It is important to ensure that the resources of the District Court are being used effectively. In April 1992, a Bureau of Crime Statistics and Research study, entitled "Aspects of Demand for District Court Time", found that 78 per cent of all penalties imposed in 1991 in the

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District Court were less than two years imprisonment. This finding suggests that significant savings in District Court time would be achieved by increased use of summary jurisdiction for those offences not attracting penalties of more than two years.

Accordingly, this bill provides for a presumption that certain offences carrying up to and including a 10-year maximum penalty will be dealt with summarily, unless either the prosecution or the accused elects to have the matter heard on indictment. There are some exceptions to this presumption; namely, the offences of culpable driving and culpable navigation where death is occasioned, and certain sexual offences. The Government is of the view that these offences are so serious that they warrant the consideration of a higher court. A number of sexual offences remain amenable to summary jurisdiction, as do a number of offences carrying a maximum penalty of 14 years. The inclusion of these offences is a product of the ad hoc approach of the past and at this stage the Government does not propose to remove them. These new provisions are to be inserted in the Criminal Procedure Act 1986, rather than the Crimes Act 1900. This will assist in the ongoing reform of the criminal law by the separation of those provisions which are of a procedural nature only from those which define criminal offences.

I turn now to the major features of the bill. Proposed part 9A of the Criminal Procedure Act 1986 sets out the revised procedure for certain indictable offences to be dealt with summarily by a local court. Table one to the part lists those offences which shall be dealt with summarily unless the prosecuting authority or the person charged with the offence concerned elects to have the offence dealt with on indictment. Table two to the part lists those offences which shall be dealt with summarily unless the prosecuting authority elects to have the offence concerned dealt with on indictment. "Prosecuting authority" is defined in the Act as the Director of Public Prosecutions or other person responsible for the conduct of a prosecution. The offences listed in table one to the part include all those offences presently within section 476 of the Crimes Act 1900, with the exception of offences relating to child prostitution and child pornography. Other offences carrying up to and including a 10-year maximum penalty are also included. As I have already said, the offences of culpable driving and culpable navigation where death is occasioned and certain other sexual offences are excluded from table one.

A significant feature of the bill is that, whereas the existing monetary value of the property which is the subject of certain larceny offences, namely \$15,000, determines access to summary jurisdiction under section 476, the proposal removes that limiting factor. Pursuant to table one, larceny and certain other related offences are presumed to be disposed of summarily where the value of the property exceeds \$5,000. Larceny offences where the value of the property is less than \$5,000 are provided for in table two to the part. This will introduce greater flexibility in terms of either the prosecuting authority or the person charged making an election to have a larceny matter dealt with on indictment. It also removes the need for constant review of the appropriate monetary value of property involved in the commission of such offences.

Also included in table one are offences under Acts other than the Crimes Act 1900 such as the Bail Act 1978, the Justices Act 1902, the Oaths Act 1900, the Prisons Act 1952 and the Drug Misuse and Trafficking Act 1985. Table two to the part includes those offences presently in sections 495, 496 and 496A of the Crimes Act 1900 that may be disposed of summarily without the consent of the person charged. It also includes certain offences under Acts other than the Crimes Act 1900, such as the Drug Misuse and Trafficking Act 1985, the Firearms Act 1989 and the Prohibited Weapons Act 1989.

Clause 33H of the bill provides that information about the person's right to make an election and the consequences of not making an election be provided to the person both orally and in writing at the person's first

appearance before a local court on a table one offence. The same law requires the prosecuting authority to serve or cause to be served on a person charged with a table one offence a copy of the brief of evidence and the person's criminal history, if any, within the time fixed by the local court. The time for service must in any event be prior to the time fixed by the local court for the making of an election. This provision ensures that a person appearing before a local court on a charge falling within table one is armed with all the material necessary to enable the person, or his or her legal advisers, to make an informed decision either to elect to have the matter dealt with on indictment or to decline to make an election.

Pursuant to clause 33F of the bill, an election may be made after the time fixed by the court, but only with the leave of the court and if the court is satisfied that special circumstances exist. What constitutes special circumstances is to be left to the discretion of the courts. However, an election may not be made after the court has commenced taking evidence presented by the prosecution where the person has entered a plea of not guilty, nor may an election be made after the prosecution has tendered the facts of the offence where the person has entered a plea of guilty. Clause 33G of the bill provides that an election may be withdrawn by the party who made the election, provided that the court has not commenced taking evidence tendered by the prosecution where the person has entered a plea of not guilty and provided that the court has not committed the person for sentence where the person has entered a plea of guilty.

The bill does not change the maximum penalties that may presently be imposed by the local court where a matter is dealt with summarily. Clauses 33J and 33K prescribe those maximum penalties for table one and table two offences respectively. The bill contains a large number of consequential amendments to other Acts which presently refer to proceedings

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under section 476 of the Crimes Act 1900. In summary, the bill provides for the expeditious disposal of a wider range of appropriate offences in the local courts and a consequent benefit in the more efficient allocation of resources in the District Court. The prosecution and, in the case of the table one offences, the person charged will be in a better position to determine whether the interests of justice will be served by an election to have the offence dealt with on indictment. This decision will be made at an early stage of the proceedings and will thereby save the trauma and expense associated with a full hearing before a magistrate before the question of summary disposal can be addressed. Accordingly, I commend the bill to the House.

Debate adjourned on motion by the Hon. K. J. Enderbury.

TIMBER INDUSTRY (INTERIM PROTECTION) AMENDMENT BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing) [9.37]: I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of the bill currently before the House is to include the Eden Native Forest management area in the Timber Industry (Interim Protection) Act; to extend the expiry date of the Act to 31 December 1995; and to establish a high level regulatory and information committee to oversee forestry operations within this State during that period. The timber industry in the southeast is threatened by a supply shortfall of up to 30 per cent of current sawlog levels for the first three-quarters of this year. This threatens the viability of the Eden mill, owned by Boral, immediately, others soon thereafter. The shortfall is due mainly to fauna issues and delays in the completion of the latest Eden environmental impact statement.

The proposed legislative action will bring the Eden Native Forest management area into line with most of the remaining native

forest management areas in New South Wales and provide interim protection for the dependent sawmilling industry and its employees whilst the environmental impact assessment process is completed. The solution contained in this bill offers protection for the environment, and protection for employment. In essence, the bill divides the Eden management area into two sections, one which will be placed under a moratorium and one which will be available to maintain supplies to the dependent timber industry.

The moratorium area consists of some 200,000 hectares. This is a far greater area than the Hon. R. S. L. Jones has in fact suggested in his proposal for the southeast forests. It includes areas which are known habitat for long footed or long nosed potoroo, koala, southern brown bandicoot, powerful, sooty or masked owls - whether it be regrowth forests or undisturbed forest; nominated national estate areas; wilderness areas and areas of undisturbed forest, that is, areas where no logging or road construction has occurred previously. The prescriptions which have been applied in identifying these areas are far more onerous than in other areas in the State. For example, the buffer zone around an owl habitat tree on the North Coast is generally 140 metres; in this instance in the southeast, it will be 1½ kilometres.

Some 40,000 hectares have been identified in consultation with the National Parks and Wildlife Service as being the "least sensitive" areas and these will be made available to maintain supply to dependent industry, pending the completion of an environmental impact statement. By ensuring that this area is available to industry the bill protects the livelihood of local communities. Compartments within this area are still subject to licensing by National Parks and Wildlife Service. Those licences, which cover such aspects of forest operations as the level of canopy, seed and habitat tree retention, width of buffer zones and filter strips et cetera, can be reviewed, amended or cancelled at any time. Similarly, clean water licences must be obtained from the Environment Protection Authority.

Eight Compartments, comprising about 2 per cent of that area, have been the subject of consultation between the various parties to the debate and have now been identified as being available to industry only as a measure of last resort to maintain sawlog supply and protect employment. The quarterly report on the progress of the Forestry Commission's EIS program, which is tabled in the Parliament, will contain particular information on these eight compartments. Concern has been expressed in various arena about the planning, control and transparency of harvesting activities within areas of the State that have not yet been subject to an EIS determination.

To allay these concerns and to enhance accountability the bill currently before the House establishes a regulatory and public information committee. This committee will comprise the chief executives of the National Parks and Wildlife Service, the Environment Protection Authority, the Soil Conservation Service and the Forestry Commission. It does allow for alternative nominees, but I would stress that any nominee must still be chosen from the most senior management level of the respective agency. It is envisaged that this high level committee will oversee the planning, monitoring and public disclosure aspects of proposed logging and roading activity.

The establishment of this committee constitutes a three-pronged approach - accountability, monitoring and public disclosure. This will mean that prior to the completion and determination for an EIS the Committee will have a responsibility to determine those compartments which are to be roaded and logged by the Forestry Commission. The committee's role will extend beyond the determination of an EIS inasmuch as the committee will be required to monitor logging and roading activity undertaken by the Forestry Commission until the expiry of the Act. This will provide a quality control mechanism which will ensure that forestry activities consistently comply with acceptable environmental standards; and further the committee will be required to maintain a register containing proposed logging and roading plans; licences issued by the National Parks and Wildlife Service and the Environment Protection Authority; and timer licences issued by the Forestry Commission.

This information will be available not less than 40 days before activities commence unless in the committee's view a shorter period of time is warranted due to exceptional circumstances. In addition, any relevant environmental reports from the Forestry Commission, the Environment Protection Authority, the National Parks and Wildlife Service and the Soil Conservation Service will be publicly available. This information will be available for inspection at the head office of the Forestry Commission and will be provided to interested parties upon request at a reasonable cost of making the copy.

This proposal protects the environment, improves management of the EIS process and protects against employment loss. It is in accord with Commonwealth-State agreement on southeast forests and the accompanying adjustment package which is being formulated as part of that agreement. The moratorium area of 200,000 hectares is in addition to the 55,000 hectares already set aside for conservation reserves under that agreement. Those who oppose the move to include Eden under the TIIP Act are

bring great joy to industry but it has accepted the compromise, and the proposal warrants bipartisan support. I commend the bill to the House.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [9.37]: The Opposition intends to support this bill and it is a fact that I intended to use the quite legitimate term -

The Hon. Patricia Forsythe: Not alternative government any more, you have recognised your place at last.

The Hon. B. H. VAUGHAN: The Hon. Patricia Forsythe does not like it. The alternative government intends to support this bill. Honourable members would be aware that this bill is necessitated by the incompetence of Boral Building Products which operates a sawmill in the Eden area. Put simply, Boral failed to organise its licence - sawmill logs, southeast forests - and was about to close its Eden factory at a cost of 28 jobs and jeopardise an estimated further 30 jobs as a result of a multiplier effect. All of this is occurring in a town which was recently in the headlines because a gang of unemployed youths allegedly vandalised a considerable number of shops in the town's main street. They did it because of boredom and, in particular, because of lack of employment opportunities.

Honourable members will know and will remember that since March 1988 the New South Wales sawmillers have been able to obtain from State Forests long-term leases for hardwood logging areas. However, for some inexplicable reason Boral delayed applying to State Forests for a long-term licence of the southeast area. Two other companies in the area applied and successfully secured such licences. The Opposition has shown considerable restraint and responsibility in supporting the bill. Members on this side have a strong commitment to both conservation and the protection of jobs. What the Australian Labor Party does object to, however, is that honest working members of the Australian Timber Workers Union have been and are being used as pawns in what is effectively a game of brinkmanship between Boral and the Government. It is quite often necessary to remind the community that the Australian Labor Party is a trade union party and that without the trade union movement there would be no Labor Party.

The bill will amend the Timber Industry (Interim Protection) Act 1992 in several ways: it will prevent logging in old growth forests comprising the Eden native forest management area until an environmental impact statement is obtained and logging is approved by the Minister for Planning; it will allow logging in other parts of the Eden native forest management area pending an environmental impact statement; it will require State Forests to produce the abovementioned environmental impact statement by 31 December 1995 - by which time, of course, the Australian Labor Party will be in government in this State; and it will extend from 31 December 1994 to 31 December 1995 the day on which the Timber Industry (Interim Protection) Act expires. I am pleased to say that the amendments recommended by the Opposition in the other House were accepted by the Government and were moved by the Government in this place. As a consequence, the House will not be surprised to hear that the alternative government supports the bill.

The Hon. D. F. MOPPETT [9.42]: I am delighted to hear that the Opposition supports the bill. The future of the timber industry in the southeast of this State has been a matter of great concern. Honourable members would recall the very long debate on the southeast forests held last year, at which time the House sat into the early hours of the morning. On that occasion one could have said, without any triteness, that those who spoke about locking up the southeast forests simply could not see the wood for the trees. That has been the central problem in this sad chapter in the contrived conflict between the timber industry and some sections of the environmental lobby.

It is regrettable that instead of parties taking the global picture and examining the distribution of parks and timber producing areas and other reserves, the balance across the State, the need for the products of the forestry industry and the regeneration possible in those forestry areas, each issue has been fought as if there were only one stand of timber left in New South Wales. During the debate to which I have referred the House was presented with a parade of malicious arguments - which I hope will not be heard again tonight - that did no credit to the honourable members who came forward with their heap of deceptive and fallacious arguments

designed to advance the cause of ecological warfare to the point of complete stagnation of the timber industry.

Honourable members need to consider some salient points about the size of the timber industry in our community. It is as big as the cotton industry or the sugar industry, and is therefore of tremendous importance in our economy. The gross value of sawlog production, without all the other significant by-products, was about \$750 million. Although Australia is a nation that enjoys extensive land resources, it is in fact a net importer of timber. The surplus of imports over exports of timber stood at a staggering \$1.660 million.

The Hon. J. R. Johnson: The cockies are cutting it all down for fenceposts.

The Hon. D. F. MOPPETT: That is an interesting observation. Certainly farmers cut down some timber, but probably farmers have been more responsible than anyone for good husbandry of the land and have ensured that there are adequate stands of timber where they are needed for shade, shelter and erosion control. Farmers have shown particular sympathy for those who derive their livelihood from the forests. The House has just heard from the Deputy Leader of the Opposition, who tried to place on record the commitment of the Australian Labor Party -

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The Hon. B. H. Vaughan: What does the honourable member mean by "tried"? I would be very surprised if I did not convince him.

The Hon. D. F. MOPPETT: I must admit that at times the contribution of the Deputy Leader of the Opposition seemed to be rather more an argument as to form than one of real commitment. I do not want to protract this debate. Opposition members have conceded that the bill should be passed, recognising the critical position that has been reached in the southeast. We need to remind ourselves that, although the bill overcomes the problem in the southeast, a considerable amount of anxiety is still felt in several other forest areas, notably in the Dorrigo area and along the North Coast. At least some breathing space has been secured for the southeast forests by the Opposition's commitment to support the bill. It should be recognised that the bill is an interim measure while environmental impact studies are completed in relation to a much larger area and that in the long run it will produce the kind of resource security needed by the timber industry, not only for the people in that area who are directly connected with the harvesting and the processing of the timber but for the economy of New South Wales as a whole. The issue of resource security is one that will be debated again and again in the House.

The Hon. R. S. L. Jones: They should try to plant their own resources.

The Hon. D. F. MOPPETT: It is interesting to hear from the Hon. R. S. L. Jones echoes of the arguments that I described as disingenuous. Those arguments would mislead the public if the public were to listen to them but, fortunately, not many people do listen. Though there is a great role for plantation timber, at the same time, for the sake of the quality of those forests that are set aside for forestry purposes, it is important that logging should go ahead in the eucalypt forests which abound along the eastern coast of this continent of Australia. We in New South Wales have very extensive stands of eucalypt forests. I remind the House that at any one time harvesting operations would be taking place in less than 1 per cent of the areas available for forestry, which are themselves a small proportion of the total wooded area. I defy those who travel around New South Wales by air to look down on the broad ridges of the Great Dividing Range and say they can see where logging operations are occurring.

I am satisfied that a reasonable balance has been struck with the environmental aspects in this area, and more broadly between forestry areas and areas protected in national parks and in proposed wilderness areas. Certainly I will be vigilant in the future to make sure that we proceed with resource security legislation that will enhance the confidence of the timber industry in New South Wales and ameliorate the present dilemma the industry faces, which is causing an exodus of investment from this State. Manufacturers of timbermill equipment in the primary and secondary processing areas tell us there is a boom in production at the moment.

But that boom is for equipment being supplied to mills in Victoria, Tasmania and Queensland. It is only the extraordinary political situation of New South Wales that provides this tremendous threat to the industry. I am confident that after 25 March 1995 we will make more definite steps to secure the industry.

The Hon. R. S. L. JONES [9.51]: A number of members are not aware of the steps that have proceeded before this bill came to its present form. This House debated the South East Forests Protection Bill that was introduced by Clover Moore in the other place. I tried to introduce it in this House on a couple of occasions, but was voted out by Reverend the Hon. F. J. Nile. On the second occasion the bill was brought before this House it was lost by a single vote. The Hon. E. P. Pickering, however, expressed more interest in conserving the southeast forests than some of his colleagues. As a result, I had a meeting with the Hon. E. P. Pickering and we discussed how to overcome the impasse.

A number of meetings were held with Warwick Watkins from the Department of Conservation and Land Management, Jeff Angel of the Total Environment Centre, and George Souris, Minister for Land and Water Conservation. We sought to work together as a team to identify what we believed to be the most valuable areas in the southeast forests that needed a moratorium. This bill sets aside 200,000 hectares under a moratorium for three years, though 20,000 hectares are to be the subject of a fast track environmental impact statement. But it is hoped that the logging of that 20,000 hectares will be some way down the track, if at all.

Extraordinary comments have been made about the legislation and the moratorium. Of the 200,000 hectares a significant portion has been logged. The figures vary quite wildly: some say 75,000 hectares have already been logged, another person says 120,000 hectares have been logged. It is probable that 75,000 hectares have been logged. Realistically, the moratorium will apply to only 125,000 hectares, but that is the best forest left in New South Wales apart from the 20,000 hectares that may be logged as a result of fast tracking. The 40,000 hectares covered by this bill are the least valuable conservation areas in the southeast forest. That is recognised by the conservation movement, forestry, and the Minister for Land and Water Conservation.

This bill will provide breathing space. It is designed to save 28 jobs at the Eden Boral sawmill, a problem which was essentially Boral's own fault because it did not get its act together. This legislation is designed specifically to shore up inefficiencies by Boral. Boral did not want to challenge its wood supply agreement there because it was concerned about its northern wood supply agreement, where it has 85 per cent of the wood tied up. Apparently, Boral was told that that agreement might be put at risk, so it did not challenge the other wood supply agreement. We all want to save jobs, but I find it rather extraordinary that in this House on several occasions when we have fought to save many thousands of jobs, they have gone.

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The Government has put approximately 52,000 out of work over the past six years but, of course, those people were in the public sector and not the private sector. It seems that 28 jobs in the private sector are worth more than 52,000 jobs in the public sector. Though we will pass special legislation to save these 28 jobs, the House would not pass legislation to save any of the 52,000 jobs that have been lost over the last six years. On 21 April Peter Cochran made an extraordinary comment in the other place when he said:

The koala, the long-footed potoroo, the long-nosed potoroo, the smoky mouse and various owl species have been introduced into forest areas ready for harvesting. They never seem to be found in national parks. It is extraordinary that in southeast forests these endangered species are not found in any other areas but those that are about to be logged.

That extraordinary statement conjures up an image of people with sacks in the night delivering long-footed potoroos to coupes about to be logged, which, of course, is absolute rubbish and garbage. The process followed in reaching the present situation has been interesting. We are hoping that the 125,000 hectares which have not been logged, and which contain some of the best flora and fauna habitats in the State, will be carefully looked at over the next three or four years. Indeed, there may well be a change of government in 10 months and three weeks.

The Hon. D. J. Gay: I hope you are not pushing for that.

The Hon. R. S. L. JONES: I am not pushing for anything. I am just pushing for greater protection of our forests. I have no vested interest either way. The only thing that might cause the Government to lose the election is that its popularity is way down in regard to environmental matters. New South Wales is rated seventh out of eight States. I am sure Reverend the Hon. F. J. Nile will not be holding the balance of power in 10 months and three weeks - thank God for that. The House will have a member who is even more green than me: Ian Cohen will most certainly become a member of this House. He will replace the Hon. Elaine Nile, which will be very interesting. I have a letter from Mark Blecher of the South East Forests Conservation Council. He wants us to reject the Timber Industry (Interim Protection) Bill. He states:

It is in contravention of the National Forest Policy Statement which NSW signed. The TI(IP) Bill still allows logging in high conservation value forests without the need for an EIS. John Fahey will say that the Commonwealth-State agreement is in place, and therefore the NFPS is in place in the South East. However the previous Federal Resources Minister, Mr Lee has stated publicly that the SE Agreement is an exception to the NFPS.

... The Commonwealth State Agreement places no obligations on the timber industry to spend money on restructuring in the South East. The industry is receiving another subsidy, this time of \$10 million, where there is no obligation on its part to spend an equivalent amount of money.

... John Fahey will say this threatens jobs, but you will be able to demonstrate that State Forests is causing job losses. Mr Fahey felt no compunction to legislate for the protection of jobs at the Ford Motor Company, or for growers livelihood in the Leeton district, but for some reason feels it is necessary to legislate for 28 jobs at a timber mill whose owner is not committed to the local timber industry and its workers.

I have put that on record because these people have been working very hard to save what is left of the southeast forests, despite the actions of some honourable members opposite and others on the crossbenches. One wonders whether the activity at the Boral mill might not be a bit of a smokescreen for what is really going on. I have here - which was somehow acquired - the licence for Harris Daishowa Australia Pty Limited, signed by M. J. Lee on 21 December 1993 - licence No. Mepwood 913. It is a one-year agreement for 900,000 green tonnes of timber from the southeast forests. The majority of timber from the southeast forests, regrettably, is used for extremely low value woodchips. Honourable members know that. It is a tragedy. If they were logging just for sawlogs there would be nothing like the damage, nothing like the controversy that is going on right now.

I and friends of mine in the timber industry have seen quality logs, which could have been used either now or in the future for the sawlog industry, going to the woodchip mill. This could be a smokescreen for shoring up Harris Daishowa and its supply of timber for woodchips. Fortunately, Daishowa is in financial trouble, so, hopefully, it might pull out of the southeast forests, in which case we will get down to logging some of the pine forests which are now ready for harvesting. I would like to see a deep sea port built at Eden so that those logs can be exported. There would be a much higher value on those.

We want sustainable jobs in the southeast forests, but we do not want them in old growth forests. Representations have been made to the Minister for State Development on the issue of building a deep sea port at Eden. It would provide long-term jobs. I have clashed with the timber industry on many occasions. Why have they not planted their own resource? The ti-tree industry, the macadamia industry, the orange industry and the cotton industry do. Those industries plant their own resources, and quite rightly. Why do the loggers have to rely on government handouts and subsidies as they have for so long? They have been babied along and protected for very many years, and that protection is no longer valid. We are looking at a level industrial playing field, internationally. The industry should not be protected, should not be given handouts or subsidised by the State Government. We cannot afford to do that any more.

The industry should have planted its resources years ago. The State Government provided \$1 million last year for planting hectares of six different species of eucalypt - four in the north and two in the south, I believe. It

is hoped that amount will be increased this

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year from \$5 million to \$10 million so that several million hectares can be planted. That resource will take a long time to grow, 30 to 40 years, but at least the trees will be in the ground for our children and grandchildren. That should have been done at the beginning of the agreement with Harris Daishowa some 30 years ago. If then we had started planting thousands of hectares of appropriate eucalypts - as is being done overseas - in conjunction with the farming community who will also benefit, there would not be this fight over the remaining old growth forests. I hope the timber industry can get its act together and more wisely use our timber resources.

The Australian Democrats will not oppose the legislation. It has taken many weeks of negotiations and meetings to get to this stage. The Australian Democrats believe something worthwhile will come out of this and that we are meeting somewhere in the middle. I hope that some of the areas that will come under the moratorium - in fact, perhaps the majority of those areas - will be reserved for all time for the endangered species that live in them, so that our grandchildren can see what the forests were really like before the white man came to this country and destroyed so much of it. It would be a good thing to see the timber resources in the plantations used wisely and with a high value-added component, and not just have the resource sold as woodchips.

Hopefully, we will be able to manage our timber resources much better in the future - we will have to do this because they are running out - and appreciate our timber much more than it has been appreciated in the past 200 years. We are getting there gradually. We will be increasing our plantations. Pine plantations in Queensland are now coming on stream and shortly will be used; other plantations in New South Wales will come on stream soon, together with pine plantations. Eventually, the stage will be reached when there will be resource security. I discussed this matter with the Minister and I said, "Why do you not get resource security in plantations?" He turned to Hans Drielsma and said, "Organise the legislation". That happened some months ago. That is coming; it is being worked on right now - resource security in plantations, but not in our old growth forests.

[Interruption]

There was a furphy being put around in the industry, "If we plant the plantations the greenies will not let us log them". I said, "Bullshit, of course they will. If you have resource security on those you will be allowed to log them in 30, 40 or 50 years' time. And you will have the value; you will be able to sell them in the meantime and trade in those plantations".

The Hon. D. J. Gay: What will happen if you put potoroo poo in them?

The Hon. R. S. L. JONES: They are covered. They are already covered by resource security for plantations. There is a possibility - and we have been discussing this as well with the forestry industry - that some of them may become a high category habitat, as has happened with the forests up north. The National Parks and Wildlife Service bought the forest as a habitat but had to pay the full cost of the timber on it. There would not be any discounts on that. They are not yet looking at rainforest timber plantations but that is next on the list. They are being planted up north and there will be wood lots. Many people, including friends of mine, are planting rainforest timbers up north for cabinet timbers for the future, and they will be very high value trees when ready for logging. It is happening. It is taking a long time to do it but it is getting there.

Reverend the Hon. F. J. NILE [10.6]: The Call to Australia group is pleased to support the Timber Industry (Interim Protection) Amendment Bill. The bill will amend the Timber Industry (Interim Protection) Act 1992 to extend its provisions to control logging within the Eden native forest management area and to postpone the expiry date of that Act. As honourable members know, concern was expressed about the situation in the southeast forests. It seemed very clear that the Eden mill conducted by Boral was at risk, not merely the company but the jobs. Call to Australia is pleased that the bill has been brought before the House by the Government and has the support of the Opposition. That is why it is pointless for the Australian Democrats to oppose it; they know it will be passed in this House.

This legislation will maintain a sensible balance in seeking to save jobs as well as the forests. I have visited the area on a number of occasions at the invitation of the Bega Council and on other occasions at the invitation of the Bombala Council, the green groups, the Southeast Forests Protection Society and others to see for myself what was happening. I concur with what the Hon. D. F. Moppett said earlier concerning the forest and forest regrowth and the attitude of the staff from State Forests who are supervising the logging in the area, and the responsible way in which it is being done.

I also had the opportunity to ride in one of the huge timber jinkers with the timber workers, and watch them conduct their activities. I reject the allegation that the Hon. R. S. L. Jones continually raises in this House that good timber is going into the Eden mill. I watched the men cutting the timber, and watched the waste timber which could not be used in the normal logging mills being stacked and taken to the Eden mill.

The Hon. R. S. L. Jones: Rubbish!

Reverend the Hon. F. J. NILE: It was rubbish. Rubbish was being taken to the Eden mill. The Hon. R. S. L. Jones is misrepresenting the situation. I hope that the Government will look at the Call to Australia group's South East Forests Conservation Bill which is a private member's bill based on the 1990 Federal-State forest agreement. I believe that would clear the air in a dramatic way in the southeast forests and enable five national parks to be declared in the southeast forests area.

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I see this bill as an interim measure to meet a particular emergency that has developed. I hope the Government will support the South East Forests Conservation Bill, for it has many positive aspects. It is not a negative bill, as was the South East Forests Protection Bill. The Government should support it. I have had discussions with the responsible Ministers and they have indicated their general sympathy for the bill. I hope the Government will support the bill coming forward. I am sure the Opposition will support it because it embodies the agreements made by the Federal Labor Government with the New South Wales Liberal Party-National Party coalition Government.

Proposed part 3 provides for the setting up of a regulatory and public information committee. The committee will comprise the Director-General of National Parks and Wildlife or his nominee, the Director-General of the Environment Protection Authority or his nominee, the Director of the Soil Conservation Service or his nominee, and a nominee of the Forestry Commission. The committee will play an important role in ensuring that the forests are cared for responsibly. It will determine the compartments to be logged and the sites of roads proposed by State Forests during any period when logging and roading takes place before State Forests obtains an environmental impact statement for those compartments or sites.

The committee will also monitor logging and roading undertaken by or on behalf of State Forests. It will also keep a register containing particulars of proposed logging and roading plans, licenses issued by the Director-General of National Parks and Wildlife and the Environment Protection Authority, timber licences issued by State Forests, and any monitoring reports of State Forests, the National Parks and Wildlife Service, the Environment Protection Authority or the Soil Conservation Service. Although the bill is an interim measure, it contains protective provisions, and Call to Australia is pleased to support it.

The Hon. D. J. GAY [10.11]: It is a great pleasure to follow Reverend the Hon. F. J. Nile in this debate because on numerous occasions he has added his vote to that of the Liberal Party-National Party team in the Legislative Council to protect the timber industry in the southeast forests of New South Wales. The Liberal Party and the National Party have stood up for workers in those forests on numerous occasions, and with the vote of Reverend the Hon. F. J. Nile and the Hon. Elaine Nile the Government has been able to save the forest industries. The people of Eden are aware of the fact that without the votes of Reverend the Hon. F. J. Nile and the Liberal Party and National Party their industry would not have been saved. In this debate the lot on the other side of the House have mouthed platitudes and talked about their involvement with the union movement in

the south. They have paid lip-service to the union movement, but the unions in the south know what the Opposition is all about. The lot opposite are from the heartland of hypocrites. They have deserted the union movement, and they will continue to desert them at the drop of a hat if it is politically expedient to do so.

In 1988 I stood on a soapbox in the main street of Tumut with Gavin Hillier from the Timber Workers Union campaigning against the Labor member in that electorate. Union members in that area still have not forgotten the trendy issues and platitudes of the Labor Party, its trendy politicians, or its trendy leader, Bob Carr. They will not forget the Labor Party. We have not forgotten the Labor Party either, but the people of New South Wales will forget it, the same as the Labor Party has forgotten the Hon. Franca Arena as a candidate for the Senate. Whatever this lot opposite lose, they will lose dramatically. I disagree with the Hon. R. S. L. Jones on many matters, but I agree with his support for the Minister in relation to the proposed extension of plantations. Although they are not the only things that will save the industry, they are important for the future resources of the industry. The trendy lefties on the other side of the House, that simpering, whimpering lot, talked but did nothing. They are absolutely useless; they are the wusses of the woodlands. They sit in this Chamber and whimper about what they should have done, but they did nothing. The boy from Budawang, the Range Rover kid, cannot add anything further.

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing) [10.14], in reply: I thank honourable members for their varied contributions to this debate. Although I acknowledge the reluctant support given by the Australian Democrats and the Australian Labor Party to this bill, I, like my friend and colleague the Hon. D. J. Gay, marvel at the inconsistency and hypocrisy demonstrated by both of those groups. Only a few short months ago the Government fought them to a standstill in this very Chamber over Clover Moore's South East Forests Protection Bill. Tonight they have meekly supported a bill which, on the surface, appears to represent almost a direct contradiction of what they said on that night. I am delighted to say that I and my colleagues and Reverend the Hon. F. J. Nile have been constant in our support of the timber industry and jobs in the southeast of New South Wales. As the Hon. D. J. Gay and other speakers on this side of the House have said, the people of the southeast will not forget. With those few words I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

PROPERTY, STOCK AND BUSINESS AGENTS (AMENDMENT) BILL

Second Reading

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing) [10.17]: I move:

That this bill be now read a second time.

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

Leave granted.

The main purpose of this bill is to simplify the method by which interest accrues on agents' trust accounts and to enlarge the scope of the application of funds in the council's statutory interest account.

The chief function of the Real Estate Services Council is to provide advice to the Minister on the most appropriate form of regulation for persons providing real estate services. The council licenses business agents, real estate agents, stock and station agents, strata managing agents and on-site residential property managers.

In June 1991 the council initiated a review of its trust account requirements with a view to simplifying procedures, reducing the administrative burden on industry and maximising returns to the Government.

Currently, licensees are required to deposit with the council 25 per cent of the amount that was the lowest balance in the licensee's or the firm's trust account on any day during the 12 months ending 31 March or, if more than one trust account is held, the aggregate of the lowest balances.

The money is deposited in the Real Estate Services Council special account which is held with the head office of each bank. The bank issues each licensee with a letter of credit for the amount deposited and the funds are repayable on demand. The banks advise the council of the balance held in the special account and interest on this sum is paid direct to the council's statutory interest account.

This system has been criticised by the industry as being cumbersome and a burden on licensees. In addition, it has been difficult for the council to monitor industry compliance with the requirements. It is possible for licensees to minimise their contribution to the special account by arranging cash movements in their trust account to create an artificially low figure on any one day which then becomes the base figure for the special account calculation.

In July 1991, the council released a discussion paper proposing a new scheme to key industry and consumer bodies, major banks, building societies and their associations. The council proposed that the Act be amended to allow trust moneys to be deposited by licensees into trust accounts held with recognised financial institutions, including permanent building societies with trustee status under the Trustee Act 1925.

The special account would be abolished and interest would accrue on all money in agents' trust accounts directly to the council's statutory interest account at 25 per cent of an appropriate short-term money market interest rate.

This proposal would simplify the regulatory burden on licensees as they would no longer need to spend time calculating the required deposits for the special account. Also the preparation of audit returns would be simplified and costs reduced.

The simplicity of the system would assist in reducing council's administration costs. More importantly, the proposal would require financial institutions to pay a more reasonable return on funds deposited.

The responses to the discussion paper were generally supportive of the simplified procedures. The majority of banks expressed a preference for interest to be linked to their at call rates rather than reserve bank rates, such as the 11 a.m. unofficial money market cash rate, as their computers could process the data automatically.

The bill before you is in three parts. Schedule one deals with amendments relating to trust accounts, schedule two deals with the statutory interest account, the compensation fund and minor licensing reforms and schedule three covers savings and transitional provisions.

So far as the trust account reforms are concerned, it should be noted that currently all licensees are required to hold clients' moneys in trust accounts established in a bank in New South Wales. The bill will allow banks and building societies in New South Wales with trustee status under the Trustee Act 1925 to hold agents' trust accounts. All States and Territories but the Australian Capital Territory allow building societies to operate agents' trust accounts and no difficulties are envisaged given the introduction of national uniform legislation for building societies in July 1992.

Licensees will be required to notify the financial institution that the trust account is a trust account required under this Act. Both licensees and financial institutions must notify the council if a trust account becomes overdrawn.

The bill provides that financial institutions that keep agents' trust accounts will become responsible for paying interest on these accounts to the council's statutory interest account. After consultation with the Treasurer, the Minister will determine a trust account rate for each financial institution at which agents' trust accounts are kept.

For the first two years after the commencement of this scheme, interest on trust account balances is to be calculated at 25 per cent of the trust account rate applicable to the institution. (Note that the remaining 75 per cent is not paid to the council or to licensees - it is retained

by the financial institution).

Interest is to be paid monthly and calculated on daily balances held in trust accounts and credited to the statutory interest account free of transaction charges.

The prescribed portion of 25 per cent is to be preserved for a two-year transitional period, after which time a more commercial return may be determined by the Minister in conjunction with the Treasurer.

In practice, the Minister is expected to approve the financial institution's at call rate, or a Reserve Bank rate (such as the 11 a.m. unofficial money market cash rate) for those institutions that do not have at call rates (e.g. small building societies). At call rates are appropriate because money in trust accounts must be available on demand. The relevant trust account rate for each institution will be gazetted.

The Real Estate Services Council special account will be abolished. This simplified approach has been adopted by real estate licensing authorities in Victoria, Queensland, South Australia and the Northern Territory.

The bill permits the council to hold money in its administration account, compensation fund or statutory interest account in a building society with trustee status as well as a bank.

Schedule two of the bill deals mainly with the application of funds in the council's statutory interest account. The Act allows this money to be spent on supplementing the compensation fund, if necessary, and to meet costs associated with the delivery of approved licensing courses, professional development courses and the administration of the council's accounts. It is also used to meet half the costs of the Residential Tenancies Tribunal and may be accessed to meet costs associated with administering the Fair Trading Act.

The bill extends the range of permissible areas of expenditure to include:

- capital works funding for institutions providing approved licensing courses, grants for approved courses or professional development for valuers and grants to evaluate education activities;
- community education programs;
- costs associated with the introduction of co-regulation schemes, disciplinary tribunals or dispute handling bodies in the real estate sector; and,
- shortfalls in the council's administration account.

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Money in the statutory interest account that is not required for these purposes may be invested in accordance with the requirements of the Public Authorities (Financial Arrangements) Act 1987 or in any manner approved by the Minister with the concurrence of the Treasurer.

The expanded application of funds in the statutory interest account will enable moneys in this account to be made available for purposes consistent with Government objectives and industry and consumer needs.

Schedule two of the bill also includes provisions to extend the time limit for claims on the compensation fund. The main purpose of the fund is to compensate persons where licensed agents fail to account for money or other valuable property entrusted to them. The bill extends the time limit on claims from within six months of a claimant becoming aware of a failure to account, to within twelve months of this or within two years of the date of the failure to account, whichever occurs sooner. Each year a small number of claims are rejected for being out of time and the measure will assist such claimants.

Another amendment will allow claims in relation to the non-lodgement of rental bonds to be made within twelve months of the termination of the residential tenancy agreement.

In recent months the council has been concerned that it cannot compensate persons where agents fail to lodge rental bonds with the

Rental Bond Board because the defalcation is often not discovered in time if the tenancy extends beyond two years.

The amendment overcomes the problem for the expiration of the two-year maximum period before the tenancy is terminated and both the lessor and lessee have become aware of a defalcation.

The bill provides for two amendments in relation to the procedures governing applications for restoration of a licence. Firstly it is proposed the general manager of the council should have discretionary power to restore a licence without the imposition of a late fee where an application for renewal is received within seven days of the expiry date of the licence. The council regularly receives applications for the renewal of licences soon after their expiry dates and often delays in the mail have caused the application to be overdue.

A grace period of seven days would permit the council to waive the late fee in those cases where applicants have attempted to renew their licences on time. The automatic imposition of a late fee is considered harsh by many applicants and gives rise to complaints that could be avoided if reasonable discretion could be exercised.

The second matter concerns the status of a person who has made application for restoration of a licence and the application is refused by the Local Court following the lodgement of an objection by the council to the granting of the licence. Section 23C(1A) of the Property, Stock and Business Agents Act 1941 provides that anything done between the expiration of a licence and its restoration is taken to have been done while the person was the holder of a licence. Thus consumers retain the protective ambit of the compensation fund. However, if the court upholds the objection and the licence is not restored, there is no provision deeming that the actions of the person in the meantime were those of a licensee. Nor is the person deemed to be licensed pending the hearing of the appeal.

In the interests of consumer protection this amendment will provide that anything done between the expiration of a licence and the refusal of an application for restoration of a licence by the Local Court is to be taken to have been done while the person was the holder of the licence and that the person should also be deemed to be licensed pending the hearing of an appeal against the court's decision.

The final part of the bill, schedule three, deals with savings and transitional matters. Before abolishing the special account, the council will be required to return all moneys held in the account (approximately \$33.6 million) to the trust accounts of the agents who contributed them.

If the persons or firms concerned are no longer licensees, the money will be paid to the Treasurer's Consolidated Fund. As with all unclaimed money, any person entitled to it will be able to claim it from the Treasurer. As soon as all the special account deposits have been repaid and unclaimed money paid to the Treasurer, the special account will be closed.

In summary, the bill streamlines trust account requirements for industry, enhances consumer protection in respect of compensation claims and maximises the use of the funds held by the council.

I commend the bill to the House.

The Hon. R. D. DYER [10.18]: The Opposition supports the Property, Stock and Business Agents (Amendment) Bill. The principal Act, the Property, Stock and Business Agents Act 1941, regulates conduct and dealings in real estate in New South Wales. In particular, the Act regulates the procedures involved when members of the public pay deposits to real estate agents for the purchase of properties. Section 36(1) of the Act specifies that "all moneys received for or on behalf of any person by any licensee shall be paid into a bank in New South Wales into a trust account".

The supervision of money held in trust accounts rests with the body that regulates the real estate industry, the Real Estate Services Council. That council holds four accounts: the administration account, the compensation fund, the special account and the statutory interest account. The bill contains six changes, the first of which relates to the simplification of interest calculation regarding agents' trust accounts. Henceforth interest on the whole of the funds in an agent's trust account is to be calculated at 25 per cent of the current interest rate in an interest rate series approved by the Minister for Housing and paid into the statutory interest account of the Real Estate Services Council. I note that State Treasury has suggested that the prescribed rate of 25 per cent should be maintained for a transition period of two years and that thereafter a more commercial

percentage rate should be prescribed by the Minister.

The second important change contained in the bill is the abolition of the special account, to which I have made brief reference. The special account does not comprise Real Estate Services Council funds; it is composed of 25 per cent of the minimum annual balance of funds that agents hold on trust. As I said, as it is now proposed to calculate and transfer 25 per cent of the interest earned by the agent on the whole of the trust funds, the special account will no longer be required and hence will be abolished by the bill.

The third matter to which I should like to refer relates to the entitlement of permanent building societies to operate trust accounts. Only banks in this State are now permitted to hold agents' trust funds. It is proposed to allow all banks and building societies with trustee status under the Trustee Act 1925 to hold agents' trust accounts. I should also like to mention that in another place my colleague the Hon. Deirdre Grusovin moved an amendment to include credit unions in the category of financial institutions that are entitled to operate such accounts or to hold such

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accounts on behalf of real estate agents. I congratulate the Government on its acceptance of that amendment in another place. There can be no doubt that credit unions are a respected part of the financial community.

The fourth matter dealt with in the bill relates to claims on the compensation fund, the main purpose of which is to compensate persons when agents fail to account for money or other valuable property entrusted to them. The bill provides for the extension of the time limit for claims from within six months of a claimant becoming aware of a failure to account, to within 12 months. The bill will allow claims in regard to the non-lodgment of rental bonds to be made within 12 months of the termination of the residential tenancy agreement. The Opposition supports those changes.

The next matter to which I refer is the application of the funds in the statutory interest account. Those funds are used for approved licensing courses, professional development courses, costs associated with the administration of the Real Estate Services Council accounts, and to meet half of the costs of the Residential Tenancies Tribunal. The bill makes provision to extend the range of permissible areas of expenditure to include community education programs, costs associated with the introduction of co-regulation schemes, disciplinary tribunals or dispute handling bodies, and shortfalls in the Real Estate Services Council administration account. The Opposition also supports those reforms.

The bill provides for minor reforms in regard to licence restorations. It provides for two amendments in relation to the procedures governing applications for the restoration of a licence. The amendments are primarily designed to ensure that the interests of the consumers are protected during the time between the expiration of a licence and the subsequent granting of an application for its restoration. These amendments were foreshadowed by the Minister as a result of a defect in the existing legislation, which was evidenced during the Alliance Strata Management case. That case is ongoing, and the interests of consumers will be protected as a result of the changes to be effected by this part of the bill. The Opposition is happy to support the legislation.

The Hon. D. F. MOPPETT [10.25]: I am delighted to hear that the bill has the support of members opposite. The bill forms part of a package of microeconomic reforms upon which the Government has embarked that has touched many areas of business. I think there have been salutary improvements - as I think the Hon. R. D. Dyer alluded to earlier - as a result of reforms to the licensing provisions of various classes of stock and station and other agents. This glaring problem, this perhaps rather archaic provision for the handling of trust funds and the accruing of interest on those trust funds, is a legacy of that earlier legislation. This legislation is well thought out and has the support of not only the Opposition but all parties. I am very happy to support it.

The Hon. R. S. L. JONES [10.27]: The Australian Democrats are happy to support the Property, Stock and Business Agents (Amendment) Bill, which, among other things, simplifies the methods by which interest accrues on agents' trust accounts. We are pleased that the Government accepted the honourable member for Heffron's amendment to include credit unions in paragraph (b) of the definition of "Prescribed financial

institution" in item (1) of schedule 1. It is good to acknowledge that credit unions are a major part of our financial industry, and they deserve to be included in the legislation.

Reverend the Hon. F. J. NILE [10.27]: The Call to Australia group is pleased to support the Property, Stock and Business Agents (Amendment) Bill. It is a very simple bill which will amend the Property, Stock and Business Agents Act 1941 with respect to money held in trust accounts maintained under that Act and with respect to the use of funds held in the Real Estate Services Council statutory interest account and for other purposes.

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing) [10.28], in reply: I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ENVIRONMENTAL PLANNING AND ASSESSMENT (AMENDMENT) BILL

Second Reading

Debate resumed from 21 April.

The Hon. JAN BURNSWOODS [10.30]: The Opposition broadly supports the Environmental Planning and Assessment (Amendment) Bill, but will move some amendments in the lower House. I understand that the Government will probably accept those amendments. The bill arises out of a review of environmental planning in New South Wales, which has been going on for two or three years now. The bill makes five amendments. The first arises largely out of the court decision in relation to the five sites at Balmain, about which the court found that the Director of Planning had not consulted properly. The amendment is designed to amend section 45 of the Environmental Planning and Assessment Act to define the extent of the obligation of the Director of Planning to consult in the preparation of regional environmental studies or draft regional environmental plans. The Opposition broadly supports this amendment.

The second amendment deals with the powers of consent authorities to jointly advertise exhibits and consider development applications. It is not controversial. The third amendment is more controversial. In the lower House the Opposition will attempt to either remove this proposed new section altogether or to amend it in a major way. The problem with the new section as proposed by the
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Government is its notion that things are deemed to comply with standards. This could be abused. There is certainly legitimate objection by local government to this new section. The Minister for Planning has assured me that he is happy to drop this amendment.

The fourth amendment deals with the introduction of performance based conditions of consent, particularly to enable consent to be expressed in terms of desired outcomes and objectives to be achieved without specifying the particular means of doing so. Broadly speaking, this amendment is supported, as it introduces some flexibility into the planning process. I think some people have reservations about this, but the general thrust of the amendment is supported.

The fifth amendment deals with consent by local government to Crown development applications. Historically, councils - although they have not been able to refuse Crown applications - have often adopted the tactic of not dealing with the proposals; in other words, they have simply delayed them. Local government has expressed concern about this amendment. There has been considerable discussion about possible further amendments to it, and I understand that the Government is prepared to drop this amendment. Perhaps it remains for some further negotiations to take place in the lower House before the exact fate of this new section

is determined. Broadly speaking, the Opposition supports the bill, but believes that it can be improved beyond what has been proposed by the Government.

The Hon. PATRICIA FORSYTHE [10.34]: I am pleased to support the amendments to the Environmental Planning and Assessment Act. Whilst I acknowledge the broad support of the Opposition for this bill, I regret that it has not given total support. The Environmental Planning and Assessment Act was brought in about 12 years ago, and it has had considerable bipartisan support. In 1988 when the coalition came to government the Opposition was concerned that it would make radical changes. In fact, this Act has had support and we have made very few changes since coming to government. When we attempted to make changes we were accused of not consulting, not listening to the community, and acting to meet all sorts of interests that were alleged to support the Government. That has not been so.

In 1991 the Department of Planning issued a comprehensive booklet entitled "Modernising the Planning System". It was by and large a discussion paper aimed at inviting the community to look again at the Environmental Planning and Assessment Act, to test whether what was valid in 1979 was valid in 1991. This bill is largely the result of the extensive review that has been conducted since 1991. The bill arises out of listening to and consulting the community, including local government, those interested in the planning process, and the general community.

These five amendments are minor. They are about improving efficiency, clarifying aspects of the bill and keeping it relevant in 1994. I note that the previous Labor Government introduced the Act. This is a fine bill. It has put New South Wales at the forefront of the planning process. I regret that in this case the Opposition is giving only qualified support - or broad support, as the Hon. Jan Burnswoods said. The first amendment, to section 45, is most interesting. It says something about where the process has gone since the bill was introduced. It shows how community expectations have changed with respect to involvement in the planning process and the right to be consulted. In the 1979 Act section 45 provided that the director shall ensure consultations are held. Indeed, it said no more than that. This bill seeks to clarify the director's role. It highlights how much more involved the community has become in the process, how much more it expects to know and to be involved. It also introduces the time frame - 40 days - in which the director must accept comments on the bill.

The second amendment inserts a new section 4B to enable development applications to be placed on exhibition with a draft plan, rather than by separately and sequentially exhibiting draft local environmental plans and then a draft development application. This amendment was extensively discussed in the booklet "Modernising the Planning System" under the heading "Does current sequential assessment process limit development opportunities?" Many issues were raised at this point, and this amendment is a direct result of that consultation process.

This provision in no way reduces the capacity of the community to be made aware of the development or to comment on it. As the "Modernising the Planning System" booklet said, most developments are currently assessed sequentially. The existing system can disadvantage projects with economic or time constraints where the project's future depends upon the approval of a particular aspect. The order of approval may not be crucial to getting an acceptable development, so long as the applicant gets the necessary approvals before commencing. I think that overcomes one of the concerns about the Act: the time frame involved in the whole process. It will keep the Act modern and maintain community support for the concept.

The third amendment, as the Hon. Jan Burnswoods mentioned, is the most controversial. It inserts a new section 90A. As members will be aware, section 90 introduces all the heads of consideration that must be considered by a consent authority. Proposed section 90A will take the concept a little bit further. It introduces non-discretionary standards. If a development complies, the consent authority will have no discretion to further consider that standard. This change is likely to be of great benefit to small projects. The point that is missed - I know we are prepared to accept some sort of amendment on this - is that this innovation, though it may be a new concept, does not move away from the idea that it is the consent authority that is in charge. Under this amendment it will be for the consent authority to introduce and identify the non-discretionary standards. Local

councils will have a

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role. Non-discretionary suggests non-compromise. Clearly, this will enable the consent authority to define its areas of concern. It certainly does not take away its powers.

The fourth amendment inserts a new subsection (3B) into section 91, and is designed to improve the flexibility of the system. It has been in the public arena for the past two years and has been subject to much discussion in the review of the Act. Clearly, many aspects of a development can be left to the detailed design stage, providing a clear requirement is set for its standard performance. The importance of this particular amendment is that it fits very much with the amendments to the new Local Government Act, which allow for staged approvals. The last section deals with Crown applications. The important point to note is that many local government councils do not like dealing with Crown applications. The role is clarified so that a council that fails to deal with an application within a certain period is deemed to have refused to deal with it. The bill is important to keeping the planning system modern and relevant. It attempts to overcome some criticisms about efficiency and certainty. I endorse the bill.

The Hon. R. S. L. JONES [10.40]: This bill is regarded as fairly innocuous. Nevertheless, the Australian Democrats have a few problems with it. The amendments to section 45 of the Act define and limit the extent of consultation that the New South Wales Government is obliged to undergo with any local government authorities when preparing a regional environmental plan. The amendment appears to result from the embarrassment the Government suffered in the case brought by Leichhardt Municipal Council, decided in the Court of Appeal in December 1992. In that case it was found that the Minister for Planning had not consulted with Leichhardt Municipal Council, that the council was not told in enough detail what the proposals were and was not given sufficient time to respond to the proposals. The bill will not allow a council to know what is being proposed. The council will not be consulted about the substance of the REP before it is drafted. This is a backward step. Further, 40 days is too short a time to allow proper consultation.

The Government's explanation that it is clarifying the law is nonsense. The law is clear. Councils are entitled to be told with some particularity what is proposed and not simply aims, objectives, policies and strategies. The section 72 amendments will allow a development application and a rezoning to be exhibited at the same time. The Department of Planning states that valuable time is lost by separately and sequentially exhibiting and considering a draft plan and development application. That time is indeed valuable. It is the time the public needs to examine the proposals and take them into account, first, from a planning point of view and, second, from a specific development application point of view. A fresh development application can be lodged at any time after a rezoning. It is, therefore, misleading to advertise the development application and rezoning together because a completely different development may eventually take place on the site.

For example, a development application for a flower growing business might be advertised with an application to rezone land to, say, rural industrial. Once the rezoning is through, a fresh development application for a different use allowed under the zone, such as a piggery, might be lodged. By allowing an environmental impact statement to be an environmental study also, the amendments will confuse the roles of the two documents. The EIS is meant as the proponent's document. The environmental study is supposed to be council's own document. This was decided in *Burns Philp Trustee Company Limited v. Wollongong City Council*. The rationale is:

A consultant who is responsible to, and reporting only to, the council is much more likely objectively to approach the question than a consultant who is dependent upon the developer.

By allowing an EIS to perform the roles of both studies, the independence of the environmental study is lost. The Australian Democrats believe that this amendment and the following amendment should not be allowed and should be deleted in the lower House. Proposed section 90 should be rejected outright. Much of the amendment is poorly drafted and nonsensical. The thrust is to limit a council's powers to deal with each development application on its merits. If, for example, there were a non-discretionary standard saying that no building shall exceed 12 metres, any building up to 12 metres would be allowed and the council would not be

allowed to impose a condition of consent reducing the height of the building. This means that the particular circumstances of the site cannot be taken into account. One of the heads of section 90 consideration will be taken away.

On the other hand, if the proposed height of the building is 14 metres, any flexibility, such as that provided by State environmental planning policy 1, would apply to that development application, so that a council could allow developments that breach these standards. In other words, councils could only relax standards, not tighten them. The amendment to section 59 is also objectionable. Section 59 allows a consent that specifies outcomes or objectives that the development must achieve and gives clear criteria against which to measure these. Basically it is proposed to allow a council to say, "Well, you must achieve these standards and we don't really care how you do it. If you say it can be done, just go and do it".

In its attempt to absolve councils from consideration of what may be critical aspects of a development without examining the means by which the outcomes or objectives are to be achieved, councils will absolve themselves from consideration of the development. Further, the outcomes or objectives may not be achievable. Without a full examination before construction commences, this will not be known. If the development is constructed and does not comply with outcomes or objectives, there will be pressure to allow the development to continue. An important purpose of environmental impact assessment

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is to assess whether a development can be achieved within acceptable levels of impact. One has to examine what the development is, not just what it hopes to achieve.

Finally, the section concerning the determination of Crown development applications to a council applies to development applications made by government authorities or departments. Again the law is clear. A council has no discretion when considering a development application from the Crown. It can only refuse the development application or impose conditions if the Minister for Planning allows it. The Minister can approach the Land and Environment Court for an order if a council refuses to comply with the law. *Land Commission of New South Wales v. Baulkham Hills Shire Council*, Court of Appeal (1985) 1 NSWLR 479, is authority for the power of the Minister. I know of no occasions when the Minister for Planning and Minister for Housing has been obliged to approach the court. The system is working. Additionally, the Minister can appeal to the court in the same way as any other developer if a council does not make a decision within the required time. The amendments are not quite so benign as they appear. They are an attempt to speed up development, but at the same time they weaken the Environmental Planning and Assessment Act.

Reverend the Hon. F. J. NILE [10.48]: The Call to Australia group is pleased to support the Environmental Planning and Assessment (Amendment) Bill. The object of this bill is to amend the Environmental Planning and Assessment Act 1979 and its main purpose is to define the extent to which the Director of Planning is obliged to consult with councils and others in the preparation of a draft regional environmental plan and a number of other areas. We believe that this will promote far more efficient co-operation and development in this State and will remove some areas of confusion and also some of the unnecessary delays that occur.

There must be in our State provision for positive development. I do not believe that persons who wish to develop projects should face so many restrictions and barriers that they do not know where they stand and often encounter continuous objections. If that continues, development will come to a standstill in this State and the Government's report of the increased availability of jobs, low inflation and other positive developments would not continue. Therefore, it is important that this type of positive legislation passes this House. We support it.

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing) [10.49], in reply: I thank honourable members for their contributions to the debate. This is important legislation. It will substantially improve the working of the Environmental Planning and Assessment Act without in any way removing any of its environmental protection measures. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ADJOURNMENT

The Hon. R. J. WEBSTER (Minister for Planning, and Minister for Housing) [10.51]: I move:

That this House do now adjourn.

REPUBLIC OF SOUTH AFRICA ELECTIONS

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [10.51]: It seems to me that I should make some remarks about the extraordinary events that have taken place in the Republic of South Africa in the past several days. I had the great opportunity of visiting that republic last year on one of those blessed Commonwealth Parliamentary Association tours. In all the euphoria about events in South Africa and giving all due credit to Nelson Mandela, no one should forget the contribution of F. W. de Klerk. There is an extremely interesting community in the Republic of South Africa. It was my choice to visit Cape Town and only Cape Town after a very enjoyable sojourn in Zimbabwe. What the Dutch did in South Africa, beginning 350 years ago, is very much in evidence today. Why would it not be?

No one could defend apartheid; no one can take from Nelson Mandela the enormous contribution he has made; and no one ought to ignore the contribution of the leader of the National Party in the Republic of South Africa in the past several years. The problems in South Africa are manifest to us all - courtesy of television, apart from anything else. I worry about the problems that will be faced by that country in the coming years. It is my hope that nobody lays a hand upon Nelson Mandela. I am concerned that Nelson Mandela might not survive 1994. God willing, he will. He is a man of judgment and a great Christian gentleman.

From a Christian's point of view, one of the great worries would have to be that the Dutch Reformed Church took a very un-Christian stand on South African society. I give absolute credit to, I compliment, I praise and I admire Nelson Mandela, but it seems to me that one of the finest speeches made by a politician in recent times was that made by F. W. de Klerk in the past day or so. It is very important that the Republic of South Africa should come together. The blacks in South Africa have every reason to resent the white domination of that country. But never let it be forgotten that the whites in that country have been there a long time, too. All praise and glory to Mandela and all praise and honour to F. W. de Klerk.

CALL TO AUSTRALIA ELECTION CAMPAIGN

Reverend the Hon. F. J. NILE [10.56]: As national president of the Call to Australia citizens' movement and leader of the Call to Australia group in the New South Wales Parliament, particularly in the Legislative Council, I am pleased to announce that Call to Australia will launch its 1994-95 election

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campaign on Mothers Day, 8 May. Climaxing on that day, the Call to Australia group will distribute thousands of its 1994 action plan kits to all its members and supporters throughout New South Wales and also to the 3,000 Christian churches in New South Wales. The Hon. Elaine Nile and I will lead the election campaign as leaders of the New South Wales upper House team. We are confident, in spite of statements to the contrary by others, that the Hon. Elaine Nile will be re-elected and that the Call to Australia group will continue to win and to retain what politicians call the balance of power - we prefer to call it the balance of prayer and responsibility - in the New South Wales Parliament.

As the Call to Australia group campaigns for the next election it will seek, particularly through the Hon. Elaine Nile, to represent the mothers of New South Wales, to demonstrate that mother care is always better than child care and to support mothers who choose to stay at home and care for their children. Call to Australia will

also seek to represent the 64 per cent of working mothers who admit, through surveys, that they work only because of economic pressure and that if they had the choice they, too, would stay at home and be the primary child carers of their children. The Call to Australia group will work to promote economic and social policies that will enable working mothers to choose whether they wish to go to work or to stay at home. As I have said, 64 per cent of those mothers would prefer to stay at home. The principle of family split taxation is a Federal matter. The Call to Australia group is glad that the Federal coalition has taken a positive attitude to that economic advantage for single-income families.

Our group will continue to represent the unborn babies of New South Wales and is particularly concerned to develop the decision made recently by Justice Newman. The group is very pleased about that decision and congratulates Justice Newman. The decision has, of course, been the subject of some criticism by pro-abortion groups. Scientific surveys show that the most dangerous place in New South Wales for a baby is in its mother's womb, which should be the safest place. The Call to Australia group would like to do all in its power to make the mother's womb a safe place for the baby. The Call to Australia group has announced its 10-point plan for Australia. The plan has been produced on posters that will be distributed to thousands of people throughout the State. Ours is a plan to give priority to traditional family values within our Australian society. Though it is the Call to Australia 10-point plan, I am sure that many honourable members, particularly those in the coalition Government, support these principles. I venture so far as to say that some members of the Opposition would support them also.

The 10 points include: that all welfare policies should stress the integrity and the preservation of the traditional family unit; that all government programs should respect family values and foster decent, moral behaviour; that no program should provide incentives for immoral sexual behaviour or promiscuity by teenagers; that all fathers should be located and required to fulfil child support obligations; that a welfare voucher system should be introduced for benefit payments to needy families; that programs should be expanded to help families in need to purchase housing; that mortgage interest on the family home should be tax deductible; that parents should be partners in school education and curriculum material to promote family values; that there should be a progressive reduction in taxation for families with child dependants, no tax marriage penalty and split taxation for single-income families; and that there should be tax incentives to assist small businesses to create jobs for family bread-winners.

Those are the main principles of our 10-point plan for Australia. We call it "The Vision for Australia's Families and Future Generations of Australian Children". Recently Mr Al Grassby attacked the concept that Australia has a moral core or consensus. A recent survey published in the *Australian Magazine* on 16 April showed that in our Australian society 74 per cent of the population profess to be Christian. The percentages of other religions in the population were Muslim 0.9 per cent, Buddhism 0.8 per cent, Judaism 0.4 per cent and others 0.5 per cent. All the Christians represent the majority of our community.

AUSTRALIAN CHAMBER ORCHESTRA

The Hon. J. M. SAMIOS [11.1]: Last Friday night I was privileged to represent the Minister for the Arts, Peter Collins, at a superb performance of the Australian Chamber Orchestra at the Sydney Opera House. It included works by Benjamin Britten and Handel, led by Richard Tognetti, orchestra director, and recitals by Yvonne Kenny. Founded in 1975, the Australian Chamber Orchestra is Australia's only national orchestra. It comprises a core group of 17 strings and, depending on repertoire, is augmented by specialist players and soloists.

The orchestra's national program of activities includes subscription series in Sydney, Melbourne, Perth, Adelaide, Canberra, Brisbane and Newcastle, with plans to extend to Hobart in 1995. Honourable members may be interested to know that the Australian Chamber Orchestra also regularly plays in regional centres. Yvonne Kenny is Australian born and is one of the many internationally and nationally acclaimed soloists who have performed with the orchestra. She has had an impressive career as one of the leading sopranos of her generation. She made her operatic debut in London in 1975 and is currently a principal soprano with the Royal

Opera House, Covent Garden.

Having been resident in London for nearly 20 years, she is a regular soloist at the world's great opera houses and appears regularly on the concert platform. The return of the highly talented and dynamic young Australian violinist Richard Tognetti to take up the position of orchestra director in 1989

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was welcomed by patrons of the arts. This opened up an exciting chapter in the artistic history of the Australian Chamber Orchestra. Under the direction of this brilliant young director, the orchestra has reached impressive heights, attracting some of the world's leading soloists. The recital included performances by Yvonne Kenny of Handel's "Julius Caesar in Egypt" and Benjamin Britten's "Les Illuminations".

The occasion was impressive, one in which we can take pride that the Australian Chamber Orchestra has earned a reputation and respect as a leading arts flagship not only of the Australian community but, indeed, of the international community. In the *Sydney Morning Herald* of 4 May Roger Covell spoke of Yvonne Kenny's brilliantly agreeable performance with the Australian Chamber Orchestra as further evidence of her range and outstanding musical

intelligence. This augurs well for the initiatives that the State Government has taken over the years in financially supporting structures such as the Australian Chamber Orchestra. Those initiatives, which have been set by Australia's longest serving Minister for the Arts, Peter Collins, are to be applauded.

MACQUARIE FIELDS SELECTIVE HIGH SCHOOL

The Hon. J. F. RYAN [11.5]: I want to allay the fears of some people who have been making representations to me about the status of the Macquarie Fields selective high school. There are two groups within the community, some who support - [*Time expired.*]

Motion agreed to.

House adjourned at 11.6 p.m.
