LEGISLATIVE COUNCIL AND
LEGISLATIVE ASSEMBLY

Tuesday, 10 May 1994

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JOINT SITTING TO ELECT SENATOR

The two Houses met in the Legislative Council Chamber at 3.30 o'clock p.m., to elect a Senator in the place of Senator Graham Frederick Richardson, resigned.

Mr FAHEY: Mr Clerk, I move:

That the Honourable Max Frederick Willis, President of the Legislative Council, act as President of the Joint Sitting of the two Houses of the Legislature for the election of a Senator in place of Senator Graham Frederick Richardson, resigned, and that in the event of his absence the Honourable Kevin Richard Rozzoli, Speaker of the Legislative Assembly, act in that capacity.

Mr CARR: I second the motion.

Motion agreed to.

The Hon. MAX FREDERICK WILLIS: I thank honourable members for the honour they have done me in electing me to preside at this joint sitting.

The Hon. MAX FREDERICK WILLIS took the chair.

[*Business interrupted - Distinguished visitors.*]

The PRESIDENT: Order! I announce the distinguished presence in my gallery of His Excellency Alexander Losyukov, Ambassador of the Russian Federation, accompanied by the Consul-General, Mr Vladimir Kulagin.

[*Business resumed.*]

Mr FAHEY: I desire to bring up certain rules for the regulation of the proceedings at the joint sitting, which have been printed and circulated. I move:

That the proposed Rules, as printed and circulated, be now adopted.

Mr CARR: I second the motion.

Motion agreed to.

The PRESIDENT: I am now prepared to receive nominations with regard to a person to fill the vacant place in the Senate caused by the resignation of Senator Graham Frederick Richardson.

Mr FAHEY: I propose Michael George Forshaw to hold the place in the Senate rendered vacant by the resignation of Senator Graham Frederick Richardson, and I announce that the candidate is willing to hold the

vacant place if chosen. Senator Graham Frederick Richardson was, at the time he was chosen by the people of the State, publicly recognised to be an endorsed candidate of the Australian Labor Party and publicly represented himself to be an endorsed candidate of that party. Michael George Forshaw is a member of the same political party.

The Hon. M. R. EGAN: I second the proposal.

The PRESIDENT: Does any member desire to propose any other person to fill the vacancy? There being no other nomination, the question is:

That Michael George Forshaw be chosen to hold the place in the Senate rendered vacant by the resignation of Senator Graham Frederick Richardson.

Question resolved in the affirmative.

The PRESIDENT: I declare that Michael George Forshaw, has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator Graham Frederick Richardson.

Mr FAHEY: I move:

That the President inform His Excellency the Governor as soon as practicable that Michael George Forshaw has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator Graham Frederick Richardson.

The Hon. J. P. HANNAFORD: I second the motion.

Motion agreed to.

The PRESIDENT: I now declare the joint sitting closed.

The joint sitting closed at 3.41 p.m.

LEGISLATIVE COUNCIL

Tuesday, 10 May 1994

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

The President offered the Prayers.

MENTAL HEALTH (AMENDMENT) BILL

Bill received and read a first time.

Suspension of certain standing orders agreed to.

PETITION

Anti-Discrimination (Homosexual Vilification) Legislation

Petition praying that because the homosexual vilification amendments to the Anti-Discrimination Act censor criticism of homosexuals, they be repealed, received from the **Hon. R. T. M. Bull**.

MOTOR ACCIDENTS (AMENDMENT) BILL

Second Reading

Debate resumed from 4 May.

The Hon. JUDITH WALKER [2.35]: The Opposition supports the Motor Accidents (Amendment) Bill. I understand from the shadow minister in the other House, the honourable member for Mount Druitt, that the Opposition has some problems with the bill but that the industry and the Government would be placed in a difficult position if the Opposition did not support it. The bill will clarify the principles applicable to the determination of damages to ensure that a court cannot order interest on damages for the provision of certain home care services, such as domestic services, nursing and attendants, and general damages for pain and suffering. It will overturn a decision of the Supreme Court in *Marsland* v. *Andjelic (No. 2),* which held, by a majority of two to one, that interest could apply on amounts awarded for all past losses and notional losses at the current rate set by the Supreme Court of 10.5 per cent.

The Court of Appeal decision in the Marsland case has had a binding effect on a number of third party and workers' compensation claims. The value of the award for general damages, pain and suffering and voluntary home care is already indexed under the Motor Accidents Act. The damages entitlement is not static. It increased from $180,000 at the date of the Marsland accident to $212,000 at the time of the hearing. The Court of Appeal ignored the fact that damages for the provision of certain home care services and non-economic loss were indexed and awarded interest. Bodies such as the Insurance Council of Australia do not sit easily with me. Honourable members will recall that for many years the Insurance Council of Australia and its members - the various insurance companies in Australia - wanted nothing to do with third party insurance. Until recent

times, third party insurance was written predominantly by the Government Insurance Office, though the National Roads and Motorists Association had about 5 per cent of the market, mostly in the Australian Capital Territory.

The insurance industry had to bite the bullet on workers' compensation insurance when the cost of insurance to industry fell more in line with what could be afforded. The insurance industry had become involved in a battle of rate cutting. It did not offer third party insurance because it was terribly noble but because of the advantages of cash flow. The Government allowed it to do so. From time to time the insurance industry announces that motorists will have to pay more for green slips, and they will, but I hope the Government will note that they are already paying an additional $40 to the old motor accidents pool.

As the Government has gone to the trouble of introducing this bill, to which the Opposition has given its support, it might be wise for the Motor Accidents Authority to examine closely what its sister authority in Victoria, the Transport Accident Commission, does in regard to road safety and perhaps spend some of the money under its control in better ways. With all due respect to the Motor Accidents Authority, it is a much more conservative body than its Victorian counterpart, which is very much involved in advertising, making videos and bringing issues related to motor accident claims - third party and otherwise - to the attention of Victorians. The Transport Accident Commission is doing a great job, and the Motor Accidents Authority could well take a leaf out of its book.

Though the Law Society is of the opinion that the law as determined by the Court of Appeal should prevail, it should be noted that prior to the decision in Marsland's case, which led to the problem, the interest rate of 2 per cent could be set at common law. To penalise everyone at the rate of 10.5 per cent on a damages claim that is already protected by indexation would place an unexpected burden on the third party insurance pool. I am sure that the Government is aware of that. Everyone, especially consumers, will be much better off following this alteration to the law. In addition to running costs motor vehicle users pay a considerable amount to have their cars on the road, by the time they pay third party insurance, comprehensive insurance, Roads and Traffic Authority charges and the fee for a pink slip. The Opposition is happy to support the bill.

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The Hon. JENNIFER GARDINER [2.42]: I speak in support of the Motor Accidents (Amendment) Bill. The bill is another in a series of law reforms that flow on from court decisions that appear to interpret statutes in a way that was not expected at the time the bills were framed. The amending bill is a response to a decision of the Court of Appeal in *Marsland* v. *Andjelic (No. 2)* late last year and seeks to restore the law as it existed before the appeal was decided. The decision in Marsland's case was unexpected by insurers, as the Hon. Judith Walker said. They had not taken into account such an interpretation of the Act and, accordingly, had not collected sufficient premiums to fund the additional resulting costs. The bill is necessary because, if no restorative action is taken, insurers will face additional liabilities and will have little or no ability to recover those costs.

The Marsland case related to the discretion of the court to order the payment of interest on an award of damages under the Motor Accidents Act 1988 and the Motor Vehicles (Third Party Insurance) Act 1942. Until the decision in Marsland's case courts had awarded interest when an insurer had failed to make a reasonable attempt to assess the damages and settle the claim, or had made offers that were not reasonable in the circumstances. When an insurer had acted reasonably, interest was not automatically awarded by the court. The decision in the Marsland appeal led to there being a much broader interpretation of section 73 of the Motor Accidents Act, which means that interest is available under more heads of damages and at a much higher rate than was the case previously. To add to the burden of the implications of the case, the court in Marsland's case did not take into account the provisions in the statute that provided for indexation of damages awarded for past voluntary services and non-economic loss, also known as general damages. In that regard the bill will restore the law to the situation that existed before the Marsland decision. Accordingly, I support the bill.

The Hon. ELISABETH KIRKBY [2.44]: On behalf of the Australian Democrats it gives me great

pleasure to support the bill. The object of the bill is to overturn the majority decision of the New South Wales Court of Appeal in *Marsland* v. *Andjelic (No. 2)* handed down on 24 December 1993. The appeal related to the payment of interest. Section 73 of the Motor Accidents Act 1988 states:

> (1) Except as provided by this section, a court shall not, in relation to an award of damages, order the payment of interest, and no interest shall be payable, on an amount of damages in respect of the period from the date of death of or injury to the person in respect of whom the award is made to the date of the award.
>
> (2) A court may order the payment of interest:
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> (a) if the defendant has not taken such steps (if any) as may be reasonable and appropriate to assess the merits of the plaintiff's claim and liability of the defendant in respect of the claim; or
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> (b) if, where it would be appropriate to do so, the defendant has not made an offer of settlement; or
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> (c) if
>
> (i) the defendant has made an offer of settlement;
>
> (ii) the amount awarded by the court (without the addition of interest) is more than 20 per cent higher than the highest amount offered in settlement by the defendant; and
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> (iii) the court is satisfied that the highest amount offered by the defendant was not reasonable having regard to the information available to the defendant at the time the offer was made.

The wording of the section clearly shifts the presumption against the payment of interest except where the defendant - that is the insurance company - has not taken reasonable steps to settle a claim speedily and to make a reasonable offer of settlement. In Marsland's case interest was awarded as a penalty against the insurance company. The former Attorney General, the Hon. John Dowd, Q. C., introduced the Motor Accidents Bill in 1988. Page 3833 of *Hansard* of 29 November 1988 records his comments in relation to section 73 as follows:

> Payment of interest is limited by clause 73. In future, interest will be available only if the defendant has not taken reasonable steps to settle a valid claim. In such cases the availability of interest in the past meant claims were not pursued as quickly as they could have been. It constituted one of the best investments in town and there was no incentive on the plaintiff to take the lump sum and to invest the money at a lower rate of interest.

The policy aim of this administration was made crystal clear in that statement. All parties agreed with it. However, last December in the majority decision of the Court of Appeal in Marsland's case the President of the Court of Appeal, Mr Justice Kirby, and Mr Justice Meagher found:

> It is difficult to see why a successful plaintiff has not got almost a vested right to an award of interest, so that circumstances have to be indeed exceptional before he or she can be deprived of it on any discretionary ground.

That statement can be found on page 4 of the judgment. They argued further:

> As to what components of the plaintiff's claim should bear interest, prima facie we think all components should.

Mr Justice Kirby and Mr Justice Meagher went on to argue that interest should be payable on damages for non-economic loss and voluntary domestic services even though the right to do so "is not so clear". From my reading of the judgment the reasoning they followed was that interest should be payable on damages for non-economic loss because a ceiling has been imposed by legislation on non-economic loss and general

damages are not limited. Their view was strengthened because non-economic loss in their terms would cover pain and suffering, loss of the amenities of life, loss of expectation of life and disfigurement. Indeed, their whole purpose seemed to be an attempt to maximise the amount payable. On page 5 of the judgment they argued:

> It is, we believe, implicit in the decision that if the question were to determine the quantum of `general damages' apart from statute, a still higher figure would have been reached.

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On page 6 they argued:

> What Gogic's Case establishes is that, since the *Ruby* v. *Marsh* principle contains a built-in inflationary factor, it would be a conceptual absurdity to award full interest on general damages as so awarded. In our view that reasoning can have no application in cases like the present, where the amount awarded for "non-economic loss" can hardly be said to be ascertained in terms of the money value at the time of judgment, but is subject to an arbitrary and artificial statutory limit.

Mr Justice Kirkby and Mr Justice Meagher ruled that interest be applied to compensation for voluntary home care at the Supreme Court rate of 10.5 per cent. Prior to the decision, interest had been applied at the nominal rate of 2 per cent on half the compensation awarded to motorists for pain and suffering. The point is that limits were placed on amounts that could be awarded to avoid the spiralling costs associated with previous third party insurance schemes. Honourable members who were present in this Chamber when the legislation was debated in 1988 will be well aware that at that time the newly elected Greiner Government was determined to put a limit on those spiralling costs. This, I think, was taken into account in the Marsland case. In his dissenting judgment, Mr Justice Mahoney argued:

(a) the practice of awarding interest in personal injury cases is of comparatively recent origin;

(b) because of the basis adopted for the calculation of interest (`the conceptual basis') the quantum of the awards of interest grew very greatly;

(c) it was the intention of the legislature, by section 73, to change (or at least to vary) the principles upon which the award of interest should be approached; and

(d) the principles now to be adopted are not what is here proposed.

In view of the clear intent of section 73 when Parliament passed the Motor Accidents Bill in 1988, I would have to agree with the reasoning of Mr Justice Mahoney rather than that of Mr Justice Kirkby and Mr Justice Meagher. To have allowed the Marsland decision to stand would have increased premiums by between $13 and $24 and would have exposed the Government to additional liabilities of up to $130 million. The more generous the payout, the higher the premiums that will have to be paid by members of the public, who are already considerably perturbed about the high cost of insuring motor vehicles.

There is also the problem that claimants may delay providing information to insurance companies, which is what occurred previously when interest was widely awarded. The bill clarifies the provisions of section 73 of the Motor Accidents Act to specifically address the issues raised by the Marsland decision. The bill makes it clear that there has to be and that there will be a limited statutory entitlement to interest. It also makes clear that interest is not payable on domestic services, nursing and attendance. The real value of an award on those grounds is automatically maintained through indexation. There is no obligation on the plaintiff to reimburse any other person for domestic services provided gratuitously.

The bill also makes it clear that no interest will be payable on damages for non-economic loss, the real value of which is also maintained already through indexation. The tests in relation to the payment of interest

which apply under current law will still apply albeit with an emphasis on the need for plaintiffs to provide the full details of the case to the insurer at the earliest appropriate time. Interest will also be payable if the insurer should have revised an offer of settlement but did not and if the insurer did not make interim payments for medical and rehabilitation expenses as required by section 45(2) of the Act. The Australian Democrats support the goal of having claims made quickly, assessed and paid as soon as possible. The interest penalty will still apply where insurers delay assessment or do not offer a realistic settlement. I ask the Minister to continue monitoring the situation to ensure that insurance companies honour their responsibilities. I support the bill.

Reverend the Hon. F. J. NILE [2.56]: Call to Australia supports the Motor Accidents (Amendment) Bill. The object of this bill is to specify the circumstances in which a court may or may not order the payment of interest on an award of damages under the Motor Accidents Act 1988 and the Motor Vehicles (Third Party Insurance) Act 1942. The bill is necessary because of the majority decision of the New South Wales Court of Appeal in the *Marsland* v. *Andjelic (No. 2)* case given on 24 December 1993 in relation to payment of interest. The purpose of the bill is to clarify when interest should and should not be paid. Proposed new section 73 outlines where interest will be paid. It states:

Payment of interest

73. (1) **Limited statutory entitlement.** A plaintiff has only such right to interest on damages payable in relation to a motor accident as is conferred by this section.

(2) **Domestic services, nursing and attendance.** No interest is payable on damages comprising compensation under section 72. A court cannot order the payment of interest on such damages.

(3) **Non-economic loss.** No interest is payable on damages awarded under section 79. A court cannot order the payment of interest on such damages.

Proposed new subsection 73(4) provides that interest is not payable on such damages except in the cases of exemption noted in the bill. The bill spells out how interest, when payable, is to be calculated, and also the rate of interest. Proposed new subsection 73(7) deals with judgment debts. It states:

Judgment debts. Nothing in this section affects the payment of interest on a debate under a judgment or order of a court.

Call to Australia is pleased to support the bill.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [2.58], in reply: I thank honourable members for their support of the bill. Their support of this reform is a clear message to the legal profession that this House intends that the motor accidents scheme in New South Wales be kept affordable and that this House is prepared to support

amendments to the legislation when court decisions blow out the cost of the scheme. I thank the Labor Party and those on the crossbenches for sending a clear message to the legal profession by supporting the bill.

The Hon. Elisabeth Kirkby expressed concern about actuarial costings. I note that, in material supplied to her, Coopers and Lybrand have undertaken certain actuarial costings, and in a costing report indicated to her that the estimated cost per policy of $24 is probably a most extreme case and that the most likely cost will be higher than the reasonable scenario costed at $13 per vehicle as a result of the Marsland decision. The honourable member was also advised that the effect of that decision was to add between $55 million and $198 million to this State's liability in respect of claims incurred prior to 1 July 1989.

As honourable members would be aware, claims that were incurred prior to 1 July 1989 will be paid out of a fund which is generally supported by the taxpayers of this State. Therefore, to have not addressed this reform could have had a potential additional liability to the indebtedness of this State of $198 million as well as an

ongoing annual and ever-continuing contingent liability of all motor vehicle owners in this State. That alone is an issue that commends itself to all members of this House. I thank them for supporting the Government in sending a very clear message to the legal profession in the way it wishes to administer this legislation.

Motion agreed to.

Bill read a second time and passed through remaining stages.

JUSTICES (FINE DEFAULT) AMENDMENT BILL

Second Reading

Debate resumed from 4 May.

The Hon. J. W. SHAW [3.3]: This bill seeks to grapple with the vexed question of imprisoning fine defaulters. It does so in a way which is, generally speaking, a positive development because I think almost everyone will agree that it is undesirable that a fine defaulter be subject to full-time imprisonment. The bill does not preclude that possibility, as we read it, but it does act to make imprisonment on a full-time basis less likely for fine defaulters. Currently there are fewer options available to magistrates or judges faced with people who have defaulted on fines than this bill would make available. The proposed changes include greater and more flexible availability of community service orders, more 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 orders.

Some of the amendments, of course, still leave open quite drastic enforcement remedies such as the garnishee of wages. Obviously there is the prospect that in some cases the impact of those measures will be on those other than the actual defaulter. As I have indicated, there is still the possibility of full-time imprisonment for a fine defaulter, the exposure to the rigours of the prison system, for people who would not be regarded as appropriate for incarceration. Presumably this bill is, at least in part, responsive to a number of recent cases which have exposed the dangers and the excessive nature of full-time imprisonment for people who owe the State monetary penalties. One area of difficulty or criticism of the bill that I want to mention is the proposal of ministerial guidelines to govern the exercise of functions of justices. This aspect is dealt with in proposed section 89F in the Justices Act, which is contained in schedule 1 to the bill. It provides that:

> An authorised Justice must, in exercising or performing powers, authorities, duties or functions under this Subdivision or section 5C of the Periodic Detention of Prisoners Act, 1981, comply with such guidelines (if any) as may be issued by the Minister by order in writing published in the *Gazette* from time to time. A failure to comply with any such guidelines does not affect the validity of any proceedings, decision, order or warrant.

That is probably a little curious in the sense that there is a statutory obligation to comply with the guidelines, yet failure to comply does not vitiate the decision reached. More important is the principle that when people are bound to act judicially they should really be bound by criteria set out in the statute. I am suggesting that at some time we should consider enshrining the guidelines in the legislation rather than leaving it to the administrative direction of the Minister. I appreciate that when the bill refers to authorised justices it is including clerical officers who may be employed in the administration of the Lower Court and may be justices of the peace. In large part these sorts of functions would be exercised by people who are not in the ordinary sense judicial officers. Nevertheless, they have a judicial discretion that should be exercised in accordance with the statute, not in accordance with ministerial guidelines. That criticism is not sufficient to prompt the Opposition to move any amendments in this Chamber and with those observations I indicate the Opposition's support of the bill.

The Hon. JENNIFER GARDINER [3.7]: I support the Justices (Fine Default) Amendment Bill. There

is a clear need to change the current system of dealing with fine defaulters in New South Wales so that fewer of them are in gaol. This bill will mean that fine defaulters are given every opportunity to avoid default imprisonment. It will allow more flexible availability of community service orders and there will be access to periodic detention as an alternative to full-time imprisonment. There will also be the option of civil enforcement through the seizure and sale of property or the garnishee of wages as an alternative to custodial options.

Obviously the periodic detention options lessen the burden on the community when compared with full-time imprisonment. For a start, the offender may remain in employment, which is obviously beneficial to the offender and also to his or her family. The burden on the State's purse is also reduced with fewer

inmates inhabiting the corrective institutions. About a year ago there were 3,920 adult fine defaulters in New South Wales gaols. Others were in the police cells. It is clear that the Act needs changing. At the moment, the fine enforcement scheme under the Justices Act provides two options to fine defaulters as an alternative to gaol. The defaulter may be given time to pay or may serve out a community service order. Defaulters are given oral advice by the police of the existence of warrants and they receive seven days in which to choose one of those options.

However, the defaulter is given only one chance to choose one of those options. If defaulters fail to comply with the community service order at that stage, or choose time to pay, the legislation does not allow for the issue of another community service order at a later time in that case history. The other major problem with the legislation is that periodic detention is not currently available at all as an option for fine defaulters. Further, civil enforcement is available only in very limited circumstances, hence the necessity for this bill. Major amendments in the bill include: first, fine defaulters under the new arrangements will be able to apply for community service orders both before and after the issue of a warrant of commitment. The first application will be granted automatically and all subsequent applications will be assessed in accordance with guidelines for the issue of the community service orders.

Second, where fine defaulters fail to comply with a community service order or time to pay order, the next step will be to attempt to enforce the fine civilly. A sheriff's officer will be authorised to attempt to seize the fine defaulter's property for sale after the fine defaulter has been located by police. That step has to be completed either by the seizure of property or by a determination that the fine defaulter has no property to seize before the next step will be available.

Fine defaulters will also be able to satisfy their fines by periodic detention. This option will be available only if the fine defaulter has previously failed to comply with a time to pay order or a community service order unless the fine defaulter is already serving a periodic detention sentence for other offences, and where civil enforcement has proved to be unsuccessful. The bill provides that on every occasion when a police officer attempts to execute a warrant of commitment, that police officer must serve written notice on the fine defaulter as to the options then available as an alternative to prison and must allow seven days for the fine defaulter to take up one of those options.

If the next step is to be civil enforcement, the fine defaulter will be encouraged to attend the nearest Local Court to resolve the matters either by allowing the seizure of property or by providing details of means and assets to show that civil enforcement will not succeed. If there is any dispute about those facts, the onus will be on the fine defaulter to prove that written notice was not given. The bill also contains some minor amendments which provide that authorising prison officers will be allowed to execute warrants of commitment on prisoners who are currently in custody in gaols. It will also raise the cut-out rate on community service orders from $12.50 per hour to $15 per hour. That is, the rate at which work carried out under a community service order cuts out amounts which are owed under warrants will be $120 for an eight-hour day.

The bill also clarifies the rights of police to rely on photocopies or facsimile copies of warrants of commitment as sufficient authority to attempt execution of those warrants. A further amendment to section 89D of the Justices Act will provide that the only method of enforcement of monetary orders payable to private

payees will be by civil means under the Local Courts (Civil Claims) Act. These amendments will result in a number of benefits to the justice system. The changes to the fine enforcement system will reduce the number of people going to gaol for being unable to pay their fines. This amendment is clearly necessary. The changes will ensure that only those people who decline to take advantage of the options available to them will be imprisoned full time for fine default.

The changes to the system will require police to give written notice rather than oral notice and will ensure that fine defaulters are fully aware of the options available to them and can make informed choices about what they might do to recompense society for their default. The changes will make the system more flexible and will allow fine defaulters more choices should the distinct possibility of injustice occur, particularly for people on lower incomes. The amendment to section 89D will prevent orders payable to private payees being enforced by way of warrant and will remove the risk that people will go to gaol for non-payment of what could be categorised as a private debt. I have pleasure in supporting the bill.

The Hon. JAN BURNSWOODS [3.13]: I wish to make some comments on the new options or alternatives that the Justices (Fine Default) Amendment Bill introduces to full-time imprisonment. I am happy that the Government will ensure that people who are in trouble simply because of their inability to pay a fine will be less likely to go to gaol, though the Government could have taken action on this matter some time ago. I express the hope that in the sausage machine style of parliamentary action that has occurred this week, the Government will ensure that the bill proceeds through both Houses before the end of the week rather than be left until September.

Honourable members will be aware that I have a particular interest in some aspects of the bill, and I wish to cover them in some detail. Before I refer to those areas that I spoke about a few weeks ago, I wish to comment on the broad outline of what the bill seeks to do. In relation to community service orders, a person will be able to convert a fine to a community service order both before and after the issue of a warrant by applying to an authorised justice. The Attorney General said in his second reading speech that granting of the first application will be automatic.

After that, however, the application will be assessed according to guidelines to be published in the *Government Gazette* and fine defaulters will have to show that they come within the guidelines.

I would like the Attorney General to inform the House in his reply what these guidelines are and when they will be published and, in particular, whether they will be available as soon as the bill becomes law. If they are not available now, I hope the Government will ensure that they are available as soon as possible so that we are not in a situation of having heard fine words about the purposes of the bill but are not able to see in detail what it will do. In relation to periodic detention, the bill provides that the fine defaulter can apply for periodic detention after a warrant has been issued and there has been non-compliance with a further time to pay order, community service order or where civil enforcement has failed.

Under civil enforcement, if there has been non-compliance with orders for further time to pay or community service, an authorised justice may use procedures similar to enforcing a civil debt. The justice may issue a warrant to seize property of the fine defaulter or may issue a warrant as a garnishee order. Unfortunately, due to the way the present Act has been administered, some parties who have taken private proceedings, been unsuccessful and had a costs order against them have found the police knocking at their door with a warrant for their arrest. Neither the police nor the courts seek the warrant; the person to whom the costs are owed has been given the power by court clerks to decide whether the debtor should pay off the debt in court. I regard this situation as outrageous.

This bill removes the power of a party who has been awarded costs in a private matter to have the costs order enforced as a warrant of commitment to prison. However, if the present legislation had been properly and sensibly administered this part of the bill would not be needed to ensure that no one goes to prison for a civil debt. I hope all members agree that in this day and age it is shocking to find that courts in New South Wales would even consider sending someone to gaol for failure to pay a civil debt. I raised this matter last month, and

I was delighted at the compassionate response of members of the public to this ridiculous and outdated situation.

The Act provides for the civil enforcement of a costs order in criminal proceedings brought by a private informant rather than by police. Courts need never issue a warrant for a person in default of a costs award. The court has the discretion not to issue a warrant to arrest the person who has failed to pay the costs order. Section 87 of the Act, which will remain under the bill, states that an authorised justice may, by warrant, commit the person to prison. The discretion not to issue a warrant clearly exists. I have taken up the cases of a number of women who faced gaol sentences because they were unable to pay the amount of costs awarded against them when they lost cases involving men who were harassing them.

When I brought one case to the attention of the Attorney General I was astounded at his response. After he had told this Parliament on various occasions - erroneously, we now know, otherwise we would not need the bill - that gaol was a last resort for fine defaulters, he was quite happy for a woman to go to gaol for failure to pay a civil debt. The Attorney General failed to see that by allowing a person to go to gaol for failure to pay a private costs order he was, in effect, allowing a modern version of the archaic debtors' prison.

The Attorney General stated that there was nothing he or the court could do to prevent the woman going to gaol because - and I particularly want to emphasis this point - the other party would not allow the woman to restart payments to him by instalments. Had the court used its sense and its compassion in the first place it would never have allowed the man to gain a warrant of commitment against the woman for a private debt. The first time the man attended court seeking the warrant to put the woman in gaol he should have been told to register the debt in the Local Court and have it enforced like any other civil debt, using section 89D(2) of the Justices Act, which remains in the bill but is renumbered section 89G.

Because the man was allowed the warrant, the power to enforce the costs order as a civil debt was then lost under section 89D(3)(b) of the Act. It was not disputed in this case - and this was put clearly to the Attorney General - that the man involved did not care whether he received the money for the costs order. In fact, his behaviour both to the courts and to the police proved that he did not want the money. He wanted to see the woman go to gaol. It was clear to the courts and to the police involved that he was revelling in that thought. He knew he was in a situation where he could exercise the power to have this woman thrown into gaol simply by refusing to accept any more payments by instalments, and that is exactly what he did.

[*Debate interrupted.*]

SENATE VACANCY

Joint Sitting

The DEPUTY-PRESIDENT (The Hon. D. J. Gay): I shall now leave the chair to permit preparations to be made for the joint sitting to be held at 3.30 p.m. Business of the House will be suspended during the joint sitting and will resume at its conclusion upon the ringing of the bells.

[*The Deputy-President left the chair 3.20 p.m. The House resumed at 3.49 p.m.*]

The President reported that at a joint sitting this day Michael George Forshaw had been chosen as Senator in the place of Senator Graham Frederick Richardson, resigned.

The President laid upon the table the minutes of proceedings of the joint sitting.

Ordered to be printed.

JUSTICES (FINE DEFAULT) AMENDMENT BILL

[*Debate resumed.*]

The Hon. JAN BURNSWOODS [3.49]: When the debate was interrupted for the joint sitting to elect the new Senator I was explaining that under the Act the court had enabled a warrant to be taken out against the woman whose case I took up and that she faced the prospect of going to gaol. The court did not have to do so. It had exercised a discretion to allow the man in the case to have, in effect, the right of veto. I explained to the Attorney General when I contacted him that the man involved did not care whether he received the money for the costs order. In fact he did not really want the money; he wanted the woman to go to gaol.

I contacted the Attorney General's office immediately when I heard about this woman's case because I had heard him say publicly time and again that he did not want fine defaulters to go to gaol. Therefore, it seemed natural to me that I should appeal to his compassionate side to help the woman. After weeks of attempting to plead with the Attorney General's office to take action to help her to avoid a prison term - which, after all, the Attorney General was telling the public was his policy and that of his Government - she and I received letters from him. The letter was one of the most harsh and bureaucratic I have seen. It was full of legalese. The woman had no hope of deciphering the legalese. But there was one simple sentence, which read:

> The clerk of the court has made it clear in this instance that he will not intervene without the consent of the payee.

The clerk of the court, a bureaucrat and a member of the staff of the Attorney General's Department, was leaving the question of whether a person was to lose her liberty in the hands of the very person she had accused of bashing her. Then, wiping his hands of the whole problem, the Attorney General stated in his letter:

> Because of the independence of the courts from the executive government, it is inappropriate for me, as Attorney General and Minister for Justice to intervene or comment upon the manner in which a clerk of the court exercises this discretion.

The clerk of the court is not an independent judicial officer. There is no appeal from a decision of the clerk when he or she is exercising a discretion and has not breached the law. The clerk is a public servant, albeit with lengthy legal experience. The Attorney General should have realised then that it is appropriate, and in fact his duty, to intervene and to comment when a clerk of the court is unfairly interpreting legislation or policy and exercising her or his discretion, which can result in a person going to gaol. The Attorney said in the last line of this offending letter, "I regret I have been unable to assist".

He was probably more regretful when the story hit the media and the Premier stepped in to try to repair the damage that had been done. Aware that many people were offering to pay the woman's costs, after the case had been publicised in the media, the Premier announced that the Government would make an ex gratia payment to the court. The Attorney General went on radio defending his indefensible policy, but again the public was unimpressed with his response. Several people rang radio stations offering to pay the woman's legal bill. Within a short time the Premier had publicly overruled his Attorney General. A number of provisions in the bill say that an authorised justice, usually a clerk of the court, should have regard to guidelines to be published in the *Government Gazette* when deciding what action to take against a fine defaulter in certain situations.

I am pleased that the bill contains a provision stating that in exercising his or her powers, the authorised justice must comply with the guidelines. Since I raised the case to which I have just referred I have been contacted by a legal centre representing a woman in a similar case and by a third woman who had just had an order for costs made against her in a domestic violence case. In one case a woman from the South Coast had moved into a rental property and had become embroiled in her landlord's rather unpleasant marital break-up. She had nothing to do with the landlord or his estranged wife, but the wife's family decided something must be going on with the woman and her new landlord and started to make life very difficult for the woman.

The woman and her two young children were stalked and harassed by a man in his thirties until it became too much and she attempted to seek an apprehended violence order to protect herself and her children. She lost

the case when the man involved produced other members of his family to give evidence in his favour. A costs order was made against her for daring to use the State's laws to protect herself. She was given three months to pay the costs and arranged with the court clerk to do so by instalments. The man accepted the instalments for some time, but suddenly, without explanation, returned the instalment cheques to the court, saying he would no longer accept them and wanted payment in full immediately. When the woman could not pay the amount of approximately $1,200 the man asked the court to issue a warrant for her arrest and - I find this unbelievable - the court gave it to him.

By this stage the woman had packed up and moved far away from the town. Not surprisingly, she wanted to put a lot of distance between her and the stalker, who had been able to defeat her in court. However, one day police turned up with the warrant and gave her the obligatory seven days' notice - in other words: pay in full or go to gaol! She could not possibly pay, so another man was able to see a woman who had got in his way threatened with being sent to gaol. I took this case to the Premier, asking that he treat her in the same way as he had the first woman and that an ex gratia payment be made, as she could not possibly pay the costs. Her case was as disturbing as was the previous one. The Premier was not so helpful on this second occasion. Originally he stated on 31 March - the day the *Sydney Morning*
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Herald highlighted yet another case of the Government sending a woman off to debtors' prison - that the Government would cover the costs of women in that situation.

By the afternoon of 31 March the Premier appeared to be in dispute with his Attorney General over ex gratia payments and backed away from his earlier statements. The Government was totally confused over the issue all of that day, with various spokespeople for the Premier giving different versions of the Government's intention. Some television and radio stations carried stories stating that the Premier had promised to pay the woman's costs; other journalists said they had been told the opposite. The woman actually saw the news and was under the impression that the Premier's statement meant that she was to be helped - not for the benefit of a nice headline for the Premier but on compassionate grounds.

Given all of this, I ask again that the Attorney General, representing the Premier, take a stand and make an ex gratia payment to assist this woman. She has two young children, one of whom has a disability, and is not well herself. The stress and strain of trying to pay off the costs award while on a pension and trying to keep herself out of prison have made her illness much worse. She should never have had to take her case to court in a private action in the first place. She had approached the local police to help her to stop the man from following and terrorising her, but the police failed to act. If the police had applied for an apprehended violence order for the woman, she would not have faced an adverse costs order.

The police told the woman to go to the Local Court and ask the Chamber Magistrate to help her obtain an apprehended violence order. Clearly that was bad advice. It was the duty of the police to help the woman and her children. All that she wanted to do was to stop a madman from getting his thrills by scaring all of them. It is deplorable that the woman was put in this position in the first instance. I hope sincerely that she is treated better by the Government than she has been until now by the justice system. Had the police acted properly, the woman would not be facing this debt. I urge the Government to assist her by making an ex gratia payment. After all, it is a minute amount compared to ex gratia payments made to the former Premier, Mr Greiner, and Tim Moore to pay their legal bills for representation before the Independent Commission Against Corruption. Perhaps the Attorney General might consider a payment such as this in light of the amount paid to Peter Collins for his ICAC legal costs.

I shall now relate the details of a third case. I have been contacted by another woman who in February had a costs order made against her in a domestic violence matter. I have arranged through the New South Wales Bar Association for the woman to be represented, free of charge, in a appeal against the costs order in her case. I thank the association for coming to her aid to try to right this injustice and for having lodged the appeal last week. I am pleased to put forward the details of these cases, for it is clear that only a few months ago the Attorney General saw no need to change the law in relation to the modern-day debtors' prison facing these women. I should add that almost every time a case is brought to my attention of a woman in a domestic

violence situation, or cases of women trying to take action in sexual assault cases or having charges brought against men when there have been allegations of sexual assault, the men involved say the same things about the women.

I raise this matter because the similarity in the claims of the men is always so noticeable. They say the woman is mad, she is an alcoholic, she is suffering from manic depression, she is seeing a psychiatrist, or one cannot believe a word she says. All those types of things have been said about the women involved in the cases I have raised. The litany of repetitive and similar phrases is one of the harshest things that these women have to put up with, and indeed that I and others like me must endure when raising these cases. It is a shame that the three women I have mentioned had to go through the trauma to which I referred because of a justice system that was so unfair to them. I am sure they will be pleased that their cases have resulted in changes to the law.

To conclude my remarks on the bill, I return to what I said at the beginning, that is, I hope the bill will be passed rapidly. A moratorium exists on the costs orders of the women I have mentioned. It would be grossly unfair if through the Government's inaction they were to be forced to wait for months until the bill was passed and received assent. Also, I would again call on the Attorney General to inform honourable members whether the guidelines referred to will be available as soon as the bill becomes law.

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

QUESTIONS WITHOUT NOTICE

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LAW REFORM COMMISSION DISCUSSION PAPER ON ADOPTION

The Hon. B. H. VAUGHAN: My question is directed to the Minister for Education, Training and Youth Affairs, representing the Minister for Community Services. I refer to the review of the New South Wales Law Reform Commission of the Adoption of Children Act 1966. What is the Government's intention concerning the recommendation that all future adoptions include information access provisions, inclusive of children conceived by artificial reproductive technology?

The Hon. VIRGINIA CHADWICK: As I understand it, the report is a discussion paper. It will be considered not only by my colleague but also by the Government, and in due course a response will be given.

NATIONAL EDUCATION PROFILES

The Hon. ELISABETH KIRKBY: My question without notice is directed to the Minister for Education, Training and Youth Affairs. Is it a fact that the national profile on mathematics was allocated to the State of New South Wales? If this is the case, how were the writers of the national profile on mathematics selected? Why were the learned societies representing mathematicians and subject teachers on mathematics not consulted before the profiles were drawn up? Does the Minister not agree that this time it is too late for them to make a valuable input into the national profile on mathematics? Will this now be rectified?

The Hon. VIRGINIA CHADWICK: This question relates in part to a question the honourable member asked not so long ago on the same matter. I do not know the names of the people involved in the development of the profile - it was so long ago that I was not the Minister at the time - but I am more than happy to seek advice from the department and to advise the Hon. Elisabeth Kirkby accordingly. The national profile was adopted last year by the ministerial council in Perth though it was developed three years earlier under the

auspices and chairmanship of the Department of School Education.

I am somewhat surprised that it has only been in the past 12 months that learned academics in the mathematical field have had the opportunity to comment on or have input to a document that has been in the public arena since at least mid-1990. I can pinpoint the time accurately. Soon after I became Minister the Director-General of School Education showed me the document that had been prepared because the deputy director-general, Ken Eltis - now Professor Eltis of the University of Sydney - was going to Melbourne to present it. It has been in the public arena for 3½ years to four years and I am surprised that at this late stage there are comments. However, I take the matter seriously. I will ascertain who was involved in the preparation of the document, albeit so long ago, and advise the honourable member.

COMMUNITY JUSTICE CENTRE SERVICES

The Hon. Dr MARLENE GOLDSMITH: My question without notice is directed to the Attorney General, Minister for Justice and Vice President of the Executive Council, who has previously informed the House about the valuable work done by the community justice centres. Do community justice centres provide services to families to help adjudicate family conflicts?

The Hon. J. P. HANNAFORD: As the Chairman of the Standing Committee on Social Issues, which is inquiring into violence in the community, the Hon. Dr Marlene Goldsmith has a real interest in this question. I am able to inform the House that community justice centres provide a valuable service to the community by providing alternative dispute resolution services. I have previously informed the House of the impressive statistics that quantify the success of community justice centres. Those centres deal with a range of disputes, including family conflicts. I am impressed with the work the community justice centres do to resolve family conflicts. I am not just talking about family law issues, which often result in attempts by the Family Court of Australia to mediate outcomes, but about direct interpersonal disputes, often between children and their parents.

Given the large number of family conflicts that can potentially lead to family break-ups, it makes sense that community justice centres should be promoted as an effective avenue for the resolution of family disputes. Therefore, I am pleased to inform the House that today I have released a brochure that highlights the assistance that community justice centres can give to young people and their parents who are facing family conflicts and family break-up. The theme of the new brochure is "You Don't Have to Go on Fighting". I am happy to circulate samples of the brochure to honourable members and make packages available if required. The brochure is a two-sided colour brochure. Its message is aimed at young people and their parents. I shall make the brochure available through the schools, and I thank the Minister for Education, Training and Youth Affairs for her department's co-operation in its distribution. It will also be made available to all youth clubs and other places where young people gather.

Community justice centres offer families a real alternative to family break-up. The State's six community justice centres offer a free service. They employ trained mediators to resolve conflicts that might otherwise remain unsolved or lead to expensive court action. Community justice centres have developed considerable expertise in mediating in generational conflicts within families. Effective resolution can help avoid the distress of young people running away and the resulting social problems of youth homelessness. The brochure has been produced by the Department of Courts Administration with the support of the Law Foundation of New South Wales in this, the International Year of the Family. Supplies of the brochure can be ordered from community justice centres at Bankstown, Campbelltown, Newcastle, Penrith, Sydney city and Wollongong. Mediators are multilingual and are available to provide services in ethnic communities if the service is required. I commend the brochure to the House and encourage people to access these particular services.

INDUSTRIAL COMPLAINTS DELAYS

The Hon. J. W. SHAW: I direct my question to the Minister for Education, Training and Youth Affairs,

representing the Minister for Industrial Relations and Employment. Does the Minister acknowledge that there is a significant backlog of complaints waiting to be dealt with by industrial inspectors of the Department of Industrial Relations, Employment, Training and Further Education of over 2,000 files each month, more than 50 per cent of
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which are more than six months old? What is the Government doing to reduce this backlog and provide assistance to the underresourced industrial inspectors?

The Hon. VIRGINIA CHADWICK: I would be astonished if there is such a large backlog, particularly given the efficient and effective way my colleague the Minister for Industrial Relations and Employment operates. However, I take on board the honourable member's comments and will refer the question to my colleague. We should get these things into perspective. The department processes almost 6,500 industrial complaints each year. In 1992-93 the department recovered $1.23 million on behalf of employees. The length of time taken to investigate complaints is influenced by their complexity and the successes of the efforts of industrial inspectors in attempting to encourage employers, where appropriate, to settle matters without the need to prosecute. Unfortunately, delays are inevitable in finalising difficult cases. I think the honourable member, with his background, would agree with that comment.

I understand that the number of complaints has increased over those in previous years. No doubt the recession has had its effect in this regard. Nonetheless, the Department of Industrial Relations, Employment, Training and Further Education recognises the need to keep standards of service high and is implementing a number of initiatives aimed at improving performance. These include a new computerised award information system and case tracking systems which are in the process of being developed. Industrial inspectors have been provided with laptop computers to improve their efficiency. Resources have been reallocated within DIRETFE to address complaints currently at hand in those areas of the State where the honourable member thinks there are delays.

An external review is to be undertaken of the prosecutions branch to identify any means of improving efficiency and effectiveness. In addition, the recommendations of the review of complaint handling procedures have been implemented, with a trial of new procedures having commenced on 11 April this year at two city offices and all regional offices. New guidelines have been developed which will assist departmental officers to determine circumstances of the highest priority. The objective is to direct resources to cases where intervention and support by the department are most needed, and to avoid unnecessary delays.

Even in circumstances where the department is unable to take action directly on behalf of a complainant, the department will offer advice concerning civil recovery action if employees fail to resolve a claim with their employer. They will also be provided with a plain English self-recovery kit. I stress that the guidelines are not to be interpreted in black-and-white terms. The DIRETFE documentation to its staff emphasises flexibility in cases of genuine hardship. I will refer the question to my colleague. I hope that the detail I have provided on behalf of my colleague allays some of the honourable member's fears.

LAW REFORM COMMISSION DISCUSSION PAPER ON ADOPTION

The Hon. ELAINE NILE: I address my question without notice to the Minister for Education, Training and Youth Affairs, representing the Minister for Community Services, Minister for Aboriginal Affairs and Minister for the Ageing. Is the Minister aware that in this International Year of the Family the New South Wales Law Reform Commission has recommended that those living in homosexual cohabitation and lesbian cohabitation be legally allowed to adopt babies and children? Is it a fact that every baby has a human right to a female mother and a male father as role models for his or her personal development? Will the Government categorically reject, in the interest of the baby, this irresponsible recommendation?

The Hon. VIRGINIA CHADWICK: I have not had an opportunity to read the Law Reform Commission report, but I have followed with great interest media comment on this matter. I echo comments made by my colleagues the Premier and Deputy Premier on this issue. However, the Government, acting

responsibly, must read the report and consider its recommendations rather than simply respond to statements about it in the media. The report has had a rather precipitate media launch without any member of the Government, let alone my colleague the Attorney General, having an opportunity to read and consider it properly. It is unfortunate that has occurred.

I and ministerial colleagues have had portfolio responsibility for adoption in this State, and fine work has been done in enabling information to be revealed about the origins of an adopted child. I am proud of the report, which has been a great achievement in the history of this Chamber. I would be astonished if the Minister for Planning and Minister for Housing, and the Attorney General and Minister for Justice, did not agree with me that adoption is a vexed area for any Minister. Many fine families in New South Wales would love to adopt a child either because they do not have a child and feel a deep need and desire to provide a family environment for a child, or because they have a natural child or have adopted a child and wish to have another child.

Overseas adoptions were particularly poignant for me, in that many families which had adopted a child from another country wanted to give their child the opportunity of having a sibling. For a variety of reasons there was a marked lack of enthusiasm in the department in that regard. From time to time it even occurred to me that many people involved in adoption in my then department were opposed to adoption - which I found odd. The stark reality is that, given the number of mothers these days who choose to keep their children - as is their right, and the community has an obligation to support them in that regard - a minuscule number of children are available for adoption in this State. If we are absolutely committed - as I suspect all members of this Chamber are - to ensuring that a child is given the best available opportunity, I for one have some difficulty with the recommendations of the Law Reform Commission.

INTERCHURCH STEERING COMMITTEE ON PRISON REFORM REPORT

The Hon. J. M. SAMIOS: My question without notice is directed to the Attorney General, Minister for Justice and Vice President of the Executive Council. There has been recent media coverage of a document released by the Interchurch Steering Committee on Prison Reform. Will the Attorney tell this House whether all the findings of that committee are correct? What does he intend to do about the recommendations of that group?

The Hon. J. P. HANNAFORD: The honourable member continues to show an interest in prison administration issues. I am familiar with the document to which the honourable member refers, although neither my office nor my department were consulted about its findings or recommendations. Many of the figures and situations quoted in the report are out of date, having been drawn from information available in 1991. As a consequence, they are inadequate. Two weeks ago I commented in this House on an article in the *Sydney Morning Herald* authored by Reverend Harry Herbert. At the time I was not aware that two days after that article appeared the document to which Reverend Harry Herbert referred in that article was to be officially released at a ceremony in Sydney.

I have always considered members of the interchurch steering committee to be fine and honourable people who work hard to achieve reform both in the prison system and in society generally. I commend them for that. It was a great disappointment to me that they did not feel it necessary to enlist the assistance of either my office or my department in the compilation of that report. I do not have difficulty with the majority of the recommendations in the report, but much of the information contained in it is not new. Statements in the report which have attracted public attention should therefore be commented on. The document largely deals with the claim that there is overcrowding in our prisons due to the truth in sentencing legislation. The committee has called on the Government to back down and to soften that legislation. I state here quite categorically that I do not intend to do that.

The community called for truth in sentencing and the people expect this Government to stick by that

legislation. Truth in sentencing provides certainty to the community, to the public, and to those who have been sentenced. It is preferable for all concerned. Victims of crime can be sure that, if the person who has injured them, stolen from them, or murdered a member of their family, is sentenced to time in gaol, the time determined by the court will be served out. We are not about to go back to the bad old days of Rex Jackson where 20 years meant seven, and seven years meant two. We are not about to go back to the bad old days of the Labor administration in this State when inmates could get years taken off their sentences at the whim of a Minister.

If Opposition members want to be sure about the attitude of the community to truth in sentencing, perhaps they should take time to talk to the victims or the victims' families. This Government will not back down on its commitment to the people of this State that crime, especially violent crime, will not be tolerated and that anyone who commits those crimes will be locked up for the full time allocated by the courts. The paper released by the Interchurch Steering Committee on Prison Reform highlights claims of overcrowding, especially at the Norma Parker minimum security facility at Parramatta. Yet it is interesting to note that on the day the paper was launched there were 23 vacant beds in that centre. It was, however, lack of information in regard to the 10-year capital works program of the Department of Corrective Services that I consider was most unfortunate.

Fifty per cent of our gaols are more than 50 years old. The problem is principally quality of life rather than overcrowding. I have been attacked by the Hon. Jan Burnswoods on my desire to decommission some of the older gaols in the system, and either build new facilities in the same vicinity or to rebuild the old institutions on the same sites. I will not back away from my desire that those old institutions should be closed. It is a fact that new institutions are easier to manage because the environment is good and the considerable savings from replacing outdated security systems can be directed to meaningful programs to assist the inmates. Yet the building of new centres was presented as an indictment of this Government by both that committee and by the honourable member opposite.

The report also suggested that there was a lack of employment for inmates, but no mention was made of the tremendous efforts to lift industrial employment positions from 1,600 in 1989-90 to 2,600 today, despite opposition from some employer groups. I have personally been involved in talks with employer groups in an effort to make them understand that involving inmates in gainful employment, providing them with a structured day of which employment is a vital part, is the best way to encourage rehabilitation and the smooth running of our institutions. The report mentioned the recent preparation of a women's action plan, but it contained no detail. The department's plan has been publicly released, discussed with a large range of women's groups, and has been readily available since December. I would have welcomed the specific comments of the committee on that report, but these were not contained in the released report.

In the committee's discussion of medical matters, the report failed to recognise the recent initiatives of the department, especially the establishment of the new Corrections Medical Board which is chaired by Professor Ron Penny and which has made significant improvements in the delivery of health services to inmates. Unfortunately, the comments on visiting facilities were also outdated and did not recognise that a substantial amount of money has been spent establishing new facilities at Parramatta, Kirkconnell,

Maitland, the industrial prison and reception centre at Long Bay, as well as at Mulawa. The department has also recently called tenders for a new facility at Bathurst.

Over the past two years visitor complaints have significantly decreased and the number of letters complimenting officers on their assistance has increased. As I have told this House before, great emphasis has been placed on staff training and on recruitment in these particular areas. The members of this House are aware and members of the committee should also be aware that my department and my staff are happy to assist and to co-operate with the interchurch committee in putting together reports such as the one that was just released by the interchurch committee. I welcome the views and the comments of responsibile, independent bodies such as that committee. I hope that the matters raised by me today have been oversights by that committee and that it will feel free to speak with the department and to work with officers there in the future, in order to ensure that we all work together to improve conditions in the gaol.

CHILDREN'S SERVICES FUNDING REVIEW REPORT

The Hon. R. D. DYER: I direct my question to the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier, representing the Minister for Community Services, Minister for Aboriginal Affairs and Minister for the Ageing. I preface my question by referring the Minister to the appointment by her colleague the Minister for Community Services of an implementation committee to provide advice to the Department of Community Services on the implementation of the recommendations of the Children's Services Funding Review, which were submitted in December 1993. Is the Minister aware that the Community Child Care Co-operative in its recently issued annual report complained that the implementation committee has made little progress as a direct result of Department of Community Services failing to adequately service the committee, particularly in the area of data provision? Will the Minister approach her colleague with a request that he facilitate the work of the implementation committee by instructing his department to provide the data required for it to complete its task?

The Hon. VIRGINIA CHADWICK: I will refer the honourable member's question to my colleague in another place. While I noted with concern the comments made by the honourable member, I know the value that my colleague and all Government members place on the provision of high-quality, early childhood services and our desire to ensure that there is appropriate co-ordination of these services, that clearly have developed in a diverse manner over a long period of time. I would be quite surprised if the concerns of the co-operative were valid. However, I take on board the honourable member's question and I will refer it my to colleague in another place.

SCHOOL FEES

The Hon. J. F. RYAN: Will the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier inform the House of the findings of the widely representative committee examining the issue of optional school fees?

The Hon. VIRGINIA CHADWICK: It is true that from time to time and over many years there have been discussions about the free public education system. Those discussions related to whether the fees were mandatory or voluntary, and whether there was punitive action directed towards a child or parent in relation to this matter of fees. I asked a number of major stakeholders in the education area to form a committee and to make recommendations to me about what should happen about a general service fee at our public schools. That committee has reported to me, and I thank committee members for their very fine work.

One of the most interesting features of the deliberations of the committee, which was ably chaired by John Sutton, the assistant director-general of the western region, is that despite the contentious issue of charges in schools, every committee recommendation was reached by consensus and there was no dissent to the findings of the committee. That is remarkable, especially when one realises that the committee included representation by the President of the Secondary Principals Council, the President of the Primary Principals Council, the President of the Teachers Federation, the President of Federation of Parents and Citizens Associations, and the official representative of FOSCO, the Federation of School Community Organisations. Unlike Opposition members, I certainly intend to take notice of the views of the committee.

The committee has identified other equity issues of charges and fees at schools and has requested that it be given further terms of reference to deliberate on these matters. I have happily agreed to that. The recommendations of the committee are valid, and I have already said I will accept and implement those recommendations. That means in future a standard letter will be used by principals to be sent to parents so that any misunderstanding or lack of sensitivity - deliberate or otherwise - can be avoided. Those fees or service charges that are above the State average will be capped.

Despite the wild rhetoric from time to time in this regard, it is worth noting that many schools - in fact, approximately one-third of public schools in New South Wales - have no fees at all. The average fee in New

South Wales is $56 for a secondary school and $24 for a primary school. Any school that is charging above that amount will be now capped. I would like to think that those schools will do what is appropriate when setting fees and will have regard to the State average and the views of the school community before they implement voluntary contributions.

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Today I was intrigued to read a press release from the honourable member for Riverstone in another place. It is clear that he issued a press release without ever having read the report. The report is downright embarrassing. Mr Aquilina, no doubt advised by educational experts opposite, said, "The sharing of education resources between schools will be based on equitable distribution". That already happens. There is a formula upon which global budgets are distributed to schools in New South Wales. That is not some airy-fairy thing plucked out of the air by bureaucrats in my department; it is the result of a round table consultation with the principals' councils, both secondary and primary, to determine an equitable distribution of resources.

That already happens, and it has been happening since 1989 - but it is going to be an initiative of any future Carr Labor government! That is a great initiative! Here is another doozey: "A Carr Labor government would introduce a fair funding policy for schools". The second dot point in the funding policy is: "School fees will be a component considered in the allocation of funds to schools". I assume that means if I still had a child at school and I chose to pay school fees, I would do so knowing that the State would penalise me by reducing the global budget to the school. A school with an active parents and citizens association or which is active in fundraising or has business sponsorship will be penalised.

Another exciting initiative which forms part of the Carr Labor government's fair funding policy for schools is that "School bank accounts should be consolidated in a single statewide account, attracting higher interest, rather than 2,300 individual school accounts". Who will receive the interest on the school bank account? The head of Treasury has discussed this matter with me from time to time. I know what Treasury would like to do with the interest from a consolidated 2,300-school bank account. I know exactly what would happen to that interest. I have said I would fight it tooth and nail because the funds are school funds and the interest on that money is school money. What a great initiative for a so-called fair funding policy! I suggest to Mr Aquilina and to Mr Carr that, first, they should read the report so that they are not so embarrassingly wrong, and, second, they should go back to the drawing-board for their fair funding policy.

DAMAGE TO FRANKLINS STORES BY PICKETERS

Reverend the Hon. F. J. NILE: I wish to ask the Attorney General and Minister for Justice in his portfolio and as representing the Minister for Police and Minister for Emergency Services a question without notice. Was damage inflicted on the Franklins Stores warehouse and grounds during the recent violent storemen's strike and picket? What action is being taken against those persons who were guilty of damaging property and who were clearly videotaped?

The Hon. J. P. HANNAFORD: All honourable members were concerned at the level of violence that appeared to be associated with the picket outside the Franklins facility. On that day the Hon. J. W. Shaw gave notice of legislation to allow peaceful pickets to be made lawful. One wonders whether the Hon. J. W. Shaw had in mind a different picket to that which was drawn to our attention by the media in relation to the Franklins incident. That type of industrial action is deplored by all Government members, although the Labor Party obviously seeks to encourage it.

The Government is intent on ensuring that there are lawfully administered industrial relations laws in this State. That is encouraged by the industrial legislation which is being maintained by the Government. I would have to seek advice directly from the Minister for Police and the Minister for Industrial Relations about the extent of damage caused during the demonstration and the action that is being taken in relation to the damage. I will obtain that information and convey it to the honourable member.

MULAWA INMATE SELF-MUTILATION AND SUICIDES

The Hon. Dr MEREDITH BURGMANN: I address my question to the Attorney General and Minister for Justice.

The PRESIDENT: Order! The level of interjection during question time does not assist Ministers to answer questions. It has really gone too far. I entreat honourable members to keep their comments to themselves, or at least within reasonable bounds.

The Hon. Dr MEREDITH BURGMANN: Is the Minister aware that Mulawa women's prison has not previously had a history of self-mutilation? Is he aware that, in the last six weeks at Mulawa, there have been more than 50 self-mutilations and that one woman killed herself in the segregation unit? Is the Minister also aware that just last Thursday another woman attempted to hang herself in the Ann Conlan wing and is still on a life support system in hospital? Minister, what is going on in Mulawa?

The Hon. J. P. HANNAFORD: In response to the first part of the question concerning whether or not Mulawa has not previously had a history of self-mutilation, the honourable member is obviously leading a life of self-delusion if she believes that is so. That institution has a long history of inmates mutilating themselves. It is a deplorable situation. That is one of the reasons that a report on the redevelopment of that institution was called for. To my recollection that report was commissioned by the previous Labor Government, which did nothing to correct the problem. A report entitled "Women in Custody" is now available for public consultation with a view to correcting many of the problems that have been identified.

The Hon. Dr Meredith Burgmann asked whether a woman in that institution had killed herself. My answer is, no, she died of natural causes. The honourable member also asked whether another woman recently attempted to commit suicide. My

answer to that question is, yes, that is correct. Unfortunately, the woman has had a long history of psychiatric problems and has been receiving treatment in and out of institutions. It is most regrettable that she attempted to commit suicide while she was in that institution. Had the Hon. Dr Meredith Burgmann bothered to contact my office or my department about this matter, she would have established the circumstances concerning that woman. It was not appropriate for the honourable member to mention that case in this House.

The Hon. Dr Meredith Burgmann has a deplorable lack of knowledge. Her allegation that someone had committed suicide was a repeat of an allegation made some time ago by one of her parliamentary colleagues. At that time I indicated to honourable members that the woman referred to had not committed suicide, but that she had died of natural causes. Today the Hon. Dr Meredith Burgmann repeated that allegation in this House. She has not checked her sources of information to establish the accuracy of the matters she is trying to peddle. I have no difficulty making available to the honourable member information about events at Mulawa. I have made it abundantly clear to all honourable members that I will assist them in that regard. I am not happy about events that are occurring at Mulawa. I would like to be able to improve conditions at that institution.

The Government is doing much to address the problems. The Hon. Dr Meredith Burgmann will not further her cause by coming into this House during question time and making allegations that are just not accurate. I have not said that there are no cases of self-mutilation. I have acknowledged that problems exist at the institution. The Hon. Dr Meredith Burgmann must not try to wriggle out of this; she made allegations in this House concerning an individual which are not accurate and which have not edified anyone in this Chamber.

MULAWA INMATE SELF-MUTILATION AND SUICIDES

The Hon. Dr MEREDITH BURGMANN: I seek to ask a supplementary question of the Attorney

General. When cases of self-mutilation and attempted suicide occur will the Attorney General provide those details to members of the Opposition? If he does that, the Opposition will have no need to seek such details in question time.

The Hon. J. P. HANNAFORD: If the Hon. Dr Meredith Burgmann approaches me for information concerning these matters, I will be happy to make it available to her. From time to time women in Mulawa attempt to mutilate themselves. I have visited that institution and seen the results of some of those incidents. The raising of issues such as this by the honourable member does not help the inmates at that institution. Her sense of purpose defeats me. The honourable member, by highlighting cases of self-mutilation by women in that institution, has not done so for the edification of any honourable member. It defies all logic. I hope that this issue is not seen by some as titivating. It is a matter of real concern, which this Government is seeking to correct. The previous Labor Government certainly did nothing to correct it.

LAKE ILLAWARRA AUTHORITY SANDMINING

The Hon. R. S. L. JONES: Is the Minister for Planning and Minister for Housing, representing the Deputy Premier, Minister for Public Works and Minister for Ports, aware of a plan by the Lake Illawarra Authority to allow the mining of three million tonnes of sand from an area of seagrass fish habitat at the entrance to Griffins Bay? Will this huge hole be backfilled with a mix of dredge spoil and coal washer waste? Will the Minister advise the House what impact this will have on the lake in terms of fish habitat, siltation and eutrophication? Does the Public Works Department stand to gain $4 million from this proposal in its guise as the Lake Illawarra Authority? Will the Minister ensure that the Lake Illawarra Authority has a strategic plan for the lake - goals and objectives - and a commitment to ongoing monitoring of the lake?

The Hon. R. J. WEBSTER: I shall seek an answer from my colleague.

MINISTERIAL COUNCIL ON EDUCATION, EMPLOYMENT, TRAINING AND YOUTH AFFAIRS

The Hon. D. F. MOPPETT: Will the Minister for Education, Training and Youth Affairs, Minister for Tourism and Minister Assisting the Premier inform the House of the success of the recent meeting of the Ministerial Council on Education, Employment, Training and Youth Affairs? Will the Minister assure the House of the success of this meeting for the people of New South Wales?

The Hon. VIRGINIA CHADWICK: Only a week or so ago the first meeting of the new ministerial council was held. That ministerial council was formed following a heads of government meeting, which amalgamated a number of ministerial councils. The meeting of the council, which has the most ungainly acronym of MCEETYA, was a success. It was able to advance a significant number of education, training and youth affairs issues. One issue, which I think will be of great interest to our Parliament and our State, is a determination to establish a national gender equity task force to look not only at the education of girls - which is an ongoing matter for the council - but also at the emerging issue of boys' education and educational opportunities.

I, on behalf of this State, enthusiastically supported this proposal because it fits in well with steps that have recently been taken by my department and my ministerial advisory committee, which is chaired ably by my colleague in another place Stephen O'Doherty, the honourable member for Ku-ring-gai.

He is looking at those issues on our behalf. By the time of the next meeting of MCEETYA in October education initiatives in New South Wales will be well advanced. The initiatives, which have been undertaken by New South Wales, have been enthusiastically supported and adopted by the Federal Government and other State governments.

CIRCUS BANS

The Hon. FRANCA ARENA: I ask the Minister for Planning and Minister for Housing, representing the Minister for Local Government and Co-operatives, a question without notice. Is the Minister aware that the Royal Society for the Prevention of Cruelty to Animals is pressuring local councils to prohibit circuses with animal acts and is aiming for a nationwide ban on exotic circus performances by the year 2000? Is the Minister aware that some councils have already banned circuses from council owned land and that there is strong support in the community for such action? Will the Minister advise the Local Government Association that it would be a good idea to have a uniform policy in this State regarding this matter?

The Hon. R. J. WEBSTER: As the honourable member well knows each individual local government area makes a decision about whether to license circuses to perform within in its boundary. So far as I and the Government are concerned that policy will remain. On the broader question of animal welfare, I do not share the view of some people in the community that to train animals to perform in a circus is unkind to those animals. I realise there are other broader issues involved, such as the way in which the animals are caged, handled, fed and treated. I am sure honourable members share common ground on those issues. Within the community there is a wide diversity of opinion as to whether animals should be trained to perform in circuses, or such like, at all.

The Hon. M. R. Egan: It is fast changing.

The Hon. R. J. WEBSTER: The Leader of the Opposition said it is fast changing. I will be interested to see whether the Australian Labor Party comes out with a policy at the next election to ban circuses. I can almost guarantee that will not happen. What is a circus? Is a sheep-dog trial a form of circus? I believe I have adequately answered the honourable member's question, but I do want to say more about circuses. Last week in the House the Leader of the Opposition - who I thought was a man of integrity - raised some rather cryptic questions about my old school and my association with Newington College. I knew what the honourable member was on about at the time, of course, but I did not want to let on. I knew the ALP was attempting - and rather shabbily I might add - to draw one of the longest bows I had ever seen when it raised an allegation which originated in the Transport Workers Union, courtesy of the husband of the Labor candidate for Badgerys Creek, about an alleged irregularity in a government courier contract. As a throwaway line -

The Hon. M. R. Egan: On a point of order: I am not sure what the Minister's answer has to do with either circuses or Newington College. I suggest that for the Minister's comments to be in order they ought to relate, in some way, to the question asked by the Hon. Franca Arena.

The PRESIDENT: Order! Unfortunately, the precedents and presidential rulings of this House are that Ministers' answers do not necessarily have anything to do with the questions.

The Hon. R. J. WEBSTER: I know that the Leader of the Opposition is interested in the rest of this story, in spite of his point of order. In rather shabby fashion, in the course of the speech of the honourable member for Auburn, Mr Nagle, he referred to a man by the name of Hill as a mate of mine and of the Hon. D. J. Gay, who also went to that very good school Newington College. The Deputy Premier also went to Newington, as did the son of the honourable member for Liverpool - who is looking for a seat in this House. I suspect that other members of this Parliament and many citizens of this State attended the school. I became aware that Mr Hill went to Newington College only after this allegation was made. There is a concerted campaign on the part of the Australian Labor Party to throw mud at every member of the Government progressively. This has happened now on a number of occasions, and it will continue to happen.

The Hon. P. F. O'Grady: Tell us about Leon Punch, your great former leader.

The Hon. R. J. WEBSTER: The Hon. P. F. O'Grady wants to delve back into ancient history. I am talking about now. I recall one member of the lower House, the honourable member for Campbelltown - who has switched from one faction to the other in his party - telling me shortly after I was elected to this House that

in early 1984 he was instructed by his leader, the Premier at the time, to go to Goulburn to, as he said, "Dig up some dirt on you". He then said, "But I could not find any". When the honourable member reported back to his leader he did not receive a good reception. That shows the lengths to which some are prepared to go.

The Hon. J. R. Johnson: You don't repeat private conversations. You know the rules.

The Hon. R. J. WEBSTER: The Hon. J. R. Johnson says, "You don't talk about private conversations". I will not tolerate Opposition members in the other place attempting to make out that the Hon. D. J. Gay and I are corrupt simply because we may have gone to the same school as someone they are alleging is corrupt. I understand that the allegation was not able to be sustained. I warn Opposition members that if they start it, we will finish it.

WARRINGAH URBAN CONSOLIDATION

The Hon. DOROTHY ISAKSEN: I direct my question without notice to the Minister for Planning and Minister for Housing. At its meeting on 5 April
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Warringah Council resolved to seek exemption from Sydney regional environmental plan No. 12 and State environmental planning policy No. 25 for a period of 12 months to complete a comprehensive review of its local environmental plan. Is the Minister aware of the growing community concern about the standards that apply to dual occupancy? When can Warringah Council expect a response to its request?

The Hon. R. J. WEBSTER: State environmental planning policy No. 25 was introduced in 1986 by the Minister for Planning and Environment at the time, the Hon. R. J. Carr. I have modified that policy somewhat since I became Minister for Planning; nevertheless, it is helping to achieve what I believe is a bipartisan policy of urban consolidation. Warringah Council, as the honourable member would know, is presided over by the endorsed Labor candidate for Manly, and the endorsed Labor candidate for Wakehurst is a councillor of that council. It is fair to say that Warringah Council has been deliberately difficult with regard to urban consolidation, particularly dual occupancy. I have received a positive response from a number of councils throughout Sydney, including Willoughby, Mosman, North Sydney, Hornsby, Sutherland and Manly - which is in the process of undertaking a housing strategy - and Pittwater, which is also undertaking a housing strategy. Warringah is one council that is out of the step with the others. The reason it is out of step is that it suits its political agenda to be out of step.

Tom Webster, who was a member of this Parliament shortly before the Hon. R. J. Carr became Minister for Planning, went out into the community with a holier than thou attitude about the issue of dual occupancy. He knows that his own council has the power to do a housing strategy, and has been able to do a housing strategy for the past few years. The council can amend the local environment plan and, if it meets the Government's desired density targets, that will entitle it to become exempt from State environmental planning policy No. 25. I do not have any intention of granting moratoria to any New South Wales council.

The Hon. Dorothy Isaksen: What about Camden?

The Hon. R. J. WEBSTER: The honourable member asks about Camden. I have just said that if councils are prepared to carry out housing strategies and amend their comprehensive LEPs, I will exempt them from State environmental planning policy No. 25. I have said that to the councils of Camden, North Sydney, Willoughby and Hornsby. I will tell Warringah Council the same, but I do not think that council wants to hear it because that does not fit the political agenda of Tom Webster and Mayor Green.

The Hon. J. P. HANNAFORD: In view of the hour, I suggest that if members have any further interesting questions, they put them on notice.

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PHOTOGRAPHS OF LEGISLATIVE COUNCIL

The PRESIDENT: Before the House proceeds further, I announce that it is my intention to permit on to the floor of the House tomorrow at question time a photographer who will take still photographs for the purpose of publication in the current year's Annual Report of the Department of the Legislative Council. If any member or party leader has any difficulty in that regard, I ask that he or she consult me in Chambers.

NSW ABORIGINAL MENTAL HEALTH REPORT

Personal Explanation

The Hon. Elisabeth Kirkby: I seek leave of the House to make a personal explanation.

Leave granted.

In the debate last Thursday, 5 May, in which I spoke about the NSW Aboriginal Mental Health Report, I referred to an Aboriginal community in the north of the State whose members had to obtain health services in Lismore. I wrongly referred to the name of the community as Toomelah. The name of the community to which I was referring was Baryulgil. I want all honourable members to be aware that I am now fully apprised of the fact that Toomelah is not related to Lismore; however, Baryulgil is. All of the comments I made about members of the Baryulgil community having to go to Lismore for medical treatment and assistance stand. The Baryulgil community has called for a clinic to be placed near to their area to assist women and children who live there. Unfortunately, the Hon. Dr B. P. V. Pezzutti did not make my mind any easier when he stated that the Toomelah community would have to travel as far as Moree or Tamworth -

The PRESIDENT: Order! I entreat the Hon. Elisabeth Kirkby not to canvass issues but merely to make a correction, if that is her intent.

The Hon. Elisabeth Kirkby: If it had been possible for me to speak in reply to my motion, as I would have done had the debate not been interrupted, I would have left this matter until I had that right. As it is unlikely that I shall ever be able to speak in reply to that motion, I wish to correct the error I made by way of personal explanation on this occasion.

JUSTICES (FINE DEFAULT) AMENDMENT BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. ELISABETH KIRKBY [5.4]: The Australian Democrats support the Justices (Fine Default) Amendment Bill. We agree as Democrats that it is inappropriate for someone to face a term of imprisonment for an offence that does not carry a possible gaol sentence. We fully support initiatives that will encourage the taking up of non-custodial

sentencing options for fine defaulters. It is important to place upon the record that at present about one-third of the New South Wales prison population of 13,000 is made up of people who have refused to pay fines. In 1992-93 almost 4,000 fine defaulters were in prison. Honourable members will be aware of the tragic bashing of Jamie Partlic - an incident that highlighted the often brutal environment of our prisons and how unsatisfactory it is for fine defaulters to be imprisoned.

The Australian Democrats agree that it is nevertheless necessary to have default imprisonment as an

ultimate sanction. However, we believe that all possible steps must be taken to avoid that procedure. Under the major proposals in the bill fine defaulters will have the opportunity to opt to convert an outstanding fine into a community service order at every stage of the fine enforcement process, not simply at the initial stage, as is the case at present. The bill will allow a fine defaulter to apply to an authorised justice, so that the defaulter may serve time under a periodic detention order when he or she has refused to pay, refused to perform community service or when civil enforcement has been unsuccessful. In other words, every effort is to be made to encourage the taking up of a non-custodial alternative before the State moves to a custodial sentence.

A system of civil enforcement introduced by the bill may be used when a fine defaulter has failed to comply with a community service order or a time to pay order. An authorised justice may issue a warrant for the seizure of property for sale at auction. A garnishee order also may be issued if details as to the fine defaulter's place of work or bank account are available. No costs orders made against an individual in a private proceeding will be treated as a fine default. Instead, such costs will be recovered only under the Local Courts (Civil Claims) Act just as if they were a civil debt. This is valuable legislation, especially now, because of the gross overcrowding in our gaols. If 13,000 people are serving terms of imprisonment, we need to be assured that those who are in prison have committed a serious crime and are imprisoned for that crime. For a person to be imprisoned for being in default of a fine simply because that person is out of work, living on a social security pension or has absolutely no money, is surely to go back to the Dark Ages of debtors' prisons, which were so wonderfully written of by Charles Dickens 100 years ago. They certainly have no place in modern society. I am pleased that the Government has seen fit to change the situation by introducing this legislation.

Reverend the Hon. F. J. NILE [5.8]: The Call to Australia group is pleased to support the Justices (Fine Default) Amendment Bill. The objects of the bill are:

(a) to introduce periodic detention and civil debt enforcement as additional alternatives to full-time imprisonment for fine defaulters; and

(b) to alter the procedures governing the availability of the existing alternatives to full-time imprisonment for fine defaulters; and

(c) to make civil enforcement the only means of recovering costs awarded in favour of people who take private prosecutions and to limit the existing options open to "private payees" entitled to the payment of fines, penalties or costs; and

(d) to make various miscellaneous amendments to fine enforcement procedures.

It has been obvious that something along these lines had to be done. In this debate other honourable members have spoken of two cases - both concerning women - that have been a major factor in encouraging the Government to bring forward the legislation at this time. I am pleased that has been done. As honourable members will know, a large percentage of persons in prison - approximately one-third - are regarded as fine defaulters; that is almost 4,000 people.

It concerns me that fine defaulters are put in prison alongside violent criminals and that young offenders in particular may be subjected to physical or sexual abuse by older prisoners. In recent days there have been further reports of such incidents. This bill is important because it distinguishes fine defaulters from those who should be behind bars. Clearly this legislation provides alternatives, such as community service orders, periodic detention and other options, for fine defaulters. In the past, supervision of community service orders has sometimes been lax. It is important that any order be carried out with diligence. It is not in the public interest for fine defaulters to abuse and seek to take advantage of any additional alternatives. Therefore, I urge the Government to monitor the options carefully.

I am pleased to support schedule 1(4), which removes the availability of warrants of commitment to prison for unpaid costs awarded in favour of private informants in private prosecutions. In future civil enforcement procedures will be the only method of enforcing costs orders in favour of private informants. In recent times some persons who have been prosecuting have been vindictive and used that warrant procedure to have a fine defaulter imprisoned. Also, the threat of imprisonment hanging over a person's head was a means for

intimidation or blackmail. It could also be used to silence individuals who may have information they wish to pass on to police. I welcome the removal of the use of prison as a final threat against a particular individual. Call to Australia is pleased to support the bill.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [5.13], in reply: I thank honourable members for their support for the bill. I shall ignore the comments of the Hon. Jan Burnswoods in the same way as honourable members ignore all comments by her in this Chamber. However, with regard to guidelines, which were raised in the debate, I wish to emphasise that their purpose is to ensure consistency of the application of the law in this particular area. Authorised justices are justices of the peace; they are not magistrates nor judges. They are normally administrative officers within the courts, exercising power as a result of this

legislation. In considering these applications, authorised justices are in effect performing an administrate function, even though their discretion must be exercised in a judicial fashion.

Therefore, I formed the view that guidelines should be prepared to ensure that the officers exercise the administrative function in a similar fashion right across the State. I have found during my administration that many justices have been exercising their discretion in different ways in different court houses. On occasion that has led to injustices, and some of those have been adverted to in the House. Therefore, I formed the view that although the authorised justices are exercising an administrative function but in a judicial fashion, it would be inappropriate for me as Minister to issue instructions to them in the usual way. It would be more desirable to issue guidelines and make them publicly available through the *Government Gazette*, informing those interested of the appropriate approaches to be taken by authorised justices in administrating those functions.

The guidelines are currently being drafted and will result in more openness. The final form has not been settled but the guidelines will be made available as soon as they are finalised. They will set out circumstances in which a community service order or time to pay order may or may not be granted in substitution for an unpaid fine or some other order, and will ensure that the discretion remains with the authorised justice. Where there would otherwise be an injustice, the guidelines will provide consistency for justices of the peace right across the State in exercising that discretion and will assist those making an application for assistance. I thank honourable members for their support for this important reform.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ANTI-DISCRIMINATION (AMENDMENT) BILL

Second Reading

Debate resumed from 4 May.

The Hon. FRANCA ARENA [5.17]: The Anti-Discrimination Act 1977 was introduced by former Premier Neville Wran on 23 November 1976 with these words:

> The protection of fundamental rights and freedoms of the individual is of paramount importance to governments. The principle that all human beings are born equal, have a right to be treated with equal dignity, and a right to expect equal treatment in society is a principle firmly upheld by my Government.
>
> One of the greatest contributions to the world unrest is the conflict of people of different races, the intolerance that has prevented the peaceful co-existence of people of different nationalities and the prejudice that has blighted their mutual respect as human beings, each for the other. These intolerances and prejudices are reflected today in confrontations taking place in different parts of the world. This bill is an attempt, as far as legislation can, to end intolerance, prejudice and discrimination in our community.

The Anti-Discrimination Act did not end all of that, but it has gone a long way towards making people aware of their rights. At the time the bill was considered controversial and too radical. It was stalled in the upper House. Articles such as "Bill sparks protest avalanche" - which appeared in the *Bulletin* of March 1977 - were seen in all major newspapers, with 500 letters of protest received by Sir John Fuller, Leader of the House at the time. Let it be a lesson to us all: though we should always listen carefully to people who in good faith are trying to change the stand taken by members of Parliament, we should also have the courage of our convictions and go ahead if we think that justice is on our side.

The Anti-Discrimination Act has been a great success, and I am sure that has been acknowledged by all members of this House. I am glad to be speaking tonight on a bill which will emphasise the original aims of the Anti-Discrimination Act. The measure will receive the full support of the Opposition. The bill is the product of extensive consultation undertaken in 1972 by my esteemed colleague the Hon. J. M. Samios to review the operation of the racial vilification provisions of the Anti-Discrimination Act 1977. Even though I was not personally involved with the review, at the time I was contacted by many organisations such as the Ethnic Communities Council of New South Wales, CO.AS.IT - the Italian welfare centre, and others.

My party supported the review as it supported the racial vilification Act, which was, however, opposed by a few organisations such as the Free Speech Committee, the Australian Journalists Association and the Australian Press Council. According to representations made by these bodies, free speech in Australia was at risk and the legislation would muzzle all reasonable comment. This was, of course, a lot of nonsense as there has not been a single prosecution under the Act. Since the Act was amended in March 1994 approximately 1,293 verbal inquiries have been made, with 400 written complaints - a total of 1,704 complaints. I have to use the word "approximately" because the board has to assess complaints after it receives them before deciding whether they have validity under the Act. All these complaints were conciliated, and that I think is excellent. This is the proof that whilst we uphold in our community the right to free speech, which we all hold very dearly, we also accept there must be some limitation even to free speech and that this right cannot be abused.

I shall now refer to the bill in detail. The bill expands the definition of race to include descent and religion as aspects of race for the purpose of the racial discrimination and racial vilification provisions of the Act. This means that groups such as Jews, Sikhs and Muslims have access to the relevant provisions of the Act. I spoke about this during the Address-in-Reply debate earlier this year. The policy of the Anti-Discrimination Board has always been to include these groups. There is no race such as Jews, Muslims or Sikhs. It is an ethnic religion definition which should be acknowledged in law. The Anti-

Discrimination Board has always included these groups, but such policy was recently challenged in the Equal Employment Opportunities Tribunal and therefore we need to give such policy legislative basis. It is specifically these groups I have mentioned that suffer racial vilification.

Proposed section 20D will increase the penalty for serious racial vilification from 10 to 50 penalty points. The term of imprisonment remains at six months whilst the maximum penalty for corporations remains unchanged at 100 penalty units. Let me point out to the House that 75 per cent of complaints have been against corporations in the media, but I am glad to report that all of them have been conciliated. Headlines such as "400,000 Traitors in Australia" during the Gulf War obviously referred to people of Arabic background in Australia. Tabloid newspapers are keen on sensation headlines but such destructive and hideous headlines can only do irreparable harm to the cohesion of Australian society. Some of the recommendations of the Samios report were not taken up, such as recommendation 10, which reads:

> The offence of serious racial vilification should be relocated, into the *Summary Offences Act* 1988. At the same time, the *Anti-Discrimination Act* 1977 should be amended to make it clear that the President of the Anti-Discrimination Board can either prosecute or refer a matter to others for prosecution where he or she believes on reasonable grounds that an offence of serious racial vilification may have been committed.

I support rejection of this recommendation. If racial vilification were under the Crimes Act, the police would

have the right to prosecute. Police officers are not the least racist people in our society and certainly would not have the years of experience and expertise accumulated by members of the Anti-Discrimination Board. Also, police would not have the option of conciliation by the Anti-Discrimination Board, an option which is taken up by all complainants. I was pleased that recommendation 6 was implemented. It states:

> The Ethnic Affairs Commission, the Ethnic Communities' Council of New South Wales, and other bodies specified by the Act or Regulations, should be empowered to lodge complaints with the board in their own name.

But I was disappointed that recommendation 15 was not implemented. Recommendation 15 states:

> The *Anti-Discrimination Act* 1977 should be amended to allow the President of the Anti-Discrimination Board to refer complainants to other government agencies, state or Commonwealth, with the complainants' consent.

I realise that if the president of the board were given such power, some people would view it as a conflict of interest. But given the board's track record I believe such process would be administered fairly. Above all, I hope that recommendation 14 will be implemented as quickly as possible in the next Budget. Recommendation 14 states:

> As a matter of top priority, additional funding should be committed to the Anti-Discrimination Board to publicise the racial vilification laws, and how to access them.

That is incredibly important. It is practically useless to pass legislation if people are not aware of it. The board needs funding for education programs and radio and television campaigns to promote social harmony. I turn now to the HIV-AIDS provisions of the bill. People with HIV-AIDS were covered previously by the physical and intellectual disabilities provisions of the Act but were not covered for vilification. The Anti-Discrimination Board was aware of the grave discrimination against people with HIV-AIDS and decided in May 1991 to hold an inquiry into the issue. The terms of reference of the inquiry were as follows:

1. The extent of discrimination against people who have, or are presumed to have HIV or AIDS - in employment, provision of goods and services (including medical and health services), and accommodation.

2. How current laws, policies and practices in both the public and private sectors affect HIV/AIDS related discrimination.

3. What options are available to government instrumentalities and public and private sector organisations to counter HIV and AIDS related discrimination.

I put on record my thanks to Mr Alastair McConnachie for sending me a copy of the report so promptly. I appreciated that very much. The report of April 1992 confirmed that there is widespread prejudice against people who are, or are assumed to be, infected with HIV. We must acknowledge that one of the most devastating impacts of HIV-related and AIDS-related prejudice is the discrimination which flows from that prejudice. As the report points out, Australia has a proud reputation as a nation in which all people receive a fair go. However, the impact of HIV and AIDS has severely challenged that position. Many people in our community do not receive a fair go. They have been subjected to prejudice, discrimination, vilification and even violence because they are infected with HIV, or because it is assumed that they are infected.

Some of them have been forced out of employment and accommodation. Some have been denied basic health care. Their rights to privacy and confidentiality have been almost routinely violated. They have been denied basic human rights, and they have been subjected to physical violence. Members of the social issues committee who conducted an inquiry into the effects of HIV and AIDS are deeply aware of discrimination suffered by those people. For many people, HIV-related and AIDS-related prejudice and discrimination are so extensive that they simply accept them as part of life, feeling powerless to do anything about them. There are very few effective mechanisms by which they can seek to protect the rights that most Australians take for granted.

HIV-related and AIDS-related discrimination not only causes distress to its victims, their families and friends, but also attacks society as a whole and undermines attempts to stop the spread of the virus. The very real economic cost to the community is enormous. Those who could continue in employment may find themselves forced onto social security. Those who could maintain private accommodation

may find themselves forced into public housing. Those who might have received minimal early medical intervention may find themselves precluded from receiving effective health care until they require hospitalisation. There was a great need to address this problem to ensure that all people, including those with HIV infection, have a right to live without facing prejudice, discrimination, public humiliation or vilification.

I commend the Anti-Discrimination Board for its report. I commend the Minister for taking action, even though it was a bit later than was suggested by the Anti-Discrimination Board. The board suggested that six months after the report legislation should be introduced. It was a bit late, but, nonetheless, I congratulate the Minister. The miscellaneous amendments are supported as well by this side of the House. Some are merely technical but others are important. For instance, page 18 of the bill, schedule 4, item (2) will delete the definition of "trade union" and replace it with the term "industrial organisations" to be in line with its wording contained in the Industrial Relations Act 1991. Item (4) of that schedule covers people who associate - and I emphasise the word associate - with people of ethnic backgrounds, gay people, or people with HIV-AIDS or disabilities.

If a person is denied access or services, at the moment, only the person being denied can lodge a complaint. If an Aboriginal person goes into a bar with a companion and is denied a drink because the person is an Aborigine, the companion is not allowed to lodge a complaint. When this bill is passed, the person accompanying the complainant also will be able to lodge a complaint. New section 10B will allow the Act to cover local government councillors. New section 21, which deals with special needs, programs and activities, covers organisations such as women's refuges and ethnic services organisations, which cannot be subjected to the Act.

I will not mention all the amendments, but I will say that the Opposition supports them because in the main they will strengthen the Act or make procedure for complaints more consistent. I commend the Government for this legislation. My honourable and esteemed colleague the Hon. R. D. Dyer, who is the shadow minister for community services, will address the very important disability section of this bill. The only other comment that I would like to make is to thank the Minister for making two officers of his department available to give a briefing on the bill. I support the bill.

The Hon. J. F. RYAN [5.32]: It is with great pleasure that I support the Government's bill. This is indeed a grand piece of legislation which seeks to update the Anti-Discrimination Act and to broaden its scope. In doing so, I am sure that it meets with the enormous approval of all members of this House. There are many aspects of the bill which we could seek to deal with but I wish to draw attention largely to the amendments set out in schedule 3 to the bill. Those provisions seek to broaden the definitions relating to people with disabilities. It gave us all great pride recently - or at the end of last year - to sponsor amendments to the Disability Services Act 1993 and the Community Services (Complaints, Appeals and Monitoring) Act 1993.

This legislation continues that theme of progressing in that direction - the direction which was set out in that landmark legislation. This bill includes provisions which seek to merge the existing grounds of physical and intellectual impairment into a single ground of complaint in relation to disability. This will mean that people will no longer have to define whether they have either a physical or intellectual disability to receive redress under this Act. From the time this Act is passed, all people with disabilities will be treated in the same way, as they should be. I have noted in my discussions within the sector of community services, which provides services to people with disabilities, that they find it confusing, insensitive and totally unproductive to have to draw such distinction between the sorts of disabilities from which they suffer.

For people with disabilities, these artificial forms of division serve no useful purpose, and it is good that they are to be abolished with the passing of this Act. Having said that, I would also like to draw attention to

those provisions of this particular schedule of the bill before the House which relate to people with learning difficulties. This is not unrelated in some way to what I said before, in that people with disabilities find difficulty with somehow having to define whether they have a physical or an intellectual disability. Some people, particularly parents of children with learning difficulties, have found to some extent that the treatment given to them has been somewhat different from the treatment given to those people who have suffered from a physical disability. They have sought to draw that to the attention of many members of this House and to many members in the other place.

This bill will include in the definition of disability people who suffer from a disorder or malfunction that results in a person learning differently from a person without the disorder malfunction. Additionally, it includes in the definition of people with disabilities "any disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment that results in disturbed behaviour". I know from many submissions I have received that groups such as the Council for Intellectual Disability and support groups for children with the disorder known as either attention deficit disorder or attention deficit hyperactivity disorder particularly welcome this amendment. For the first time in this State learning difficulties and difficulties such as the ones I have just outlined, behaviour disorders, have been broadly recognised.

The origins of the fight for this sort of recognition go back at least to the annual conference in 1993 of the parents and citizens association at which a motion was passed calling upon the

Department of School Education to recognise a specific category of disability they referred to as learning disability. That excellent discussion paper, which was issued to support that motion, drew attention to the fact that learning disabilities result from neurological dysfunction or impairment that may cause affected students difficulty in learning by some methods. Strategies may be employed to assist learning disabled students to maximise performance, but such strategies will not remove the disability. They listed as the sorts of disabilities that this applied to, such disabilities as visual and perceptual problems, scotopic sensitivity syndrome, dyslexia, auditory and conceptual and processing problems, short-term memory problems and other combinations of these conditions.

I would add, as has been drawn to my attention since this paper was published, the condition known as ADD, or attention deficit disorder. These children need specific assistance in the classroom to help them learn. They include things such as tinted lenses, printed material on coloured paper, large print, audio cassettes on which to receive or submit work, computer training to assist with setting out producing work, and assistance from aware speech pathologists. They also may need assistance from teachers' aides, electronic behaviour monitoring devices and token schemes which assist teachers with behaviour management. These assistances and aids are needed by children who suffer from conditions such as ADD just as much as a person with a disability needs a wheelchair to walk. These people regard this sort of assistance as their wheelchair and have been impressing upon the Department of School Education their need for this assistance; they want it recognised within the public education system.

I am pleased that the bill the Attorney General has brought before the House places their needs on the record and will give them a means to ensure that their needs are justly recognised. This Government has a first-class record on recognising and providing for people with special education needs. When the coalition came to office it promised a special education program worth $100 million. To the best of my knowledge that program has been implemented. I think back only to the comments which were made by the then education Minister, who was part of the outgoing Government, Mr Rodney Cavalier, who simply refused point blank to recognise learning difficulties or provide for them. This Government has had the courage to provide for people with learning disabilities. I am sure that as a result of its commitment, which has been outlined in the passing of this bill, it will continue to make progress in that area, and I know that many parents will recognise that.

In closing, I pay tribute to some people who have done an excellent job in bringing these issues to the attention of members of Parliament. I am sure I will not be the only member of Parliament seeking to pay tribute to these people. Mrs Dale Stauffer, from the Hunter support group for people with attention deficit disorder, has worked tirelessly for the benefit of children with this condition. Mrs Stauffer staged and

organised a superb conference which dealt with this disorder. The conference was attended by members of this House and members in another place, representing all political parties. We had an opportunity to listen to Dr Russell Barkley, Professor of Psychiatry and Neurology at the University of Massachusetts Medical Centre. He is an internationally acknowledged expert on the diagnosis and management of attention deficit disorder.

The conference was superb and was held in two places, Sydney and the Hunter. I understand that about 1,200 parents attended the Hunter session and about 800 parents attended the session held at the Wesley Centre in Sydney. I had the opportunity to attend the session held in Sydney. The conference was outstanding and assisted teachers, parents and medical practitioners who deal with the condition. Mrs Stauffer should be commended by all members of this House for her outstanding work in drawing attention to this problem. I also hosted a meeting at Parliament House to which Mrs Stauffer brought Dr Tait from Westmead Hospital and Mr Ken Johnson, O.A.M., who is a well-known campaigner for children with learning difficulties. The meeting was attended by members of this House. Those people eloquently put their point of view on the needs of these children. They will be grateful for the recognition the bill gives to children with learning difficulties.

I know that my comments will be echoed and expounded upon by other members who will speak later in the debate. I recognise that the provisions in the bill mirror similar provisions which were introduced by the Commonwealth Government in the Commonwealth Disability Discrimination Act 1993. This Government has shown its support for that wise move on the part of the Commonwealth by reflecting it in the legislation which is to be passed in New South Wales. I commend the Minister for showing interest in people with disabilities. The record of the Government in legislating for the benefit of people with disabilities is well known. The bill stacks up well with legislation I referred to earlier and supports that legislation. The provisions in this bill will be commended by all honourable members and supported almost without exception by the community generally. I am grateful to have had the chance to speak in support of the bill.

The Hon. R. D. DYER [5.43]: As my colleague the Hon. Franca Arena said earlier, the Opposition is happy to support this legislation. My colleague referred to some other provisions of the bill which deal with penalties for serious racial vilification, HIV-AIDS vilification and miscellaneous amendments. I intend to speak briefly on that part of the bill, namely schedule 3, and to a lesser extent on miscellaneous amendments in schedule 4 bearing on the question of disability. I agree entirely with what the Hon. J. F. Ryan said about the Disability Services Act and the complaints, appeals and monitoring legislation enacted last year. I attempted, on behalf of the Opposition, to approach that legislation on a bipartisan basis and I am attempting this evening to approach the present amendments on a bipartisan basis also.

I do that because I do not feel that it is appropriate to score political points in the area of disability. That is not to say that from time to time the occasion will not arise when the Government and the Opposition might have a slightly different perception of some issue affecting the disabled community. However, I believe it is appropriate wherever possible to approach this matter on a genuine and even basis in an endeavour that the Government and the Opposition should promote the interests of people with disabilities. I thank the Minister and his officer, Mr Alastair McConnachie, senior policy officer of the legislation and policy division of the Attorney General's Department, for the briefing that was provided to me and my colleague the Hon. Franca Arena last week, which assisted our understanding of this proposed legislation.

In a nutshell, as the Minister said in his second reading speech, the primary purpose of the proposed legislation so far as it relates to disability is to merge the existing grounds of physical and intellectual impairment so that henceforth there will be a single ground of complaint in regard to disability. Various difficulties can arise and no doubt did arise under the previous regime with the separating of intellectual disability and physical disability. For example, as the Minister said, where conditions which originate from the brain such as stuttering, epilepsy, cerebral palsy and multiple sclerosis are characterised as intellectual impairments, that can give rise not only to difficulty but to a certain degree of offence and disappointment on the part of those who suffer from any of those conditions to which I have just referred.

I have visited the Spastic Centre of New South Wales. It should go without saying that people who suffer from cerebral palsy, to take one example, are by no means unintelligent. Although the condition of those people inhibits their movements or their manner of speech, by the use of keyboard instruments they can communicate effectively and the disability from which they suffer can, to that extent, be largely overcome. Apart from merging the two grounds, the Government has taken the opportunity, to the fullest extent possible, of promoting consistency with the provisions of the Commonwealth Disability Discrimination Act 1992, which came into effect in March last year. The Opposition sees that as a desirable objective.

The Opposition supports both of the principal objectives, that is, promoting consistency with Commonwealth legislation and assimilating the two grounds of physical and intellectual impairment within the single ground of complaints relating to disability. I also join with the Hon. J. F. Ryan in welcoming the inclusion within the definition of a formulation that gives assistance to children suffering from learning disabilities. I have received as much correspondence in regard to this definition as I have received on any issue that I have dealt with in this shadow portfolio and probably within my parliamentary career, which is now approaching 15 years.

The Hon. J. F. Ryan: And many more years.

The Hon. R. D. DYER: And many more years to come. I am glad the Hon. J. F. Ryan joins with me in that regard. Leaving that matter aside for one moment, it intrigued me somewhat, when I asked the Attorney General a two-part question in the last few weeks which related to this definition, that the Minister answered only once in the negative. Until last week I continued in a state of some doubt as to the Minister's intentions. However, I am happy to see within the definition provision of schedule 3 item (1) subparagraph (d) a reference to "a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction". If that provision had not been included in the bill I, and no doubt other honourable members, would have had some other things to say.

However, the Government received the message and the definition has been included in the bill. To that extent the Opposition is pleased. It welcomes the moves made by the Government in that regard. I do not want to waste the time of this House by going over matters that are common ground. However, I wish to say that the Opposition regards disability discrimination as a serious and important matter. The Opposition believes that this matter is being effectively addressed by schedule 3 to the bill. In my customarily thorough way I have consulted the peak disability organisations. The New South Wales Council for Intellectual Disability made some comments to me. It appears that the Hon. J. F. Ryan recognises -

The Hon. Dr B. P. V. Pezzutti: How ungracious!

The Hon. R. D. DYER: I am not attempting to be ungracious; far from it. I am merely saying that the Hon. J. F. Ryan recognises, as I do, that the Council for Intellectual Disability tends not to rest on its laurels. It tends to advance its claims with some vigour. Earlier today I took the opportunity to give to the Minister's advisers a copy of the comments made to me by the Council for Intellectual Disability. The last thing I wanted to do was to take the Government unawares. I wanted the Minister and his advisers to have an opportunity to consider what the Council for Intellectual Disability has said. If the Government believes that there is merit in what has been said, the Minister will have an opportunity to respond appropriately and develop the Government's amendments, which is what happened last year when disability services legislation was going through the House.

The Council for Intellectual Disability said in regard to schedule 3 item (1) subparagraph (d) that it believed that consideration might well be given to including the word "condition", so that the paragraph would read, "a disorder, condition or malfunction". Evidently, the CID believes that the use of the additional word "condition" would more completely specify the formulation contained in the existing provision. That is why it has proposed that the word "condition" be added to the words "disorder or malfunction". I leave it to the Minister to respond to

that matter when he replies to the second reading debate. The CID then refers to section 49D(4)(a) and it states:

> This section requires a definition of who has the onus of proof in determining what are "the inherent requirements of the particular employment".

The CID believes that the onus should rest on the respondent. I ask the Minister to respond to that matter also when he is in a position to do so. I turn now to section 49G which deals with partnerships. The CID believes that reference should be made in this provision to three partners, to bring it into line with the Federal Disability Discrimination Act. The provision contained in the bill refers not to three partners but to six. I ask the Minister, in reply, to say why a figure of six was chosen rather than a figure of three, which is what is contained in Commonwealth legislation. The Government might well have some cogent reason for that provision. Having regard to the apparent disparity between Commonwealth and State legislation, the Opposition has some concern about why six partners rather than three were specified. The CID also refers to section 49Q which deals with superannuation. It makes this point:

> It is unfair to allow superannuation and insurance companies the right to refuse to provide superannuation or insurance to an employee.

I have some reservations in regard to that comment, but that is the view put by the CID. It also states:

> Further, in (a) to extend this exception where there is no statistical data is a further inequity.

My understanding of the briefing I obtained from the Minister's officers last week is that there is an exception where an insurer, person or company offering superannuation bases that cover on actuarial data. To draw an analogy, where an insurer has statistical data showing that smokers are likely to die earlier than others, that might well be - I believe it to be - a valid basis on which to determine the terms of the superannuation or insurance. The Government might take into account the views of the Council for Intellectual Disability in this regard, in particular the comment that "to extend this exception where there is no statistical data is a further inequity". The Minister and his advisers might well deal with that matter. It was my understanding during the briefing last week that where there is actuarial data an insurer would be able to qualify the basis on which he offers superannuation cover. I would like to deal with two other matters which are contained in schedule 4 to the bill, which deals with miscellaneous amendments. The CID refers to section 4A of the Anti-Discrimination Act and states:

> Section 4A should comply with Section 10(B) of the Disability Discrimination Act which states that if one of the reasons is the disability of a person . . . then, for the purposes of this Act, the act is taken to be done for that reason.

I put that matter to the Minister's advisers for a response as to whether there is a difference or non-compliance between the State provision and the Commonwealth provision in that regard. Finally, I mention amendments to section 88 referred to in schedule 4 in regard to which the New South Wales Council for Intellectual Disability makes the comment that in its view that provision would be improved by allowing representative bodies to make complaints in their own rights. The council adds that for that matter the Government should also be able to lodge complaints. That is a legitimate view; representative bodies might well be in a position to make complaints. In that regard it is not too difficult to imagine that a representative body could arrange for a natural person, an individual, to make a complaint; it would not be beyond their capacity to arrange for a complaint on that basis.

Perhaps the Government might give some consideration as to whether there is some legitimacy in permitting a representative body, such as the New South Wales Council for Intellectual Disability, or the Australian Council for Rehabilitation of the Disabled, or People with Disabilities, to make complaints in accordance with the complaints provisions set out within schedule 3 to the bill. As I said earlier, it was not my intention to speak at great length on this provision. The Opposition welcomes the matters set out in schedule 3 and requests the Minister to respond to the matters of detail identified during these brief remarks.

The Hon. J. M. SAMIOS [6.1]: I support the Anti-Discrimination (Amendment) Bill. This bill covers a number of groups, but I wish to draw the attention of members of the House to the provisions dealing with racial vilification and specifically the provision in schedule 1 dealing with the definition of race in the original Act so that it also protects ethno-religious groups. As the Attorney General indicated, it is not clear whether the Act, as it presently stands, covers discriminatory behaviour against people who are members of ethno-religious groups, as the common law does. In particular this includes Jews, Muslims, Sikhs, Buddhists and Hindus. The schedule to the amending bill will address those needs.

The point needs to be made that this bill represents an amendment to a previous bill, the Anti-Discrimination (Racial Vilification) Amendment Bill of 1989, which was introduced into Parliament by the then Attorney General, the Hon. John Dowd, after I had reviewed the international legislation outlawing racial hatred. The 1989 legislation was the first piece of racial vilification legislation to be introduced into any Australian Parliament. The Fahey Government intends to continue to lead Australian Parliaments in this regard. This bill is not a hasty or unnecessary amendment to the Act. On 2 October 1991 the then Premier and Minister for Multicultural Affairs, the Hon. Nick Greiner, requested me to undertake a review of the operation of the racial vilification provisions of the Anti-Discrimination Act and report the findings to him and the Attorney General.

An extensive review was conducted throughout New South Wales by me with the aid of Professor Mark Aronson of the Law Faculty of the University

of New South Wales. Professor Aronson also prepared the report of my review, which included a summary of 15 recommendations referred to by the Hon. Franca Arena. We undertook extensive consultation throughout many ethnic and community groups and advertised in mainstream and regional media, the *Koori Mail*, and 21 ethnic newspapers in late 1991. In addition, more than 2,000 letters were sent to various interested groups and official bodies seeking their input. Following the receipt of written submissions, a series of community consultations was conducted in Parliament House during which 17 delegations from the community made oral submissions and invested their time and effort to help us produce the most comprehensive report that we could.

The Hon. Franca Arena: An excellent report.

The Hon. J. M. SAMIOS: I note the comments of the Hon. Franca Arena and I thank her. I place on record my appreciation for the valuable contributions made by those groups whose advice and input have formed much of the basis upon which today's amendments have been formed. In particular I wish to mention Maha Abdo, the then President of the Muslim Women's Association, who pointed out to the panel the specific problem of Muslim women who experience racial violence and intimidation because they are more visible than other groups when they choose to wear the hijab, the scarf. I mention also the support received from Wafa Zaim and Isil Cosar from the Muslim community. I mention also the contribution of Mr Jeremy Jones of the Australia-Israel publication and Messrs Ian Lacey, Michael Marx and Peter Wertheim of the Jewish Board of Deputies for their submissions concerning the intimidation and vilification of persons of ethno-religious backgrounds that manifested itself in racist and discriminatory behaviour.

A number of oral submissions were presented by members of the Australian Aboriginal community including Ms Linda Burney, President of the New South Wales Aboriginal Educational Consultative Group, and Ms Rebecca Crawford from the New South Wales Aboriginal Land Council. Other ethnic community and national organisation groups also presented valuable submissions to the review panel: Ms Edna McGill, Chairman of the Ethnic Communities Council of New South Wales, of which the Hon. Franca Arena is a distinguished member; Ms Josie Lacey, convenor of the anti-racism subcommittee of the Ethnic Communities Council; Mr Peter Alexander and Mr Duncan MacLeod of the Celtic Council of Australia; and Ms Lynette O'Neill of the Irish National Association of Australia.

Legal opinions were also canvassed. Oral submissions were also made by Mr Anthony Restuccia of the Law Society of New South Wales and Ms Michelle McAuslan, principal solicitor of the Communications Law

Centre of the University of New South Wales. We are indebted to those groups for their contributions, which allowed us to produce as accurate a picture of racial discrimination in this State as was possible. We discovered that there was too much racial violence and vilification, although any amount is too much. Although racial violence is nowhere near the level it is in many countries, it exists at a level that causes concern and could increase in intensity unless addressed. To quote from the words of the Canadian Chief Justice:

> It is not inconceivable that the dissemination of the hate propaganda can attract individuals to its cause and in the process create serious discord between various cultural groups in society. Moreover the alteration of views held by the recipient may occur . . . subtly . . .

One of the fundamental aims of the anti-discrimination provisions of the bill is to reduce these threats to our social cohesion. We value our multicultural diversity, but in an atmosphere of tolerance. We want the law to help preserve a traditional Australian national characteristic of tolerance. The review also discovered that the provisions of the Act to which I referred earlier did not include ethno-religions in its definition of race. I might develop that a little further. It is not clear whether such groups are covered by the racial vilification provisions, as the Attorney General said, although the common law appears to cover them. Whilst the word ethnic still retains a certain racial flavour, nowadays it is used in an extended sense to include other characteristics which may be thought of as being associated with common racial origins. In many cases persons who have been vilified on the ground of their religion will have been vilified at the same time on the ground of their national or ethnic origins. The report took into account the words of Lord Fraser, whose following viewpoint is useful:

> For a group to constitute an ethnic group . . . it must, in my opinion, regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics.

Those characteristics include a long-shared history, of which the group is conscious as distinguishing it from other groups; and also a cultural tradition of its own, including family and social customs often associated with religious observance. Whilst it is impossible to identify Muslims, Jews, Sikhs, Buddhists or Hindus as one nationality, still each group feels that its members are members of a separate ethnic group. Each maintains a continuous history of its own and has a group identity and culture derived from religious observance. Following that my report recommended that there be a broadening of the definition of race to include the ethno-religious groups and to redefine the term race using Lord Fraser's definition. In concurrence with this we have received submissions from the Ethnic Affairs Commission of New South Wales and the Anti-Discrimination Board that the Act be amended to include the term ethno-religion within the definition of race.

Schedule 1 to the bill will also amend section 20D of the Act to increase the individual penalty for the offence of serious racial vilification from 10 units to 15 units, as a demonstration of the seriousness with which the Government treats acts inciting racial hatred and violence. The proposal to increase the penalty was one of 15 recommendations included in my

report, though the recommendation was not necessarily to increase the penalty to 50 units. In that regard honourable members will note that my report provided for an increase in the penal provision, but the Government saw fit to increase instead the pecuniary penalty. As a demonstration of the seriousness with which the Government treats acts inciting racial hatred and violence it has increased the pecuniary penalty by about 500 per cent.

The New South Wales Government has a very good record on civil rights. Australia is a signatory to the International Covenant on Civil and Political Rights, which grants individuals the right to enjoy their own culture, profession and religion and to use their own languages in commune with members of their respective ethnic and religious communities. The bill will bring the New South Wales anti- discrimination laws up to date with those notions and will offer legal protection to members of all ethnic groups, both national and religious. A further provision in the bill to which I shall refer is schedule 4, which contains amendments that address other recommendations made in my 1992 report of the review into the operation of racial vilification laws.

The Hon. Dr B. P. V. Pezzutti: An excellent report.

The Hon. J. M. SAMIOS: The Hon. Dr B. P. V. Pezzutti has given the report an appellation with which I do not disagree. I draw the attention of honourable members to the amendments to be made to section 88 in relation to the making of complaints. That is the third of the Government's proposals and was one of the 15 recommendations made in my report. The report recommended that the Act be altered to allow for representative bodies such as the Ethnic Affairs Commission, the Ethnic Communities Council of New South Wales and other specified bodies to be empowered to lodge complaints with the Anti-Discrimination Board in their own names. Item (26) in schedule 4 will allow umbrella bodies to represent those communities within their spheres. It must be acknowledged that many people of ethnic background may feel dislocated from due legal process because of language barriers and restrictions. Peak umbrella organisations will have a better understanding of the application of these laws and will make such legal recourse more accessible to individuals who are vilified.

The Hon. J. R. Johnson: Will extra funds be made available to them?

The Hon. J. M. SAMIOS: I anticipate that the Government will address that question sympathetically. This amending bill will be another step forward for multiculturalism in New South Wales. It will provide greater personal security for our citizens and will promote tolerance between the diverse cultures that have been attracted to this State and from which we all benefit. The Government is proud to continue the good work which is contained in the racial vilification legislation first introduced by the Hon. Nick Greiner and the Hon. John Dowd in response to the needs of the community. In closing I refer honourable members to the words of the former Attorney General, the Hon. John Dowd, when he introduced the 1989 bill. He said:

> This bill is a clear statement by the Government that racial vilification has no place in our community. That is no reflection on our society. Our society has been perhaps the most successful in bringing together people from different parts of the world to form a community in which my children's generation and, more important, my grandson's generation, will not draw a distinction between themselves and the ancestry of others.

In supporting the proposed legislation I commend the Attorney General, the Hon. J. P. Hannaford, for the support he has given to the implementation of the various recommendations contained in my report. It is pleasing to note that the most pivotal of those recommendations are now included in the bill. I commend the Attorney General for that pivotal initiative.

The Hon. P. F. O'GRADY [6.9]: Some time ago honourable members were promised amendments to the existing Act, particularly those detailed in paragraph (b) of the explanatory note, to make it unlawful for anyone to vilify persons on the ground of HIV-AIDS infection. I ask the Minister in reply to address a few matters that are of interest to me. The first relates to the explanatory note on page 2 of the bill, which states:

> The new provisions parallel the existing provisions of the Act dealing with racial vilification except that public incitement to severe ridicule will not constitute vilification under the new provisions and religious discussion and instruction will be added to the list of conduct that does not constitute unlawful conduct under the new provisions.

Why does the legislation not mirror the racial vilification legislation? What is the reason for the new wording in the bill? Item (23) of schedule 4 will amend section 56 of the Act by inserting the words "act or" before the word "practice". Given the rather substantial implications, I ask the Minister to explain why those words have been included under miscellaneous amendments.

Schedule 2 to the bill originates from an inquiry conducted by the Anti-Discrimination Board and its report entitled "Discrimination - the other epidemic. Report of the Inquiry into HIV and AIDS Related Discrimination". The forms of discrimination outlined in the report are widespread and the majority of reports I have received have related to discrimination against Department of Housing tenants with HIV-AIDS. The Department of Housing has sought to deal with issues raised by tenants who have been the subject of discrimination, and I congratulate the department on its work in this complex area. This legislation, and the

homosexual vilification legislation, does not seek to lock people up and throw away the key; rather, it seeks to deal with the issue through conciliation, discussion and education. The Anti-Discrimination Board has a very challenging role in seeking to educate people in this difficult area. It is a challenge that extends to the whole community.

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The report outlines some extraordinary cases of discrimination by people who should know better, such as doctors who have been extraordinarily callous to patients upon learning their HIV status. The report outlines one incident when an HIV positive man was referred by a general practitioner to a skin specialist in a public hospital. After examining the patient the specialist read the referral letter and said, "Why didn't you tell me you were HIV positive?" The patient replied, "Because it is written in the letter". The specialist said, "I could have contracted anything from you". The patient was upset and immediately dressed and left. To cap it all off, as the patient walked out the door the specialist said, "Would you pay the receptionist on the way out?"

The Hon. Dr B. P. V. Pezzutti: I hope he said no.

The Hon. P. F. O'GRADY: I hope he did too. Only education and considered debate will address this complex issue.

The Hon. Dr B. P. V. Pezzutti: The Act needs a stick as well.

The Hon. P. F. O'GRADY: It certainly does need a stick and, as with the homosexual vilification debate we had in the past 12 months, the amendments to the Act have been introduced in recognition of reports presented to Government that clearly demonstrate the necessity for this legislation. The legislation is somewhat overdue; it was expected some time ago but now that the bill has been introduced, I hope that it passes through both Houses before the Parliament rises at the end of this week. It would be a sad state of affairs if it remained in the lower House until September.

The Hon. J. P. Hannaford: That depends upon the Labor Party.

The Hon. P. F. O'GRADY: No, it depends on the Government's commitment to keeping the Parliament sitting until legislation such as this is dealt with. This necessary legislation requires urgent consideration and gazettal. The Anti-Discrimination Board must be given the power to deal with the complaints that are referred to in this bill. I await with great interest the Minister's response to the issues I have raised.

[*The President left the chair at 6.27 p.m. The House resumed at 8.15 p.m.*]

The Hon. HELEN SHAM-HO [8.15]: I heartily welcome and support the Anti-Discrimination (Amendment) Bill. It is an important step towards reducing discriminatory practices by individuals and organisations within New South Wales. The proposed legislation will reduce ambiguities in the current Act, particularly areas of concern in relation to definition of race and concepts of descent and ethno-religious aspects, as stated in schedule 1. Schedules 2 and 3 deal respectively with HIV-AIDS discrimination and vilification and discrimination on the basis of physical or intellectual impairment. This legislation will make it increasingly difficult for people to discriminate or vilify, and the penalties relating to such offences will be harsher.

I believe that in a civilised society all individuals should have a right to fair and just treatment. Contemporary Australia is enhanced by a policy of multiculturalism. As all honourable members know, Australia is both culturally and ethnically diverse. Multiculturalism, however, demands a commitment from all persons in Australia to its laws, structures and institutions. In recent years discrimination and violence towards minority groups have been increasing at an alarming rate. We must seek to reduce this level of intolerance towards others within our society. The amending legislation is a way to address this problem. The Anti-Discrimination Act is based on the concept of equal treatment and stands as a significant recognition of the right of all members of our community to live free from discrimination and to be tolerant of other people.

Australia is a party to the United Nations Convention on Human Rights. We have a moral obligation under that convention to introduce and encourage anti-vilification and anti-discrimination legislation to protect the rights of all citizens regardless of race, sex, marital status, physical and intellectual impairment, sexual preference or employment age. The Liberal Government in New South Wales has a proud record of addressing these issues and should be congratulated on that record. Under this Government New South Wales was the first State to introduce racial vilification legislation in 1989 as an amendment to the existing anti-discrimination legislation. The racial vilification legislation was an important step towards reducing racial intolerance.

I well remember being harassed by National Action at a Liberal Party function on the day following my contribution to debate on the bill when it was first introduced. I was extremely pleased when Premier Nick Greiner introduced a discussion paper on racial vilification and subsequently legislated against racial vilification by means of the Anti-Discrimination Act. This amending bill is a further step towards protecting the rights of all so that we can live in peace and harmony. I address specifically schedule 1 to the bill, which deals with amendments relating to the definition of race and penalties for racial vilification.

I put the following to honourable members: imagine how you would feel if, as an individual, you were victimised for a personal characteristic that is fundamental to you as a person. Your race, your religion, your heritage and your culture are part of the characteristics which make you unique. When we discriminate against a person for a unique characteristic, we often discriminate against something that person has no choice about. None of us choose our parents, our facial characteristics, or our genetic structure. We also do not choose our culture or our heritage, and many of us do not choose our religious

or ethno-religious beliefs, which are of an innate nature and are part of our upbringing and our education through societal and parental influences. I pose this question: how can we be allowed to discriminate against persons on the grounds of these individual traits?

We should not allow people to incite hatred against others purely on racial or ethno-religious grounds. For that matter, people should not be allowed to discriminate against or incite violence towards any member of our society for any reason. As Australians we should be celebrating our cultural and ethnic diversity. We must not allow our uniqueness as a nation to be hindered through discrimination and violence by some members of our community. Vilification is a product of bigotry. I am sure we all believe that hatred and bigotry should be stamped out in our community. Australia, fortunately, has not been subjected to ethnic and ethno-religious violence such as is seen in other countries. The proposed changes in the bill seek to clarify the ambiguities of race and religion that are found in the current legislation. In his second reading speech the Attorney General identified the Jewish, Muslim and Sikh communities as affected by descent and ethno-religious groupings. This amendment will expand the definition of race to include the descent and ethno-religious grouping. Item (1) of schedule 1 defines race as:

> **"race"** includes colour, nationality, descent and ethnic, ethno-religious or national origin.

In the Sikh religious sect there is an overlap between racial and religious boundaries. The Sikhs founded a religious community in India based on common religious beliefs and practices. However, as the community evolved it lost its purely religious character. The Sikhs became a separate community with distinctive customs such as the wearing of long hair and a turban, just as the Jews evolved to form a community with common racial stock. Neither of these groups deliberately established themselves as a separate race based on a geographic area. However, they both developed a shared culture that was unique to their community.

It is this combination of ethnic origin and religious practices that gives groups such as the Sikhs, the Muslims and the Jews their distinct social identity based on a combination of historical antecedents and beliefs, not just geographic or group solidarity. The groups share a long history, distinguishing them from other groups in society. They also practise a cultural tradition that is unique to their own community. This includes family and social customs and manners that may not always be associated with religious practice. The groups may also share a common geographic origin or descent from similar ancestors, a common language, a common

religion, and often comprise a minority group within a larger group. An ethno-religious group should be distinguished as one group under this amendment.

Proposed section 20D will amend the penalties for the offence of serious racial vilification. The New South Wales Government is calling for harsher penalties for individuals and organisations that discriminate against another person on the basis of their race. The current maximum penalty is 10 penalty units, or six months' imprisonment, or both. The maximum penalty will be 50 penalty units, or six months' imprisonment, or both. I should like to remind honourable members that one penalty unit is equal to $100. Therefore, the penalty will increase fivefold. The maximum for corporations is unchanged at 100 penalty points. The penalty increase is designed not only to deter offenders but also to educate and change community attitudes. I hope that the heavy penalty will deter offenders but also lead to awareness of the consequences and in time change attitudes. It is important that society should be told that discriminatory behaviour is unacceptable and will be penalised.

Changing attitudes and raising community consciousness on these issues are vital in order to rectify existing problems and to improve the standards of anti-discrimination within the community. If we can legislate to discourage and prevent all forms of discrimination, we are well on the way to a cohesive and equitable society. I again congratulate the Attorney General on initiating such amendments to the Anti-Discrimination Act. I hope it will change community attitudes. I support the bill.

The Hon. ELISABETH KIRKBY [8.27]: The Australian Democrats support the Anti-Discrimination (Amendment) Bill, which will make significant amendments to the Anti-Discrimination Act in a number of areas. We have waited for this piece of legislation for a very long time. I am glad that it has finally been introduced. The bill introduces the concept of descent to the definition of race under the Anti-Discrimination Act, so that people who are discriminated against on the basis of their racial descent will be protected by the Act. The concept of ethno-religious origin will also be introduced in the definition of race, to protect ethno-religious groups such as Jews and Muslims.

No provision exists for complaints of vilification to be lodged on the basis of religious conviction. Other speakers have pointed out that religious ties unite people of different cultural backgrounds. Furthermore, in the eyes of people who do not understand, race is confused with religion - perhaps because of historical perception, images that they may have seen in the media, or perhaps because they are used to stereotyping people and cannot draw the distinctions. Recent experience, particularly during the Gulf War, made it quite apparent that there was a crying need for such groups to be covered. For example, Muslim women wearing the hijab were often the brunt of racist attacks. In a totally unnecessary and wrong attack on the Muslim religion, mosques in Sydney were not destroyed but were disfigured by graffiti.

It is also a matter of regret that anti-semitism continues to be perpetrated in Australia by extremist groups. The incidents reported by the Jewish community do not single out Russian Jews, German

Jews, Polish Jews or Israelis. The proposed legislation is necessary to ensure that if such behaviour continues provisions and sanctions will be available to deal with it. Other countries have established precedents to bring some religious groups under the definition of race, but that has not occurred previously in Australia. For instance, in 1979 the New Zealand Court of Appeal ruled that Jews met the standards of common ethnic origin for the purpose of the Race Relations Act, passed in New Zealand in 1971. In 1983 the House of Lords ruled that Sikhs would constitute an ethnic group in the future. It has also been pointed out by other speakers that the penalty for the offence of serious racial vilification will be increased from 10 penalty units to 50 penalty units.

The second major thrust of the bill is to prohibit vilification on the ground of HIV-AIDS, presumed HIV-AIDS or HIV-AIDS infection. The provisions in relation to HIV-AIDS vilification mirror the existing provisions in relation to racial vilification and homosexual vilification. The bill will not proceed to the Committee stage tonight, and I hope that representations that are being made to the Attorney General will not lead to any watering down of the sections of the bill that will prohibit vilification on the grounds of HIV-AIDS. This is one of the most important amendments to the Anti-Discrimination Act, and we cannot afford to minimise

it at this stage. The provisions relating to racial vilification and homosexual vilification have been extensively debated in this House and I do not wish to labour the point tonight. I simply repeat that I believe they are necessary in view of the discrimination and violence that is perpetrated against people with HIV-AIDS. This can be corroborated - and it is a matter of regret that it should be able to be corroborated - by the police, particularly those in the electorate of Bligh.

The third major aim of the bill is to amend the disability provisions of the Anti-Discrimination Act. A single definition of disability will merge existing grounds of complaint in relation to physical and intellectual impairment. People who suffer from conditions that originate from the brain have been offended by the label intellectual impairment. The Federation of Parents and Citizens Associations of New South Wales raised the matter of the removal of the word impairment and its replacement by the word disability. Its concern was that the word disability would exclude from the protection of the Act people suffering from conditions that cannot be measured. I refer specifically to attention deficit disorder and attention deficit and hyperactive deficit disorder.

The Hon. J. F. Ryan in his remarks referred to the conference devoted to the problems of ADD and ADHD held in Sydney a few weeks ago that was attended by thousands of parents. The Hon. J. F. Ryan mentioned the attendance of the famous and highly respected American psychiatrist who gave information in Australia for the first time to parents of children suffering from these two most distressing disorders. I also attended the conference, and many representations were made to me by psychiatrists and psychologists, as well as by parents of children suffering from these disorders, to ensure that when this legislation came before the Parliament their needs would be addressed.

I am delighted that the Attorney General has seen fit to take these concerns on board, because the issue has now been resolved and the definition of disability will cover a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction. Also, I believe that clause 49A makes it clear that a reference to a disability under the Act will include past, future and presumed disability. However, I would ask the Attorney General in reply to clarify that matter so far as the Interpretation Act is concerned. I congratulate the Attorney General on ensuring that this bill will bring the New South Wales Act into line with the Commonwealth Disability Discrimination Act 1992. It will cover discrimination on the grounds of the presence of an organism causing or capable of causing illness. This, of course, will include as a form of impairment the problems of people suffering from HIV-AIDS. The fact that it will become unlawful to discriminate on the grounds of past, future or presumed impairment as well as existing impairment will protect people with asymptomatic illnesses.

The existing defences for non-compliance are to be replaced by defence on the basis of unjustifiable hardship that would be caused by having to accommodate a person's impairment. This provision is also in line with the provisions of the Commonwealth Disability Discrimination Act. I congratulate the Attorney General again on including a number of significant miscellaneous amendments in the bill. These include provisions to cover discrimination by association, members of local councils who discriminate against fellow councillors, the removal of the exemption for things done in compliance with industrial orders, awards and agreements, the removal of the exemption for institutions providing housing, accommodation and ancillary services for aged persons, and to enable complaints to be made on behalf of a person by a representative body. These matters have been referred to by other speakers, and I will not go into them further in detail.

In conclusion, however, I must place on the record my belief that the Anti-Discrimination Act will need further amendment to remove the exemption for employers with small staffs and private educational institutions and to prohibit transgender discrimination, given the severe discrimination experienced by transsexuals, or trannies as they prefer to be known. The transsexual community asked me to attempt to introduce, by way of an amendment to the bill, provisions that would cover such discrimination. However, the Parliamentary Counsel has informed me that it is outside the scope of the bill and that it is not possible to introduce an amendment to this legislation.

I know that the Attorney General is well aware of their concerns. He has been consulting with members of that community and he has looked upon

their plight with compassion and consideration. I hope that it will be possible for legislation to be introduced to remove the severe discrimination from which they currently suffer. They are a small group in our community, but that does not mean that they deserve to be discriminated against, vilified or ignored. I appreciate that this is not the occasion to debate this important issue further, and I look forward to the release of the review by the Law Reform Commission of the Anti-Discrimination Act and to what it might say about this problem. With that proviso, I support the legislation.

The Hon. D. J. GAY [8.41]: I support the Anti-Discrimination (Amendment) Bill, but that has not always been the case. The Hon. Franca Arena said in debate that this bill should have been introduced earlier, but some people had genuine concerns about the first draft. To the credit of the Attorney General, there has been widespread consultation. By and large the Attorney General has addressed my concerns, which relate primarily to schedule 2 to the bill. Schedule 2 deals with the wide-ranging area of HIV-AIDS vilification. I have not been concerned at any stage with any other part of the bill. However, I was concerned that schedule 2 would infringe upon the teachings and dogma of mainstream churches. The Minister, for the most part, has addressed those concerns. When I spoke to the Minister a moment ago he said that he would address one lingering concern of the churches.

I have been concerned also about health. I thought that, inadvertently, this legislation would place constraints on public education. The HIV-AIDS issue concerns not only the homosexual community but also the broader community. We need to be able to talk about this issue fully, freely and frankly - a matter that I thought would not be able to be achieved. The Minister has assured me - and I am sure that, in reply, he will assure me once again - that this legislation will not prevent people from spreading the HIV-AIDS health message. The Minister is an honourable man; I take his word that this will be so. But I am sure that members of the community will need confirmation of the Minister's promise in his reply to the second reading. I sincerely hope that this legislation works. I shall be happy if it does. I was reticent earlier as I believed there were better ways of dealing with this problem. I, on behalf of members of the National Party, support the proposed legislation and congratulate the Minister on introducing it. I do not understand why any members of the Government needed to cross the floor when a vote was taken on similar legislation. They had only to wait for this legislation.

Reverend the Hon. F. J. NILE [8.45]: The Call to Australia group supports in principle the Anti-Discrimination (Amendment) Bill. As I deal with the bill I will mention some of the concerns that we have. The object of the bill is:

(a) to include the concepts of descent and ethno-religion as aspects of race for racial discrimination and vilification purposes and to increase the maximum penalty which may be imposed on an individual for the offence of serious racial vilification; and

(b) to make it unlawful to vilify another person or persons on the ground of HIV/AIDS infection and to create a criminal offence of serious vilification on that ground; and

(c) to replace the existing provisions dealing with discrimination on the ground of physical or intellectual impairment with provisions dealing with discrimination on the ground of a broader concept of disability and to change the defences available in such cases; and

(d) to make miscellaneous amendments.

I have some questions about the interpretation of the word ethno-religion, and the New South Wales Council of Churches has sought clarification of the word. The word ethno-religion, which is not adequately and carefully defined in the legislation, could cause confusion. I am sure that honourable members will take any measures they can - that is what this legislation seeks to do - to prevent any type of vilification or hatred that will result in violence based on race or ethno-religious aspects. Reference was made to the Jewish and Muslim communities. Again I am sure that honourable members will do all they can to prevent attacks on any members of those groups. To be frank, we must also try to prevent attacks by members of those groups on one another.

I trust that this legislation will encourage a happier relationship between the Jewish and Muslim movements. I hope we will not witness the problems that have occurred in the Middle East. It is to the credit of those two movements and other racial groups that the Australian community has not witnessed the problems that have occurred overseas. We do not want those problems in Australia. Some groups outside the communities to which I have referred, such as National Action, have launched vicious campaigns in Western Australia against Asian groups and the Vietnamese community. Other speakers have referred to the Citizens Electoral Council. Some people within that organisation have adopted and are promoting the extreme views of individuals and organisations in the United States of America, such as the John Birch Society, which operates discreetly in Australia - a matter that should concern all honourable members - and La Ruche, who was imprisoned in the United States for various crimes of fraud.

Today I received a letter from someone who was almost threatened - although that may be too strong a word - by someone conducting an extensive phone campaign from Melbourne. The campaign is designed to get people to transfer funds of up to $650 to the organisation by seeking a credit card number from the people who are called. I understand the harassing telephone campaign has been somewhat successful in obtaining money from senior citizens. Subsequently the person obtaining that credit card number could drain funds from the holder's account. I have been contacted by relatives who have been concerned about parents or grandparents unwittingly becoming involved with such a group.

These groups have extreme views. For example, they accuse the Jewish community of being the source of almost all our problems. These views are printed

in high quality, attractive magazines printed in the United States but filled with rubbish. These magazines claim to have found the person behind the world's drug rackets - the Mr Big - and say that it is no less than Her Majesty Queen Elizabeth II. That is the kind of crazy view promoted by those magazines. Those views can be laughed off, but views about the so-called Jewish conspiracy can lead to the seeds of fear and hatred being sown in the minds of some people, and in turn that may lead to anti-social action against that group.

Although those threats are relatively minor in the scheme of things, they are cause for concern. There is a need for a preventative program to stop these problems becoming more serious. In discussing the ethno-religious matter, it is good to note that Australia is a multicultural and multireligious nation. Sometimes a false impression is conveyed that the population is fragmented on religious lines, with 5 per cent of this religion or 5 per cent of that religion, and so on. I was disappointed when Mr Al Grassby recently referred to Australia as a multicultural nation. He made what I regard as a foolish statement, perhaps based on lack of knowledge, that based on the 1991 census the Catholic denomination is the largest in Australia, comprising 27.3 per cent of the Australian population, having exceeded the Anglican denomination figure of 23.9 per cent.

The error Mr Grassby made was to talk about Anglicans, Catholics, Muslims and Buddhists as if all were separate religions. In fact the Anglicans and Catholics are denominations, all part of the Christian church in Australia. The census gives the following statistics for the denominations: Anglican 23.9 per cent; Baptist 1.7 per cent; Catholic 27.3 per cent; Churches of Christ 0.5 per cent; Lutheran 1.5 per cent; Orthodox churches, such as the Coptic Orthodox, Russian Orthodox, Syrian Orthodox, Greek Orthodox and so on, 2.8 per cent; Pentecostal 0.9 per cent; Presbyterian 4.3 per cent; Salvation Army 0.4 per cent; Uniting Church, made up of the previous Presbyterian, Congregational and Methodist churches that went into the Uniting Church, 8.2 per cent; other smaller Christian churches 2 per cent. Together they add up to 74 per cent, representing the Christian church in Australia.

To use military terms the Christian army is made up of different regiments or battalions that are all part of the one united body. That is an important point to note. Tonight, when considering my remarks, I thought that this legislation represents a generous attitude by the majority Christian community of Australia. It is interesting to consider whether like legislation would ever be passed in Iran, Iraq, Pakistan or Malaysia. The answer would probably be no. Those nations probably need similar legislation to protect Christian minority groups or other minority groups. I will not take time tonight to refer to some of the tragic events occurring throughout the

world even this week such as persecution, murder and assassination of indigenous Christian leaders in other nations.

Even though this legislation meets a need, we must acknowledge that non-Christian religions make up a relatively small proportion of the population. Obviously some members of those religions are noticeable, particularly the Muslim community because of their increasing practice of wearing traditional dress, especially the women's headdress. When I drive through Lakemba I note that quite a few male Muslims are reverting to traditional Muslim dress, based on Mohammed's own form of clothing. Although they may be seen around Sydney, one would not expect to see many of them in country towns because the percentage of Muslims in Australia is still only 0.9 per cent, that is, less than 1 per cent.

Buddhists are not as visible as Muslims, although honourable members would have noted that in recent days one of the largest Buddhist centres in the South Pacific is being built south of Wollongong. I understand that building will finally cost $50 million. This huge centre will be both a monastery and a convention and training centre that will be open to non-Buddhists and will provide some community facilities. Buddhists account for 0.8 per cent of the population. Judaism - the official description of the Jewish religion - represents 0.4 per cent of the population. Other religious groups such as Hindus and so on are too small to show up in the census. All other religions, and this legislation is pointing to that category, account for 2.6 per cent of the Australian population.

I raise that point to keep matters in perspective. Members of Parliament should bear in mind that the 74 per cent, plus other fringe dwellers, represents the core of religious belief and moral values in Australia - it is important for legislatures to keep that in mind. I have mentioned that the New South Wales Council of Churches raised the definition, or lack of definition, of the term ethno-religious in the legislation. I have spoken about this matter with the Attorney General and much thought has been given to it. I gather that the Government's position is that it is does not believe that the definition is necessary.

I put on record the concerns of the New South Wales Council of Churches, whose secretary, Mr R. W. Ford, wrote to me on 9 May. I sent copies of the bill to the heads of the various churches - the Council of Churches, the Catholic Church, the Anglican Church and others - and asked them whether, as the bill was before the Parliament, they had any matters of concern. As often happens, most of them had no idea that the proposed legislation was before the Parliament until I sent them copies of the bill. Therefore there has been only a moderate response from the New South Wales Council of Churches. In its letter of 9 May it says:

Dear Rev. Nile,

I confirm that the Government proposes to amend the definition of "race" to include "ethno-religious origin". I enclose a copy of Council's letter to the Attorney-General of 6 May, 1994.

The Council is seeking amendments to the Bill to protect church-related organisations from claims of discrimination based on religion.

I should be grateful if the Call to Australia would support the proposed amendments and if necessary take the initiative to move same if the Government fails to do so.

The letter dated 9 May from the Council of Churches to the Attorney General says:

Dear Mr Hannaford

I refer to the conference at Parliament House on 5 May last attended by Mr Tim Tunbridge and the Rev. Barry George on behalf of the Council and Mr Stephen O'Doherty MP and Mr Ross Drinnan of your office.

I note the contents of your second reading speech of 4 May last which sets out the Government's intentions as to the interpretation of the term "ethno-religious origin".

I confirm that the meaning of that term gives rise to great uncertainty especially as there is no definition in the Bill and the Explanatory Memorandum that refers to "ethno-religion".

Moreover, a second reading speech is not binding and is merely a possible aid to interpretation, if thought necessary.

In order to avoid the possibility of costly litigation, the Council reiterates that the Bill should be amended so as to ensure that no complaints of discrimination are brought on the basis of religion of members of ethno-religious groups.

As discussed, it is urged therefore that the following be inserted as a definition: "ethno-religious origin" does not include religious beliefs or religious practices.

Again that is signed by Mr Ford. Even during this debate and tomorrow there may be some change in the Government's attitude to that matter. If not, I intend to move the following amendment to the definition provisions:

Page 2. Schedule 1(1). After line 15, insert:

(a) Insert in section 4(1) in alphabetical order:

"ethno-religious origin" does not include religious beliefs or religious practices.;

The Government may have an answer that will relieve the concerns of the Council of Churches, but I put that matter on record. I have received a detailed letter from the Catholic Education Commission, New South Wales - CECNSW - dated 6 May. The letter has been sent to me for action but is a copy of a letter that was sent to the Attorney General. The commission raises the same question as was mentioned by the New South Wales Council of Churches. Though the commission is pleased that a number of its concerns have been addressed since August 1993, the second paragraph of the letter states:

However, the CECNSW is of the view that the following proposed amendments raise issues of concern:

Schedule One
Clause 1

The CECNSW has consistently maintained that if the definition of race is to be amended to include "ethno-religious" for the purposes of racial discrimination or racial vilification, then the term "Ethno-religious should be defined in the Act. However, the CECNSW is concerned that the Bill does not include a definition of "Ethno-religious.

It is our view that, unless that term is defined, it could provide a means whereby indirectly religion becomes a ground of discrimination covered by the New South Wales Anti-Discrimination Act. In our opinion the current proposal, even if interpreted as the Government intends, will discriminate between religions in that it will give special privileges to some religious groups and not to others (e.g. to a religious group which is confined to a particular race or group within a Religion which is racially defined, hence Ukrainian Right Catholics would be covered by the Act while Catholics generally would not). Also, confusion may arise where a person converts into or out of an "Ethno-religious group".

In making this representation I am advised that the view set out in your Second Reading Speech, at pages 3 to 5, namely that inclusion of "ethno-religious" in the definition of race will not amount to an extension of race to include "Discrimination on the ground of Religion", is at best arguable at law. This, I am advised, is due to the probability that:

(a) the Courts are hardly likely to give a narrow construction to Section 56 of the principal Act, even if amended in accordance with Clause 23 of Schedule Four of the current Amendment Act. Consequently, Section 56 is not broad enough to protect Church institutions not recognised at law to be Religious Bodies, for example schools, hospitals and welfare agencies.

(b) the Courts are likely to adopt a very inclusive definition of ethno-religious groups since the Second Reading Speech, at pages 4 and 5, does cite Muslims as a key example of an "Ethno-religious group. The Muslim religion includes, of course, persons of diverse racial descent, including persons of both Asian and Arabic backgrounds. It would appear then that almost any religious group would qualify as an Ethno-religious group.

It is our view that religious beliefs and practices should not be made a ground of discrimination in such an indirect way.

The CECNSW, therefore, requests that the proposed amendment be deleted.

That letter from the Catholic Education Commission is in the name of Bishop B. L. Murphy speaking on behalf of the Catholic Church. It makes an important point. The combined Protestant churches are now linked through the New South Wales Council of Churches with the Catholic Church. Both have areas of real concern. The Catholic bishop has suggested an alternative if the amendment is not deleted. The letter says:

. . . we would propose that a new section 22A be inserted into the Act in the following terms:

Section 22A Exception - Religious Institutions

Nothing in this Part applies to or in respect of anything done on the grounds of a person's ethno-religious origin where an act is done by an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed.

The letter proceeds:

It may also be necessary to amend sections 14D and 21 of the principal Act to clarify the application of exceptions relating to race to include religious groups.

I am sure that the Government will give close attention to the matters raised. It may be that some development will occur between now and the Committee stage in regard to the amendments or, as the Leader of the National Party said, the legislation will be monitored to determine its effect and whether the fears that have been expressed eventuate from the way the legislation is implemented. Schedule 2 to the bill deals with HIV-AIDS infection or presumed HIV-AIDS infection. I am pleased that the bill parallels the existing provisions of the Act dealing
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with racial vilification except that public incitement to severe ridicule will not constitute vilification under the new provisions, and religious discussion and instruction will be added to the list of conduct that does not constitute unlawful conduct under the new provisions. Call to Australia is pleased that the Government has included that provision, for it covers some of the points made in the debate last November on the homosexual vilification legislation. Call to Australia is pleased that exemptions are outlined on page 3 as follows:

(2) Nothing in this section renders unlawful:

(a) a fair report of a public act referred to in subsection (1); or

(b) a communication or the distribution or dissemination of any matter comprising a publication referred to in Division 3 of Part 3 of the Defamation Act 1974 or which is otherwise subject to a defence of absolute privilege in proceedings for defamation; or

And this is particularly important:

(c) a public act, done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

Call to Australia is pleased that the Government has incorporated in this bill the amendments to the homosexual vilification legislation, including an expanded wording of religious discussion or instruction purposes. This

will enable the bill to have wider support. Only one inconsistency is evident in discussion about these areas of vilification and I am not sure how the Government should deal with that inconsistency. I am concerned, as other honourable members are, that on 5 March during the homosexual mardi gras parade, in spite of much public comment and what I consider to be poor public relations, the homosexual group by dressing as Catholic nuns vilified that particular religious group - and no one could question that it was vilification. The men who dressed as nuns took unto themselves names that were obscene. This was not a friendly, frivolous approach but was vilification, and the Government should prevent such vilification occurring in a public place in future. I know the Hon. J. R. Johnson agrees with me and has the same concern.

The Hon. J. R. Johnson: I certainly do.

Reverend the Hon. F. J. NILE: Something should be done about this disgraceful occurrence. Some groups were concerned that in the area of disability the Government was not relating the legislation to Commonwealth legislation. In the definition of disability on page 5, schedule 3 to the bill, the Government has included the same words as the definition in the Commonwealth legislation as follows:

(d) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or

(e) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

On behalf of those individuals and organisations I thank the Government for including the definitions in the bill. Even though HIV-AIDS is under the heading of disability - though we could argue whether a person carrying the HIV virus is in fact a disabled person - I am pleased that a new defence is added for discrimination in cases of infectious disease where the discrimination is reasonably necessary to protect public health. The Hon. D. J. Gay made a similar point and I am pleased that that provision has been included in the legislation. That must always be an overriding consideration and the medical profession is and always has been concerned that the HIV-AIDS epidemic - and I agree - has not been handled in the same way as other diseases or health problems. That has exacerbated the problem. I refer to division 4 as follows:

Public Health

49P. Nothing in this Part renders unlawful discrimination against a person on the ground of disability if the disability concerned is an infectious disease and the discrimination is reasonably necessary to protect public health.

No honourable member would support any kind of vilification and or discrimination against a person who is HIV positive but there are grounds for concern once the disease progresses. The more tragic example is where the disease has proceeded to the stage where leaking lesions appear on the body. This must be a public health issue, particularly if the person is employed as a nurse, doctor, surgeon, dentist and so on. At that stage public health must be the top priority.

The Hon. Dr B. P. V. Pezzutti: That does not mean that they can refuse to treat them.

Reverend the Hon. F. J. NILE: I am referring to the person actually being the surgeon; I am talking about discrimination on employment grounds, particularly when the disease has progressed to the stage that the person may be relieved of responsibility. The Department of Health, private hospitals or Government should not be sued, because this issue relates to public health and is not a decision based on discrimination. On page 18 of the bill under "miscellaneous amendments" it is clear that in the Act references to homosexuality include female as well as male homosexuals. I assume that emanates from discussions with various homosexual and lesbian groups. It is my belief that the common usage in New South Wales of female homosexual is lesbian, and I am wondering why the Government has decided to refer to male homosexuals and female homosexuals when even homosexuals describe themselves as homosexuals and lesbians - homosexual meaning a male, and lesbian meaning a female. This legislation seems to be inconsistent with common practice.

Call to Australia is pleased that on page 25 of the bill the Government has included item (23) in the amendment to section 56(d), religious bodies, before "practice" insert the words "act or". A number of church bodies have confusion or doubt as to the meaning of the word "practice" on its own, or
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whether the words "religious practice" could only be related to practice of religion in a church service. There is nothing sinister about adding the word "act" to proposed section 56(d), which will apply to church service liturgy and to the practice of a religion. Some church bodies thought it might have a technical meaning when defined in a legal sense. Schedule 5 contains amendments for gender neutral language - which no doubt is part of the politically correct approach that is taken these days. I am pleased that the Government has included, in schedule 5, exceptions on the basis of general occupational qualifications, which introduce a note of sanity. It is a biological fact that men and women are different, and legislators should not be afraid to acknowledge such biological differences. I support that amendment. Proposed new section 31 provides:

Exception - genuine occupation qualification

31. (1)Nothing in this Division renders unlawful discrimination against a person on the ground of the person's sex where being a person of a particular sex is a genuine occupational qualification for the job.

(2) Being a person of a particular sex is a genuine occupational qualification for a job where any one or more of the following requirements is satisfied:

(a) the essential nature of the job calls for a person of that sex for reasons of physiognomy or physique, excluding physical strength or stamina, or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a person of the opposite sex; or

(b) the job needs to be held by a person of that sex to preserve decency or privacy because it involves the fitting of a person's clothing; or

(c) the job requires the holder of the job to enter a lavatory ordinarily used by persons of that sex while it is used by persons of that sex; or

(d) the job requires the holder of the job to search persons of that sex; or

(e) the job requires the holder of the job to enter areas ordinarily used by persons of that sex while in a state of undress or while bathing or showering; or

(f) the job requires the holder of the job to live in premises provided by the employer and;

(i) those premises are not equipped with separate sleeping accommodation for persons of the opposite sex and sanitary facilities which could be used by persons of the opposite sex in privacy from persons of that sex; and

(ii) it is not reasonable to expect the employer either to equip those premises with accommodation and facilities of that kind or to provide other premises for persons of the opposite sex; or

(g) the job requires the holder of the job to keep persons of that sex in custody in a prison or other institution or in part of a prison or other institution; or

(h) the holder of the job provides persons of that sex with personal services relating to their welfare or education, or similar personal services, and they or a substantial number of them might reasonably object to its being carried out by a person of the opposite sex; or

(i) the job is one of two to be held by a married couple.

I support those reasonable and genuine exceptions. If those exceptions are not made, anti-discrimination

legislation would become a laughingstock, leading to public rejection and further backward steps in the future. The provisions are sensible. I congratulate the Government on including them. The Catholic Education Commission, in a letter to the Attorney General on 6 May, stated:

SCHEDULE FOUR
Clause 2

The CECNSW notes that in the present Bill the Government has dropped subclause (c) from the 1993 consultative draft. Subclause (c) provided:

(c) any person (whether or not of the opposite sex) with whom the person lives in a genuine domestic relationship as his or her partner although not legally married to the person.

The CECNSW welcomes this change. However, the CECNSW remains concerned that the definition of "Relative" still includes:

(b) any person who is wholly or mainly dependent on, or a member of the household of, the person

The CECNSW believes strongly that this sub-clause should be incorporated into the definition of "Associate".

In seeking this amendment the CECNSW is concerned that, if the wider definition of "Relative" is enacted, a major and substantive shift in social policy relating to Marital Status and the definition of the Family may follow.

We strongly support that concern and urge the Government to review clause 2 of schedule 4. The Catholic Education Commission stated further in its letter:

SCHEDULE FOUR
Clause 22

The CECNSW wishes to restate its position as set out in its submission of August 1993 that Awards and Enterprise Agreements should continue to be exempt from the Anti-Discrimination Act. The absence of such exemption will, we believe, impose on employers conflicting obligations in the Industrial and Anti-Discrimination jurisdictions.

Bishop P. L. Murphy of the Catholic Education Commission concluded his letter as follows:

Other Matters

In addition to drawing your attention to the above proposed amendments as being likely to impact adversely on the freedom of Church bodies to manifest their faith in spheres such as schooling and employment practices, the CECNSW wishes to highlight a further amendment which should be brought forward.

It is noted that Proposed Clause 49ZXB(2) provides a "defence" which is wider than that contained in the homosexual vilification provisions passed last year. Consequently, CECNSW requests that the wording of 49ZXB(2)(c) be substituted for that currently appearing in Section 49ZT(2)(c) of the Act. That is, the words "religious discussion or instruction" should provide the basis of rendering lawful acts related to the expression of religious beliefs about Homosexuality, AIDS and HIV.

In suggesting the above changes to the Amendment Bill the CECNSW is motivated by a desire to protect the right of all religious groups to express their beliefs through the provision of services such as schooling, health and welfare in conformity with the precepts and practices of their faith.

It is most desirable and urgent that officers of your Department and of the CECNSW's Secretariat should meet in order to discuss this correspondence. Mr Ian Hossack, Director-Administration of CECNSW, will contact your Department in the immediate future to ascertain a suitable date for the meeting.

I have read that letter on to the record as it deals with the issue in thorough detail. The Government should take on board the concerns of the Catholic Education Commission, which has the benefit of the assistance of highly skilled lawyers and their legal advice. The Government, in not anticipating problems, may think that some of the suggestions are unnecessary. However, why should the Government move in the direction of a possible problem when that can be so easily avoided by amending legislation? We support the bill in principle and ask that the queries I have mentioned in my contribution be noted.

The Hon. Dr B. P. V. PEZZUTTI [9.28]: I support the bill, for two reasons. We do not do things because of the way we think: we think about things because of the way in which we act. In order to change the way people think, first the way they act must be changed. That can be done by pointing out to people the benefits of acting in a certain way; by bringing community pressure to bear to encourage them to act in a certain way; or by imposing penalties on them for not acting in that way. The Anti-Discrimination Act, with its education package, following wide exposure and public discussion in a successful multicultural and fairly tolerant society, is the result of developing the community so that it is ready to take the next few steps. As time goes by, more steps will need to be taken.

The racial vilification legislation resulted from a spate of the most heinous hate crimes ever committed in this State, one of them being perpetrated in a particularly nasty way against my colleague the Hon. Helen Sham-Ho just after her election. A couple of years ago horrendous hate crimes were committed against members of the gay and lesbian community. In recent times, remarkable success has been achieved through provision of funds by the Government to gay and lesbian groups to help reduce, by an agreed strategy, hate crimes against gays and lesbians. I sat proudly next to Stevie at a press conference earlier this year when we were able to describe the success of a small Government contribution and valuable strategy towards reducing such hate crime.

That was of course before homosexual vilification legislation was passed. We had already moved positively, and remarkably successfully, to reduce those hate crimes by the implementation of strategies within the community. I refer now to the important issue of widening the definition of disability. I was pleased to hear this evening in the Federal Treasurer's speech that the Federal Government will allocate millions of dollars - and I do not know the exact amount but I believe it was $67 million - to reduce the impact of discrimination on the basis of psychiatric disability. It is something that many people would not think about, but it is carefully and clearly covered in proposed section 4(1)(e), such referred to in schedule 3 to the bill. That section, in conjunction with proposed section 49A(c), deals with discrimination on the basis of someone's present or past psychiatric history or facility.

That is an important feature if we are to be successful in encouraging people to settle and be treated in the community for their psychiatric illnesses, and for people to realise that these illnesses are no more and no less like any other illness, be they asthma or diabetes, which are amenable for treatment in the community. These changes do not come about by accident. I congratulate the Attorney General for giving effect to the recommendation of the various peak bodies. This is an important step forward with regard to the way in which the community views and behaves towards people who have mental illness and the strategies to be adopted to improve the lives of those with mental illnesses, which, of course, wax and wane.

I speak only briefly to this bill because a considerable amount of time, almost an hour, has already been taken up in this debate by Reverend the Hon. F. J. Nile, who I am sure will speak at some length tomorrow during the Committee stage of the bill. The important considerations relating to defences that allow one to discriminate on the basis of disability are carefully covered in division 4 of schedule 3 to the bill. They are self-explanatory. A good example of that is discriminating against a person with HIV-AIDS or who is hepatitis B or hepatitis C positive on the basis of his or her being a blood donor.

Division 4 also covers anomalies that have developed with regard to the superannuation and insurance industry. One fascinating amendment I have named the Anudhi Wentworth amendment. Anudhi Wentworth is a famous long-term councillor of Byron Council. Though that council has been dismissed on a couple of

occasions, Anudhi Wentworth keeps getting re-elected. She is a survivor and an important personality on the North Coast. Tragically, over a fairly short period, Anudhi Wentworth has gone blind.

The Hon. J. R. Johnson: Her great-great-grandfather was a president of this Chamber.

The Hon. Dr B. P. V. PEZZUTTI: I am aware of her history and the fact that she married into a very important family. However, her disability has not reduced her intellectual acuity nor her commitment to fight for what she believes is right in Byron shire. While she was absent overseas from the council a vote was taken to withdraw the money that was allocated for the purpose of having papers read to her on the basis that she took too long to read the material because of her minimal vision. As a result of proposed section 49H Anudhi Wentworth, as an elected member of council, will not be denied services that are required for her to carry out her official functions. That is an important and a very sensitive amendment.

I commend the Government for the sensitivity it has displayed in covering such issues in this broad bill. To enable such people to make a contribution we

sometimes have to take that extra step to provide additional services. The exemptions that Reverend the Hon. F. J. Nile spoke about - occupation qualifications and discrimination on the basis of disability if one is employed - are carefully covered by this bill in very simple terms. I do not intend to refer to those matters further; they would be clear to honourable members. Reverend the Hon. F. J. Nile spoke at great length also about discrimination on the basis of what has been termed ethno-religion. It is a terrible shame that Reverend the Hon. F. J. Nile does not understand the difference between religion and what is termed ethno-religion.

[*Interruption*]

Just because the Catholic Church does not understand it does not mean it cannot be understood by others. I make it perfectly clear that it is still possible to discriminate against someone on the ground of religion. One can still put an advertisement in a newspaper - and the Hon. J. R. Johnson would know this - which states, "No Catholics need apply", or an advertisement stating that the person applying for the position should be Catholic. One is able under this bill or any Act of this Parliament to discriminate on the basis of religion. For that very reason the bill contains provisions relating to ethno-religion.

One cannot assume a religion because someone belongs to an ethnic group that is often referred to as though it were a religion. For example, a Pakistani who would otherwise be described as a Sikh in ethno-religious terms might be a Catholic. One would not wish such a person to be discriminated against on the basis that he or she was considered to be a Sikh, yet one could discriminate against that person on the basis that he or she followed a certain religion. In the same way one could discriminate against a Muslim if one wished, but one would be hard pressed to discriminate against that person for wearing particular garb.

I faced this issue recently when I represented the Hon. Kerry Chikarovski in her role as Minister for the Status of Women at an important function at Chullora which addressed the topic "Facing Veiled Discrimination" - an issue that Muslim women face. In New South Wales there are as many Muslim women as there are Aboriginal women, who, to put the matter into perspective, make up about 1 per cent of the population - as mentioned by Reverend the Hon. F. J. Nile. The function was held to draw attention to the fact that Muslim women were excluded from applying for certain jobs because of the veils they wore and their manner of dress. The excuses offered for their exclusion included the possibility of clothing catching in the moving parts of machinery and persons wearing such clothing were not regarded as attractive in positions such as receptionists.

Some highly educated women who wear the hijab are perfectly capable of working in a secular society and many wish to work in a secular society. They are not all poor, uneducated people, as the Hon. Franca Arena would clearly know. Many are highly educated, intelligent, and employable. However, employers turn these people away because they wear the hijab, rather than think positively about their skills and modifications to uniforms or work practices to enable them to be employed. I was pleased to be with Jeannette McHugh at that function to help encourage the employment of women under such circumstances. These improvements cannot

be made overnight, but this bill will help them in their push.

The Anti-Discrimination Act and the anti-vilification legislation that flows from it will ensure that Australia remains an attractive tourist destination for a variety of people from around the world. The Minister for Tourism has done a wonderful job in improving the prospects of tourism for Australia. This nation's multicultural history and the way in which we deal with such sensitive issues will improve our job prospects in a most positive way. I was raised in the Irish Catholic religion - which I found was just not me. I am pleased to say that over time Catholicism in Australia has changed radically, though gradually. It is much more caring and focused on charity and Christianity than was the folklore of the Irish Catholic religion in which I was brought up at the convent.

[*Interruption*]

The Hon. Jennifer Gardiner referred to Mary McKillop, who would not have been an Irish Catholic. She was very feisty - more the English-style Catholic. In Australia the Irish Catholic religion, a religion of almost servitude and perhaps slavery, has been replaced by a more European Catholicism. Irish Catholics would be said to belong to an ethno-religious group, and I refer to the Irish Catholics of the green variety fighting the orange variety as far back as 1855-56, when they were separated by that wonderful Archbishop Polding at Missenden Road in celebrated circumstances. The Irish Catholics of the time may have banded together because of bigotry displayed by the English settlers, or they may have banded together to get their way for bigoted reasons. Thank goodness the Irish Catholic ethos in both politics and society is a thing of the past.

The Hon. Elaine Nile: They all fought together in 1898.

The Hon. Dr B. P. V. PEZZUTTI: I have brought out the Irish in the Hon. Elaine Nile.

The Hon. Elaine Nile: Irishmen united and fought together in 1898 in the south of Ireland.

The Hon. Dr B. P. V. PEZZUTTI: I am talking about Australia. The orange and the green in Australia have not got together.

The Hon. Elaine Nile: Yes they have.

The Hon. Dr B. P. V. PEZZUTTI: No, they have not. When Barrie Unsworth said he wanted to get back to basics, back to the 1950s, he meant he was trying to get the Labor Party back with the Irish Catholics and the Catholic Church in this State.

The Hon. J. R. Johnson: That is rubbish! Barrie was of English extraction.

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The Hon. Dr B. P. V. PEZZUTTI: I know, but when he spoke about going back to the 1950s he was trying to take us back to the days when the Irish Catholics supported the Labor Party. I am pleased that the Catholic Church in 1994 is an apolitical organisation which fights for its people, who are not all card-carrying members of the Labor Party any more - and good for them, too! I welcome the bill. The proposed changes are sensible. I would have spoken longer -

Reverend the Hon. F. J. Nile: Why were you not on the speakers' list? You have accused me of wasting the time of the House, yet you were not on the list of members to speak. You have just been filling in time.

The Hon. Dr B. P. V. PEZZUTTI: I have spoken for only 15 minutes. I welcome the bill and support it.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [9.49], in reply: I thank all honourable members for their contributions to this important debate. Issues have been raised which warrant a detailed response. Therefore, I will make that response tomorrow so as to satisfy everyone's concerns about this innovative and ground-breaking legislation.

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

MENTAL HEALTH (AMENDMENT) BILL

Second Reading

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [9.50]: I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this bill is to implement a number of recommendations contained in the 1992 report of the Mental Health Act Implementation Monitoring Committee, in order to simplify the operation of mental health legislation and, consequently, to improve the administration of mental health services in New South Wales.

The bill amends the Mental Health Act 1990 and the Mental Health (Criminal Procedure) Act 1990. Before outlining the main provisions of the bill, I wish to inform honourable members of the process undertaken by the Mental Health Act Implementation Monitoring Committee which has led to the development of the bill currently before the House.

The Mental Health Act 1990 provides the legislative framework for the operation of mental health services in New South Wales. The 1990 Act replaced the outdated Mental Health Act 1958 and the partially proclaimed Mental Health Act 1983.

When the Act was commenced in 1990, the then Minister for Health, the Hon. Peter Collins, M.P., established the Mental Health Act Implementation Monitoring Committee to monitor the impact of the new legislation over the first two years of its operation.

The formal terms of reference of the committee were as follows:

1. To monitor the implementation and operation of the Mental Health Act 1990;

2. To advise on processes and strategies that will assist and ease the implementation process;

3. To advise and recommend action for overcoming any difficulties or problems associated with the implementation of the new Act.

The committee was chaired by Ms Anne Deveson until February 1992. From February 1992 until the committee completed its report in August 1992, the committee was chaired by Professor Ian Webster.

The committee comprised 21 members representing a wide range of interests affected by the legislation, including service providers, mental health advocacy groups, and community representatives. Public consultations were held throughout the State and the committee received 124 written submissions from government agencies, service providers, community groups and individuals.

The committee's task was complex and demanding, particularly in view of the major changes to the operation of mental health services incorporated in the 1990 legislation and the need to take account of the wide range of community interests relating to the operation of mental health legislation. The committee is to be commended for its thorough, compassionate and dedicated work.

The report of the committee was tabled in Parliament on 24 November 1992. The report's general conclusions were that the 1990 Act is effective and humane in its attempt to balance the provision of involuntary treatment for those people whose state of mind requires intervention, and the need to protect the civil liberties of all persons in the community.

As honourable members would be aware, the main features of the Mental Health Act 1990 include:

- establishing definitions of the terms "mental illness", "mentally ill person" and "mentally disordered person" for the purpose of determining involuntary admission to hospital;

- providing for detailed regulation of admission to and care in hospitals, with emphasis on the rights of voluntary patients (termed "informal" patients in the Act) and involuntary patients and processes to review patients;

- emphasising that treatment should be provided effectively but in the least restrictive environment and with a view to acknowledging the rights, dignity and self-respect of persons subject to the Act;

- allowing involuntary treatment outside the hospital environment under community treatment orders and community counselling orders;

- providing for the care, treatment and control of forensic patients;

- regulating psychosurgery and electro-convulsive therapy;

- monitoring private hospitals which provide psychiatric treatment, (termed "authorised hospitals" in the Act);

- delineating the functions and responsibilities of Official Visitors to psychiatric hospitals;

- establishing the Mental Health Review Tribunal, to provide an independent review process for patients under the Act;

- establishing the Psychosurgery Review Board, to approve and review psychosurgery.

The majority of the report's recommendations proposed either no legislative change or minor changes to clarify the meaning of the 1990 Act, to simplify the operation of this legislation and to give legal sanction to routine administrative practices in the delivery of mental health services.

The bill before the House contains amendments to implement those of the committee's recommendations which would require relatively simple adjustment of the Act and be consistent with the Act's philosophy relating to the care, treatment and protection of rights of people subject to the Act.

Mr President, I now wish to outline for honourable members details of the main provisions of the bill.

The object of the bill is to implement recommendations of the Mental Health Act Implementation Monitoring Committee with respect to the following matters:

- the detention of patients in hospital;

- the transfer of persons between prisons and hospitals;

- the operation of community counselling and community treatment orders;

- the procedures for obtaining approval for the treatment of patients by electro-convulsive therapy and other prescribed treatments;

- hospital administration and management; and

•orders made by magistrates in criminal proceedings.

The amendments to the Mental Health Act are contained in schedule 1 of the bill. Schedule 2 contains an amendment to the Mental Health (Criminal Procedure) Act.

The first set of amendments I wish to outline relate to involuntary admission and detention in hospital under the Mental Health Act.

Items 1 and 2 of schedule 1 amend section 18 of the Act to provide a clear method to change the status of a patient in hospital from informal to involuntary.

Currently, the same procedure must be applied in both this process and in situations where a person is brought into a hospital from the community, despite the fact that the patient already in hospital will have been under constant medical supervision and review.

Under the proposed amendment to section 18, there will be no need to formally write a certificate to detain and admit a person who is already an informal patient in the hospital. All current safeguards relating to the examination of patients admitted to hospital involuntarily, by whatever means provided under the Act, will be retained.

Specifically, item 2 provides that the mechanism to change a patient's status does not alter the review procedures following detention, including patient protection mechanisms under part 2 of chapter 4 of the Act.

Item 3 amends section 21, as part of a proposal to empower the Director-General of the Department of Health to accredit specific persons to write a certificate under section 21 of the Act for the purpose of taking a person to a hospital and detaining the person for assessment.

Items 4, 5, 14 and 15 also relate to this proposal.

The committee found that, in many cases, particularly in rural communities, local general practitioners may be unable to provide this service. Accreditation of experienced persons to write schedules under section 21 would address such difficulties and would acknowledge that, in some circumstances, other mental health professionals are well equipped to perform this scheduling function. It is envisaged that appropriate persons would include some members of mental health crisis teams, who most often deal with urgent situations where persons may need to be scheduled for their own protection.

I wish to stress that such accreditation would occur on a case by case basis and that those accredited would be regularly reviewed and/or reapply for accreditation within a specific time frame. The New South Wales Department of Health will develop, in consultation with relevant interest groups, specific guidelines and processes to establish and monitor such accreditation.

Items 4 and 5 are required as a consequence of the proposal to empower the Director-General to accredit specific persons to write a schedule under section 21. Item 4 will allow accredited persons to seek the assistance of police, where necessary, to bring a person to hospital for assessment. The circumstances under which accredited persons may seek such assistance from police and the procedures to be followed by accredited persons to request police assistance will be identical to those which currently apply to medical practitioners under the Act.

Item 6 of schedule 1 substitutes a period of 12 hours instead of 4 hours, under section 29(1) of the Act, as the maximum time that can elapse before a person presented for detention in a hospital is examined by a medical practitioner.

It should be emphasised that the proposed amendment seeks to address certain practical difficulties imposed by the current 4 hour limit. It would not establish 12 hours as the "average" time before patients are examined but would set that time as a maximum limit, ensuring persons detained in a hospital are not required to be released without proper assessment of their need for care due to the temporary unavailability of a medical superintendent.

Item 6 also clarifies the intention of section 29 so that a medical practitioner who certifies that a person should be admitted to hospital under section 21 may not provide any of the independent examinations necessary at the hospital to detain that person. This includes a medical superintendent of a hospital who acts under the proposed section 18A to change the status of an informal patient to an involuntary patient.

Item 7 amends the requirements under section 30 to provide that information on patients' rights is to be given to a person as soon as practicable after that person is taken to a hospital; and, if the medical superintendent considers that the person was not able to understand the explanation given at that time, another explanation must be given not later than 24 hours before a magistrate's inquiry.

Items 9, 12 and 13 clarify procedures under sections 35(1), 38 and 40(1) of the Act where one medical practitioner finds a person to be a mentally ill person and another medical practitioner finds that person to be a mentally disordered person.

Item 14 relates to items 3, 4 and 5 which I have already mentioned. Specifically, item 14 empowers the Director-General of the Department of Health to accredit specific persons to write a certificate under section 21 of the Act for the purpose of taking a person to hospital and detaining the person for assessment. Item 15 is a consequential amendment.

Mr President, the second set of amendments in schedule 1 of the bill relate to the transfer of persons between prisons and hospitals.

Items 16, 17 and 18 provide that prisoners are subject to the same definition of a "mentally ill person" as the general community for the purposes of involuntary hospitalisation and treatment under the Act.

The third set of amendments deal with the operation of community counselling orders and community treatment orders.

Item 19 corrects an oversight in the Act by clarifying that the appointment of directors and deputy directors of health care agencies are not required to be gazetted.

Items 20, 21, 23 and 24 will improve the effectiveness of community counselling orders and community treatment orders under section 124(1)(c) and section 135(1)(c) respectively, by providing that such orders can be made or can continue when the person who is the subject of the order is in hospital.

Item 22 will permit the Mental Health Review Tribunal to initiate community treatment orders at its reviews of temporary patients.

Item 25 revises procedures under section 142, so that when a patient in breach of a community treatment order is taken to a hospital, the medical superintendent must review the patient prior to the administration of medication.

Mr President, I now turn to amendments which relate to procedures for obtaining approval for the treatment of patients by electro-convulsive therapy and other prescribed treatments.

Item 26 of schedule 1 allows the Mental Health Review Tribunal to review the capacity of informal patients to give informed consent to electro-convulsive therapy where a patient's capacity to consent is in doubt.

Items 27 to 33 streamline procedures under sections 188 to 194 for authorising electro-convulsive therapy for involuntary patients, by removing the current requirement that the medical superintendent certify the patient's capacity to consent. The Mental Health Review Tribunal's current responsibility to determine the patient's capacity to consent is to remain unchanged.

In particular, item 32 provides that in the course of an inquiry by the Mental Health Review Tribunal about the proposed administration to a patient of electro-convulsive therapy, the tribunal must consider the views of the patient about the proposed treatment in addition to the views of the relevant medical practitioners and any other information placed before the tribunal.

Item 33 ensures that a decision by the Mental Health Review Tribunal to authorise electro-convulsive therapy, as a result of an inquiry under section 194, is based exclusively on the evidence presented to the tribunal during the inquiry.

The next set of amendments deal with hospital administration and management.

Item 35 allows the Director-General of the Department of Health a discretion in relation to the arrangements which the Director-General requires to be made by an authorised hospital under section 219 for the provision of medical services to patients in that hospital.

Items 37 and 38 clarify the administrative responsibilities of the administrator and medical superintendent of an authorised hospital under section 231 and section 293.

Mr President, other amendments in schedule 1 are as follows:

Item 40 allows a forensic patient suffering from a developmental disability to be deemed capable of instructing a solicitor under section 288 of the Act for proceedings before the Mental Health Review Tribunal.

Item 41 ensures that persons detained pursuant to section 14(b)(iii) and 14(b)(iv) of the Mental Health (Criminal Procedure) Act 1990 are afforded the full protection of the Mental Health Act 1990 by including such persons in the definition of "forensic patient" in the Mental Health Act.

Item 42 of schedule 1 redrafts schedule 2 of the Mental Health Act in order to assist practitioners using the schedule and to clarify that the assistance of police should be sought only where necessary. Circumstances where this may arise include where the behaviour of the person being scheduled is dangerous or erratic or threatening the safety of care-givers, such that the only safe manner of taking the person to hospital is with the assistance of the police.

Mr President, in addition to these amendments arising from recommendations made by the Mental Health Act Implementation Monitoring Committee, schedule 1 contains three additional minor amendments to the Mental Health Act 1990, which were not considered by the committee but which have been brought to attention during the New South Wales Health Department's consideration of the proposed amendments to the Act.

Firstly, item 34 of schedule 1 removes the discretion of the Director-General of the Department of Health to appoint a medical superintendent to a hospital under section 209 of the Act and makes such an appointment mandatory.

In addition, item 36 allows the licensee of an authorised hospital the discretion to appoint a deputy medical superintendent under section 222 of the Act and introduces a provision to require that any such appointment is subject to the approval of the Director-General of the Department of Health.

Items 34 and 36 are required to correct anomalies under the current Act in provisions dealing with the appointment of medical superintendents and deputy medical superintendents.

The third minor amendment is item 39 of schedule 1, which clarifies that Official Visitors are protected from liability for any actions taken in good faith for the purpose of performing the functions of Official Visitors under the Act.

This amendment was requested by the annual seminar of Official Visitors. It will be equivalent to the protection from liability already provided under the Act to members of the Psychosurgery Review Board and the Mental Health Review Tribunal.

The final important set of amendments relate to orders made by magistrates in criminal proceedings.

Schedule 2 of the bill amends the Mental Health (Criminal Procedure) Act 1990 to improve procedures under section 33 for the transfer of mentally ill persons between a local court and hospital. Specifically, this amendment:

- empowers a magistrate to make further orders as to the disposition of a person who is not detained in hospital following assessment; and

- provides for a form to record such further orders.

In addition, as part of these improved procedures, item 11 of schedule 1 introduces a new section 37A of the Mental Health Act, to clarify that police are to collect the person from hospital and return the person to court, if required by the magistrate, on non admission by the hospital. Items 8 and 10 are consequential amendments.

Mr President, I also wish to inform honourable members about the establishment of a further review process relating to several

recommendations for legislative change made by the Mental Health Act Implementation Monitoring Committee, which are not included in the bill before the House.

The committee's report made several recommendations for legislative change which relate to on-going debates about the most appropriate levels of care and control within the mental health system.

In several cases, the committee did not agree on the extent of difficulties under the current Act or the best way to address such difficulties. The committee has also suggested several amendments which have significant ramifications for patients' rights and civil liberties. These issues include:

- the possible expansion of the definition of mental illness contained in the Mental Health Act 1990;
- a proposal to allow further detention of a mentally disordered person where the person is considered likely to commit suicide;
- a proposal to require that an informal patient give 24 hours notice of intention to leave hospital;
- the extension of the duration of community treatment orders from three to six months; and
- the proposed variation of requirements for approval of applications for emergency electro-convulsive therapy treatment.

I am pleased to advise that the Minister for Health has requested the New South Wales Health Department to prepare a discussion paper for wide consultation with relevant government authorities and community groups, which will deal with a number of the committee's recommendations for further legislative change, including the proposals which I have just mentioned. The discussion paper will seek to identify additional information and promote community debate prior to further Government consideration of these issues.

It is anticipated that the discussion paper will be released in May 1994.

The Minister for Health has agreed to establish an on-going committee to monitor the utilisation and effectiveness of the Mental Health Act, which will be required to report to the Minister on its activities and any recommendations it may wish to make for further improvements to the Mental Health Act. In particular, the committee will review the replies received in response to the release of the discussion paper.

The two-phase legislative process, comprising the consideration of the legislative amendments contained in the bill before the House and the release of the discussion paper on additional legislative issues, will allow the Government to implement many worthwhile legislative initiatives without delay, while seeking to resolve more complex matters which continue to generate widely divergent views.

Finally, Mr President, I wish to emphasise that the bill before the House and the decision to release a discussion paper on several other legislative issues are evidence of the Government's strong commitment to improve the legal framework for people affected by mental illness and to improve mental health services in New South Wales.

Improving services for people with mental illness and addressing previous neglect has been a priority of this Government since assuming office.

Since 1988, over $86 million in capital has been spent on upgrading facilities in hospitals and in establishing new hospital and community services.

Recurrent spending on mental health in this State currently stands at over $289 million, a total increase of $104 million since the 1988/89 financial year.

In view of this commitment to improving mental health services in New South Wales, the Government welcomed the report of the national inquiry into the human rights of people with mental illness, which was released late last year. The report was particularly helpful in raising community awareness of the difficulties faced by this most disadvantaged group of people and in doing so, has

provided valuable assistance in advancing the reform program already under way in New South Wales.

The Minister for Health is currently co-ordinating a detailed whole of government response to the report of the national inquiry into the human rights of people with mental illness. As part of our action plan, the Minister for Health has already announced his commitment to further increase funding for mental health services. The additional funding will be directed to programs for Aboriginal people, those living in hostels and boarding houses, the elderly, young people and those living in isolated communities.

This bill is an important strategy in the Government's on-going process of reform to improve mental health legislation in this State and to improve mental health services.

I commend the bill.

The Hon. FRANCA ARENA [9.50]: Earlier the Hon. Dr B. P. V. Pezzutti said that mental health funding had been increased in the Federal Budget. I am pleased to be able to report that for the next four years mental health will receive $169 million.

The Hon. Dr B. P. V. Pezzutti: Not for psychiatric disabilities.

The Hon. FRANCA ARENA: No, for mental health. This year $40 million will be spent on mental health. I should like also to report that breast cancer research and prevention will receive $209 million over four years. That is good news for us all. In preparing my speech for debate on the Mental Health (Amendment) Bill I looked at the comprehensive and excellent report of Brian Burdekin entitled "Human Rights and Mental Illness". On page 31 of that report Brian Burdekin spoke about mental illness principles - important principles to take into consideration when debating this bill. I quote from that report:

Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care were adopted by United Nations General Assembly in 1991.

The Principles are particularly valuable in specifying the way in which human rights recognised in other instruments apply to people with mental illness and to situations affecting them. This report, therefore, treats them as a basic benchmark.

The Principles specify that they are to be applied:

without discrimination of any kind such as on grounds of disability, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, legal or social status, age, property or birth.

While they focus primarily on human rights in relation to the mental health system, the Principles also stipulate:

•that every person with a mental illness has the same basic rights as every other person.

•that discrimination on the basis of mental illness is not permitted.

•that every person with a mental illness has the right to live and work, as far as possible, in the community.

•that people being treated for a mental illness must be accorded the right to recognition as a person before the law.

The Principles re-affirm that individuals who have a mental illness or who have experienced mental illness have the right to protection from:

•exploitation - whether economic, sexual or in other forms;

•abuse - whether physical or in other forms; and

•degrading treatment.

We should keep those principles in mind when debating this legislation. Mental health must be one of the most serious issues that this Parliament has addressed during this session or, dare I say it, at any time. Honourable members would remember the Mental Health Bill that was passed by this Parliament in 1990. Four years later the Act is being amended following a recommendation by the Mental Health Act Implementation Monitoring Committee, which until February 1992 was chaired by Ms Anne Deveson and then by Professor Ian Webster. The committee had wide representation, which included representatives from the Mental Health Review Tribunal, the Mental Health Advisory Service, the Department of Health, the Council for Civil Liberties and the Ethnic Affairs Commission. It made a substantial number of recommendations, most of which are implemented in 23 amendments. I believe the remaining recommendations of that committee will be subjected to more detailed review before being brought before this Parliament. The proposed changes are:

(a) to enable an "accredited" person, as well as a medical practitioner, to authorise the detention of a person in hospital;

(b) to increase the time from four hours to 12 hours maximum for which a person may be detained in hospital before being examined by the medical superintendent to determine whether the person is mentally ill;

(c) to ensure that a person who is involuntarily admitted to hospital is given information about their rights by the medical superintendent. An interpreter is to be provided for those persons who are unable to communicate adequately in English;

Apart from the obvious reasons why interpreters should be provided, it is important to remember that services for the mentally ill should be sensitive to their cultures. I greatly regret - I am sure this regret is shared by the Hon. J. M. Samios - that there are so few professionals of non-English speaking background, such as psychiatrists and psychologists, in Australia. It is difficult for me to understand why the Federal Government does not give visas to people from overseas who have these qualifications. I suppose that is all due to the Australian Medical Association. Other proposed changes are:

(d) if a patient has been found as mentally ill by one medical examination and medically disordered by another medical examination, they must not be held involuntarily in hospital for longer than three days before being taken before a Magistrate;

(e) if a forensic patient requests transfer from a hospital to a prison, the Mental Health Review Tribunal must accede to their request if they are satisfied that the patient is not mentally ill;

(f) a prisoner may only be involuntarily taken from a prison to a hospital if the prisoner is mentally ill;

(g) make it clear that community counselling orders or community treatment orders have no affect while the person is a voluntary patient in hospital;

(h) to allow a new Director or deputy Director of a health care agency to be appointed without the agency having to be re-gazetted;

(i) enable the Mental Health Review Tribunal to make community treatment orders for all detained patients appearing before the Tribunal;

(j) require a patient's medical condition to be examined by the medical superintendent of a hospital before treatment is started on that patient as a result of breach of a community treatment order;

(k) to enable a medical superintendent to apply to have the Mental Health Review Tribunal determine whether a person voluntarily in hospital has given informed consent to ECT. The Tribunal must take into account the patient's views;

That is an important issue. Honourable members know how often electro-convulsive therapy was carried out on people who did not consent to that treatment. Further changes are:

(l) the Director General of Health must appoint a medical superintendent to hospitals;

(m) provide that a Deputy Superintendent may be appointed to hospitals;

(n) provide protection for Official Visitors to hospitals from personal liability for acts done in good faith when carrying out their duties;

That is an excellent innovation. This afternoon I recalled that when I recently visited Italy my husband, who became ill, was taken to hospital. I saw on the doors of rooms in that hospital the rights of patients spelled out, which was a good initiative. I asked the Hon. Dr B. P. V. Pezzutti whether that happens in Australian hospitals, because I did not remember seeing it. He confirmed that that will occur before the end of this year. I approve of that sensible initiative because too often people in hospitals have no idea of their rights. It is important to place those rights on the doors of every room in every hospital. It helps people to understand their rights. The changes continue:

(o) ensure that persons with developmental disabilities are able to obtain legal representations in matters regarding the Mental Health Act;

(p) provide that the definition of "forensic patient" includes persons who have been found unfit to be tried for an offence;

(q) to re-draft the certificate for the detention of a person in simpler language;

We all know how important that is. Often things are written in a language that only professionals understand; it excludes ordinary people like us. The final proposed change is:

(r) to extend the orders that a Magistrate may make in proceedings, if it appears to the Magistrate the defendant is mentally ill. That is, require the defendant to be assessed at a hospital and returned to the court if found to be not mentally ill.

The Opposition supports the Mental Health Bill and reminds members of the Government that mental health reform cannot be done on the cheap. The Government must allocate more money to mental health. It is of great concern that the beds in Rozelle Hospital will be reduced from 420 to 40. Where will the patients go? Honourable members know the disgraceful state of many overcrowded hostels in the inner city area and also in the Blue Mountains. I visited an old friend in a boarding house in Katoomba who was living in conditions in which I would not want my worst enemy to live. Many mental health patients end up in prison. How can we call ourselves a civilised society and allow the weaker members of our community to suffer such indignities?

During the weekend I tried to speed read the excellent report "Human Rights and Mental Illness" by Brian Burdekin of the Human Rights and Equal Opportunity Commission. The two extensive volumes should be compulsory reading for all members of both Houses of this Parliament. The report documents that all the commission's research suggests a serious failure by governments to provide sufficient resources to protect the fundamental rights of many thousands of Australians affected by mental illness or psychiatric disability. Since 1801, when the first case of mental illness was recorded in the then colony of New South Wales, there have been approximately 40 inquiries into psychiatric facilities and services. It is obvious that this problem will not go away. We do not need bandaid measures but adequate funding and an understanding of the nature and prevalence of mental illness in the community and a realisation that these people feel marginalised from society and excluded from basic issues that affect their lives. Yesterday I was pleased to read in the publication of the Ethnic Communities Council of New South Wales under the heading "Multicultural Initiative in Mental Health" the following:

The Transcultural Mental Health Centre, the first of its kind in NSW, was established in response to difficulties facing non-English speaking background (NESB) clients utilising mental health services.

The Transcultural Mental Health Centre opened on 25 August 1993 and must be the best kept secret in Government because until the magazine arrived yesterday I had never heard of it and I see that the Hon. J. M. Samios did not know about it. I would be most grateful if the Minister in reply would give some information about the centre and would also indicate how much money was allocated for the centre. I will now quote Burdekin on how it feels to be mentally ill. I hope all honourable members will remember that there but for the grace of God go I:

> You become withdrawn, and thus you quickly lose all social interest. All the time this is happening, it appears to be getting worse and worse . . . you begin to feel there is no point in living, in being part of the social and political scene. At its very worst, the depression is so extreme that it is physically painful to think . . . you feel worthless, listless, numb, fearful, uncaring, angry, confused, hateful, morose and anguished.

The Opposition supports the legislation but once more reminds the Minister that the mental health budget has been cut by $11 million in real terms since the last election. Adequate funding is urgently needed in this important area.

The Hon. Dr B. P. V. PEZZUTTI [10.4]: I support the changes to the Mental Health Act. Honourable members will remember - and I will not boil the cabbage of the Minister's crystal clear second reading speech, if I can mix those metaphors - when the Mental Health Bill was introduced by my colleague the former Minister for Health, Peter Collins, he said that the bill would be subject to review from the beginning of its operations. Minister Collins set up a committee headed by Anne Deveson, which started its work when the new legislation commenced operation and reported to the Government on changes deemed necessary to make the bill more sensitive to the needs of people with mental illness. Before speaking specifically to the bill I draw the attention of honourable members to the speech of the Deputy Leader of the Opposition in the Legislative Assembly, who spent most of his time churning out Labor's lies about the Government's performance. At one stage he said:

> The changes proposed in the bill are many in number and all of them call for comment. Time does not permit me to deal with all of them . . .

The Hon. Franca Arena has made a pretty good fist of understanding the changes that the bill will make and commenting on them intelligently and reasonably. The Deputy Leader of the Opposition in another place spent little time, barely a paragraph or two, in describing the changes to this Act and welcoming them. My attention was drawn to the Schizophrenia Australia Foundation report of this year. To underline the big changes occurring in New South Wales I shall quote a few sentences from that report which will draw out the points that the Minister made in his second reading speech and refute those made by the Deputy Leader of the Opposition and spokesman on health in another place. Initially the report commented:

> New South Wales scores the most points in our ratings . . . New South Wales reaches the top because some of its regions have very good community services, because the organization of services is better than elsewhere and because it has been building new psychiatric units in general hospitals faster than the other states.

The report also made the point:

> Some of the rural New South Wales regions are the best resourced in the country in terms of community staff levels and put to shame rural Queensland and South Australia.

It continued:

> There are two specialist areas where this state outperforms the others. One is in its service to the homeless mentally ill in the Inner City Sector of Sydney; this is very good, with staff going into the shelters to offer treatment to the mentally ill individuals living there, and engaging most of them. The other area is in the provision of extended hours services for acutely mentally ill people. All of Sydney has an extended hours service which can undertake an emergency home assessment seven days a week, even in the less well-resourced sectors. In half of the sectors, the service is 24-hours a day and it can support and treat the mentally ill individual at home. Probably no other city in the world offers such a widespread and intensive service. The other major metropolitan centres,

> Newcastle and Wollongong, as well as several rural cities have extended hours services.

I draw that statement to the attention of honourable members because of the extraordinary statement of the Deputy Leader of the Opposition in another place that the Marrickville electorate is a catchment area for Rozelle hospital. He said:

> . . . an enormous number of people with mental illness inadequately accommodated . . . In my own street a number of people with mental illness wander up and down, and to the credit of the people in my electorate . . . they are well supported by the community.

Of course they are well supported. As the Schizophrenia Australia Foundation pointed out clearly:

> . . . probably no other city in the world offers such a widespread and intensive service as the mental health services care in Sydney and in New South Wales.

Does the Government get any credit for the changes that have taken place in the past four years? The Opposition gives the Government no credit for the Act, the big changes to funding and the way in which it spends the money. It tells more lies and says that 900 jobs will disappear from the health system and 100 jobs from the mental health service. If the Deputy Leader of the Opposition in the other place can show me at any time that in that way we are losing professional services designed to help individual patients to live at home or patients who come to our hospitals, I will eat my hat. The number of people employed in the service may vary, but I assure honourable members that the number of professionals employed in the service has continued to increase each and every year the coalition has been in government. We have targeted those professional services to people who need them.

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I draw the attention of honourable members to the fact that the Deputy Leader of the Opposition said that he will remove the word customer from the lexicon of health care if he ever becomes a Minister. He said it was a term that he would expunge in March 1995. For the sake of the people of New South Wales, I hope he will not do so, otherwise there will never be such a charter for customers of our services. They are not simply patients who are mentally ill. The reason for the review is the way in which mentally ill patients have an impact on the whole way of life of their family and those who live around them. That is why I addressed that issue in the debate on the anti-discrimination legislation. The word customer is carefully used in all the work done by the Minister for Health and the Department of Health, because it reflects a holistic way of looking at a person as part of society.

Everyone in society is potentially a customer for health services. Dealing with that customer relationship is not simply a matter of getting a good outcome - in other words getting a schizophrenic off the street, cleaned, bathed and washed, no longer mentally disordered in thought processes - but doing it in a way that respects individuality, respects human dignity and helps people to get on with their lives free from the disability that they had, and so that their lives mean something. That is why community workers labour day and night supporting people to get accommodation.

My colleague the Minister for Planning and Minister for Housing has done much to improve access to housing for people with mental illness and to help the people around them to understand that those with mental disorders are ill, as any other person might be ill. I am proud of the actions of the Government, the Minister for Health, the Department of Health and all the hard working, dedicated mental health workers in the State. If they were here, they would echo the words of the Schizophrenia Australia Foundation that there has been an enormous change in mental health care in this State in the past four or five years. I had the privilege of meeting with the Mental Health Co-Ordinating Council, the peak body for all the agencies that deal with people who have mental illness, including ARAFMI - the Association of Relatives and Friends of the Mentally Ill - the Schizophrenia Australia Foundation and other bodies. The people in those bodies work extremely hard to make the lives of people with mental illness positive, rather than have them suffer the torment of those with a mental illness.

I congratulate all those people on their hard work in bringing forward these changes to the legislation so that the problems could be resolved easily and quickly and become part of the discussion process that will lead to other changes resulting from the deliberations of the review body. It was important for the action being taken by the ministry to be put on display when the Minister spoke with Mr Burdekin at the Australian Catholic Health Care Association forum. Mr Burdekin and the Minister for Health both spoke on that occasion. Mr Burdekin was more than positive about what was happening in New South Wales. This State is going in the right direction, though it is not quite fast enough for Mr Burdekin. Consequently, tonight the Federal Government announced that it will give much more support, and one hopes that the additional funding over four years will result in actual dollars being delivered soon to provide accommodation for the mentally ill.

The identified changes to the Act were acknowledged by Mr Burdekin as being the way to go, not simply in New South Wales but everywhere in the world. The Act is the leading legislation of its kind in the world and sets the pace for producing positive services of world quality and giving service delivery that will enable people to live in the least restrictive way. It will give them the capacity to behave as people in society. The changes are really designed to make the system work better, to allow for people to be accredited in specific areas where a psychiatrist or another person may not be available to assess patients and to provide a certificate under section 21, the former schedule 2.

The bill provides for a holding period of 12 hours, which is a realistic time, without disturbing the entire operation of any institution. It is more convenient to extend the holding period from four hours to 12 hours. An important feature is that this will ensure that people are not simply told what is happening to them, but that it is repeated by the superintendent of an institution once he is sure that the person can understand. In other words, an explanation is not given at a time when the patient cannot understand. The superintendent will give a certificate when the patient understands what is happening. That must be done not longer than 24 hours before a magistrate's inquiry. It is important that these matters are tidied up so that those who must appear before the magistrate have a better understanding of their position.

This is the first flush of amendments; others will be brought forward, but they deserve wider community consultation. As I said during the debate on the anti-discrimination legislation, the community must be aware of the issues and take part in reaching solutions. By working through the solutions one comes to a better understanding of the issues involved and of the life of a person who is mentally ill or who has a mental illness. That is a better way of dealing with the issues and with people involved fairly, honestly and openly. It is important that the Mental Health Co-Ordinating Council's role in the process be recognised. That is a matter of interest for the patients and relatives who make up a subset of the customer focus, as well as the staff who are part and parcel of the service of delivering mental health care. The community groups which represent all those interests have been co-operatively involved in the discussions about ways to improve the services and to ensure that they are targeted towards improved mental health services.

With those few words, and relying upon the clear explanation given by the Minister, I congratulate him on continuing to move the agenda forward co-operatively, providing the funds and the real oomph.
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He has taken on this task following the real dedication of the former Minister for Health, Mr Collins, and that dedication was evident from his contribution to the debate in the other place. There has been a real commitment to mental health care by the entire Government. My colleague the Leader of this House, the Hon. J. P. Hannaford, when he was Minister for Health, pushed this agenda all the time and drew people along with him to ensure that there was a community focused change in the way people thought about mental illness and treated those who are mentally ill. That has come through in the legislation on anti-discrimination introduced by the Attorney General, the Mental Health Act and funding from the Treasurer. I support the bill and look forward to future debate on other amendments that will be made to the Mental Health Act after further community consultation. I thank the Opposition for its strong support in this House. However, in the other place the Opposition's attitude was not nearly so carefully thought out.

Reverend the Hon. F. J. NILE [10.18]: The Call to Australia group is pleased to support the Mental

Health (Amendment) Bill. The object of the bill is to implement recommendations of the Mental Health Act Implementation Monitoring Committee with respect to the following matters:

(a) the detention of patients in hospital;

(b) the transfer of persons between prisons and hospitals;

(c) the procedures for obtaining approval for the treatment of patients by electroconvulsive therapy and other prescribed treatments;

(d) the duration and effect of community counselling and community treatment orders;

(e) hospital administration and management;

(f) orders made by Magistrates in criminal proceedings.

Whenever I consider the issue of mental health I always think of the man who initiated so many of the major reforms, Lord Shaftesbury, who is famous for his leadership in England. After his election to Parliament he visited what was regarded in those days as a shocking place, described as either a lunatic asylum or a house of bedlam where people were chained up and treated like animals, sometimes without clothing, sometimes having buckets of water thrown over them and in a most disgraceful situation.

Lord Shaftesbury initiated some of the first major reforms in the mental health area that preceded what is now happening in New South Wales and Australia. The Acting-President, the Hon. D. F. Moppett, also is a member of the Standing Committee on Social Issues that is inquiring into suicide in rural areas, and he would agree with my view that Australia has the highest teenage male suicide rate among developed nations of the western world. However, to put that in context, the overall suicide rate in Australia has not changed but has remained constant. Without pre-empting the committee's conclusions, I suggest that it appears that suicide is occurring more during teenage years rather than among persons in the 40 to 50 age bracket.

I am pleased that the Government has given high priority to mental health. Effective mental health facilities are necessary to identify and treat people with potential suicidal tendencies and to prevent suicides in urban and rural areas. Call to Australia is pleased that the Opposition is supporting the bill and that the Government has had considerable consultation with relevant organisations. I note that the Mental Health Act Implementation Monitoring Committee, which was established at the commencement of the Mental Health Act 1990 to monitor the impact of the legislation over the past two years of its operation and had its report tabled in November 1993, has a membership of 21. The committee includes representatives from a wide range of interest groups affected by the legislation, including service providers, mental health advocacy groups and community representatives. Public consultation was held throughout the State and 124 written submissions were received.

The Minister should be congratulated on taking the time-consuming approach to public consultation involving those with the knowledge and expertise in the field. Most important, public consultation prevents the mental health issue from becoming a political football. This issue, as with issues relating to Aborigines, is too sensitive for either side of politics to score political points from it but requires sensitivity to ensure that harm is not done to customers or consumers, to use the words of the previous speaker. People with mental illness should be given the highest priority and the debate should not in any way add to their stress or to the stress of those seeking to care for them. It is my observation that people working in the mental health area also experience significant stress.

Therefore, governments must have a caring attitude in dealing with this issue. Consultation has resulted in the amendments receiving widespread professional and community support. Item (1) amending section 18 deals with detention of patients in hospitals. We support the further addition to the section whereby such a patient must be medically examined not later than 12 hours after the medical superintendent decides to detain the patient as an involuntary patient. The time should be sufficient for proper investigation and determination

of a patient's mental condition. The Minister stated in his second reading speech that the extension of the maximum time limit from four hours to 12 hours within which patients must be medically examined would not become the average time limit but would address practical difficulties imposed by the current four-hour limit. This could result in a patient having to be released without proper assessment because of the temporary unavailability of a medical superintendent, and that would be a tragedy. The amendment is in the interests of the patient, the family and the wider community.

Item (9) amending section 35 relates to the limited detention of mentally disordered persons and item (13) amending section 40 deals with the termination of detention. The amendments clarify that

the limited detention period of three days for persons found to be mentally disordered persons applies only to a person who is detained as a mentally disordered person and who is not on subsequent examination found to be a mentally ill person. Those amendments also are desirable. Other persons detained in the hospital and not yet brought before a magistrate will be subject only to the limited detention period if the medical superintendent forms the opinion that they are mentally disordered persons.

The amendments also deal with transfers from hospitals to prisons. A controversy recently occurred when three prisoners who were in the Morisset centre for the criminally insane were able to leave the hospital grounds by taxicab and make their way to Kings Cross. They were finally located and returned. Apparently the offences for which they had been institutionalised were murder and other serious criminal offences. This is a difficult area. Another issue of concern - and one that is increasing - is the defence that at the time of the murder the accused was insane. In some cases this has led to a verdict of not guilty on the grounds of permanent or temporary insanity. This area needs to be carefully monitored so that that particular defence is not abused.

What happens when a person found not guilty on grounds of insanity is later assessed as being sane? Is that person then to undertake a prison sentence or is the person released? That area is open to abuse. However, item (16) amending section 96 relates to requests for transfer to prison and requires the tribunal to recommend the return to prison of a forensic patient who is detained in a hospital and makes such a request if the tribunal is satisfied that the patient is not a mentally ill person. Item (17) amending section 97 deals with the transfer of mentally ill prisoners to hospitals, whereby a prisoner may be involuntarily transferred from a prison to a hospital only if the prisoner is a mentally ill person within the meaning of the Act. This makes the position of such a person closer to that of other persons who may be detained in hospitals under the Act.

Call to Australia also supports amendments in relation to community counselling orders and community treatment orders. The amendment to section 185 makes provision for electroconvulsive therapy and other prescribed treatments which need close attention and supervision. The amendment, which deals with circumstances in which treatment may be administered with consent to persons other than involuntary patients, inserts at the end of that section:

> (2) A medical superintendent who is unsure whether a person is capable of giving informed consent may apply to the Tribunal to have the Tribunal determine whether the person is capable of giving informed consent and has given that consent.

If there is doubt about the ability of a person giving consent, or doubt whether the treatment would have any value or may further damage the patient's brain or ability to function, treatment should not be allowed to continue on that patient. We all remember the tragedy that occurred in the abuse and deaths of patients at Chelmsford Private Hospital. Patients and their treatment must be carefully monitored in both public and private hospitals. I congratulate the Minister for Health on the Mental Health (Amendment) Bill and his ongoing commitment to the establishment of a committee to monitor the utilisation and effectiveness of the Mental Health Act. That committee will also review replies in order to propose further amendments in the future. Call to Australia is pleased to support the bill before the House.

The Hon. J. F. RYAN [10.32]: I support the Mental Health (Amendment) Bill, which was introduced in another place by the Minister for Health, the Hon. Ron Phillips. The bill seeks to amend the Mental Health Act 1990 and clarifies many issues raised in previous legislation as a result of recommendations made by the Mental

Health Act Implementation Monitoring Committee. The Government welcomes comments by members opposite in support of the bill. All members of this House have supported the reform focus of the bill in large measure. The major area of controversy has been more about the environment in which mental health reform has taken place under this Government and about whether or not the Government has a commitment to helping people with mental health problems.

This Government, more than any other, in its reforms to legislation and also in its budgetary allocations has demonstrated its willingness to make hard decisions in restructuring health services to make sure they are available where they are needed. The proposed amendments focus on four areas of mental health reform. First, they improve patients' rights on admission to hospital, define rights of police to admit patients to hospital and to give assistance only when necessary, and also make better provision for patient consent to electroconvulsive therapy. Second, a series of reforms ensure that prisoners are subject to the same definition of mental illness as applies in the general community. Third, the amendments approve effectiveness of community treatment orders and the operation of health care agencies. Fourth, a series of other reforms deal with hospital administration and management.

Mental illness is a serious problem which has been ignored or neglected too often in the past. One of the ways the Minister for Health has sought to address that problem is by circulation of a document entitled "Mental Illness - Out of Hiding", and I congratulate him on that initiative. Statistics show that mental illness affects at least one in five Australians, that is, vastly more people than will ever be directly affected, for example, by lung cancer. The cost to the community is enormous. Major depression, just one form of mental illness, costs more days away from work than cardiovascular disorders. Mental illness, whilst we do not want to talk about it much, affects enormous numbers of people, is costly to the community and is widespread in its effects.

Over the past six years the Government has shown its dedication to improving mental health services. According to the recent Schizophrenia Australia Foundation report, New South Wales has now achieved the greatest depth of community based mental health services in Australia. Those improvements in mental health can be illustrated by improvements in mental health services in southwestern Sydney. These facts provide a more than adequate counter to the criticisms that have been made by the Labor Party that the Government is not committed to improving services to those needing mental health services in our State.

Because of this administration's initiatives, improved mental health services are easily recognisable in the districts of western Sydney that I represent: a new 40-bed acute psychiatric admission unit at Blacktown Hospital; a grant of capital funds to Lifeline Parramatta to build an accommodation facility for young people with mental illness; a transcultural mental health service at Parramatta; a multipurpose and special purpose-built unit for confused and disturbed elderly at Mount Druitt; and extended hour community mental health services and acquisition of a community mental health centre in Campbelltown.

There were virtually no mental health services available in southwestern Sydney before the Government came to office. Members who have referred to bed closures in eastern Sydney should view such closures in the context of the Government seeking to restructure health services in this State to make sure that they are available in places where they had not been available prior to the coalition winning government. Anyone who suggests that southwestern Sydney does not need a significant boost to mental health services is kidding himself and the people of New South Wales.

The mental health policy of this administration reflects the principles of mental health care adopted in the national mental health policy. New South Wales has made great strides in improving services for the mentally ill. The Government wants to ensure that people with mental illness receive adequate treatment and are guaranteed the same basic rights as every other person in the community. I commend the efforts of Minister Phillips to maintain the Government's commitment to those suffering mental illness. The Mental Health (Amendment) Bill will make the necessary adjustments to the Mental Health Act 1990 to ensure continuance of superior mental health services in New South Wales.

I compliment Mr Joshua Greenberg, a research officer who assisted me in the preparation of my speech. Mr Greenberg has become a member of my staff through the student intern program operated by the University of New South Wales. Joshua Greenberg is all the more interesting because he has come from the United States and is currently a student of politics at Cornell University. I understand his father is quite high in the administration of health in the United States of America and is actively involved in the Clinton administration's review of health services in that country. I thank Joshua for his contribution in assisting me with this speech. I also compliment the University of New South Wales on its intern program. I have benefited from that program but I have also enjoyed the opportunity to exchange ideas with younger and progressive thinkers from universities and also with political science students generally. I support the bill.

The Hon. ELISABETH KIRKBY [10.40]: On behalf of the Australian Democrats, I support the Mental Health (Amendment) Bill. It implements, as honourable members have already pointed out, the recommendations of the Mental Health Act Implementation Monitoring Committee. I do not intend to go into the details of the amendments because they are far too numerous and they are adequately documented in the 1992 report to the Minister for Health on the legislation before the House. However, I would recommend that honourable members study the report because it is detailed and of great interest. I would also like to commend the Government for drafting this bill in plain English. It is very easy to understand. I believe it will also therefore be of great assistance to relatives and friends of people who are mentally ill and who wish to learn about the law as it effects their relatives and friends.

One of the features of this legislation, as currently drafted, is that the explanatory note for each amendment is placed after the amendment in question. This does not happen with every piece of legislation we deal with. I believe it is a very important innovation and I hope it is a practice the Government intends to follow with other pieces of legislation. I want to mention briefly some amendments which caught my attention in relation to the use of electroconvulsive therapy - ECT. The Act is to be amended to allow the Mental Health Review Tribunal to review the capacity of informal patients to give informed consent to ECT when the patient's capacity to consent is in doubt.

Procedures under sections 188 to 191 and section 194 for authorising ECT for involuntary patients will also be streamlined by removing the current requirement that the medical superintendent certify the patient's capacity to consent. The Mental Health Review Tribunal's current responsibility to determine the patient's capacity to consent is to remain unchanged. Concern has been expressed about the validity of consent given by patients with a psychotic illness. Under the current Act, free, voluntary and written consent is valid consent. There is no addressing the issue of capacity. Under the current Act, the only means of administering ECT to a freely consenting but incompetent patient has been committal, followed by application to the Mental Health Review Tribunal.

This can be very distressing both for the person concerned and for the person's relatives. I am very pleased that a solution has been found to this problem. The decision by the Mental Health Review Tribunal

to authorise ECT will be based exclusively on the evidence presented to the tribunal during the inquiry. I would also like to refer honourable members to pages 19, 20 and 21 dealing with the medical certificate and the form that has to be filled in for the examination or observation of a person. Part 2 deals with the form that has to be filled in if the assistance of a police officer is required in order to transfer a person to a mental hospital. I was delighted to see that, as listed on page 21, under part 2 it states:

> If the assistance of a Police Officer is required, this part of the Form should be completed.

Then in large black type it says:

> You should not request this assistance unless it is necessary and there are no other means of taking the person to hospital reasonably available.

I believe that that is a most important instruction. I know from experience and also from information I have been given that the police are now extremely well trained in assisting relatives, and in assisting people who have to go to mental hospitals to go there with dignity. They are acting in a highly responsible manner. However, as far as the relatives of a sick person are concerned, it is infinitely more distressing if they have to be taken there under the care of a police officer, however sympathetic and however careful that police officer may be. Therefore, it is very important that it be suggested to all medical practitioners and also to relatives and friends of a sick person that the assistance of the police should not be requested except as a last resort.

Many people who are put in the distressing situation of knowing that they have a relative who needs assistance because of mental illness feel greatly inhibited at the thought that the police may be called to ensure that that person does go to hospital. I would like to comment on a remark made by Reverend the Hon. F. J. Nile about the recent case of the three forensic prisoners who escaped from the mental institution at Morisset. It should be put on the record that at Morisset there is a newly refurbished high security area for forensic prisoners who can be transferred there from the forensic wing at Long Bay Hospital. I do not think that any honourable member would disagree that a prisoner suffering from a psychosis and receiving treatment for that psychosis should be kept in the complex of Long Bay gaol all the time.

The Morisset facility is a secure facility. It has been newly refurbished at considerable cost to the taxpayers of this State. The surroundings at Morisset Hospital are very much more pleasant than the surroundings at Long Bay gaol. I do not believe that it was wrong that those patients under medication should have been allowed to have access to the grounds at Morisset Hospital, and not cooped up inside the unit for the time of their incarceration there. The failure in that case was that not only were they given the free run of the grounds of Morisset Hospital, but it was possible for them to leave the grounds of the hospital to hail a taxi to be taken to Morisset railway station and then to catch a train to Sydney.

Under the conditions of their imprisonment, and in view of the crimes that they had committed, this was giving them too much freedom, although the freedom of the mental hospital itself and the hospital grounds was perfectly in order. I was keen to know the number of people who had received psychosurgery and how many had been approved by the Psychosurgery Review Board since the Mental Health Act was proclaimed in 1990. I remember at the time of the debate in 1990 that there was great concern that there would be greater use of psychosurgery than there had been in the past. It is still an extremely delicate subject. It is a treatment that I am informed may be totally necessary but certainly should not be used freely. I was very pleased to hear that the Pychosurgery Review Board gave only four approvals in 1991. There was only one approval in April 1992. There have been none since, although I am informed that currently there is one application only before the board and approval may or may not be granted.

Finally, I place on record my agreement with the remarks of the Hon. Franca Arena that, if people suffering from mental illness are to be able to live in the community with the support of highly trained community mental health teams, greater funding will be required. I am delighted that further funds for that purpose are being made available by the Federal Government but I hope additional funding can be found also by the State Government. It is a laudable aim to have as many people as possible who have suffered or are suffering from mental illness living as normal a life as possible in the community and not locked away in institutions - which was the practice in the past.

This can only be achieved if there are sufficient community mental health teams to assist them to do so, because many of them will need assistance and monitoring when they are allowed back into the community. There is some public disquiet that because of the lack of community mental health teams people will be released from the old style institutions and left to their own devices, without the support and back-up they need. It is essential that money is provided for this purpose. Only through the correct amount of funding will it be possible for the Government to carry out its aims in this regard. With those comments, I support the bill.

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [10.51], in reply: I thank all honourable members for their diverse and interesting contributions, and for their general support for this landmark legislation, which I

commend to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

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STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL

Second Reading

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier), on behalf of the Hon. J. P. Hannaford [10.53]: I move:

That this bill be now read a second time.

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

Leave granted.

The Statute Law (Miscellaneous Provisions) Bill continues the well-established statute law revision program which commenced in 1984. The bill is the 22nd bill to be introduced in the program. The statute law revision program is recognised by all members as a cost effective and efficient method of dealing with amendments of the kind included in the bill.

The form of the bill is similar to that of previous bills in the statute law revision program, with one important addition - a new schedule relating to gender-specific language. The honourable members will be aware that a policy of using gender-neutral language in legislation has been in force in this State for more than 10 years. The policy was announced by the Governor in his Speech for the opening of Parliament on 16 August 1983 and has been strictly applied ever since. However, gender-specific language remains in many current statutes that were enacted before the policy was implemented. The proposed Act introduces a schedule (schedule 3) specifically aimed at removing that language from the statute book. Future Statute Law (Miscellaneous Provisions) Acts will contain such a schedule until all gender-specific language has been replaced.

Schedule 3 adopts 2 approaches. Firstly, it selects Acts for amendment chronologically, beginning with the Copyright Act 1879. Secondly, it amends particular groups of Acts (such as those relating to children and to courts). These approaches will be continued in future such schedules. There are also consequential amendments to certain other Acts, such as the Energy Administration Act 1987.

I now turn to the more familiar schedules to the bill. Schedule 1 contains policy changes of a minor and non-controversial nature that the Minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending bill. The schedule contains amendments to provide honourable members with an indication of the kinds of amendments involved.

Some amendments arise out of legislation enacted in other jurisdictions. Amendments to the Jurisdiction of Courts (Cross-Vesting) Act 1987 will recognise the Australian Capital Territory as a participant in the cross-vesting scheme. They are consequential in the enactment of the Jurisdiction of Courts (Cross-Vesting) Act 1993 of that Territory. Similarly, amendments to the Prisoners (Interstate Transfer) Act 1982 will recognise the same Territory's participation in the interstate transfer of prisoners scheme. They are also consequential on the enactment of Territory legislation.

Other amendments will allow matters that are currently dealt with by regulation to be dealt with by other means. Certain of the amendments to the Dog Act 1966, for example, will permit fees for the release of an impounded dog and for the replacement of a registration disc to be set by the director-general of the Department of Local Government and Co-operatives if they are not prescribed by regulation. If the director-general does not set the fees, the local council may do so. Fees for the registration of dogs are not affected by these amendments. Similar amendments are made in relation to certain forms to be used under the Act and, elsewhere in the schedule, in relation to certain forms to be used under the exhibited Animals Protection Act 1986.

Other amendments concerning regulations include those to the Public Health Act 1991. Previously, certain provisions concerning cemeteries were contained in ordinance No. 68 made under the Local Government Act 1919. That ordinance has been repealed. The amendments will extend the regulation-making power under the Public Health Act 1991 so as to permit those provisions to be contained in regulations made under that Act.

Examples of other amendments contained in schedule 1 are the amendments to the Compensation Court Act 1984, the District Court Act 1973 and the Supreme Court Act 1970. Those amendments will allow the appointment of deputies to act in place of the barrister and solicitor members of the rule committees established under those Acts in the absence of those members. The amendments to the Supreme Court Act 1970 will also clarify a matter relating to video-link facilities in proceedings concerning bail. The amendment concerned will specify that video-link facilities are required to be used in bail proceedings only if the proceedings concern persons who are in custody at a place where the facilities are available.

A final example of the kinds of amendments in schedule 1 are the amendments to the Crown Lands Act 1989. Those amendments provide for the transfer of the property, rights and liabilities of a dissolved reserve trust to a new trust if one is established in its place.

Schedule 2 deals with matters of pure statute law revision consisting of minor technical changes to legislation that the Parliamentary Counsel considers are appropriate for inclusion in the bill. Some amendments in schedule 2 update obsolete references, some correct typographical errors, some omit unnecessary material or insert missing material and some make changes in consequence of amendments made by other Acts.

Schedule 3 I have already dealt with. Schedule 4 contains repeals. It repeals amending acts that are no longer necessary because the amendments have been incorporated in reprints of the relevant principal Acts.

Schedule 5 to the bill contains provisions dealing with the effect of amendments on amending Acts, savings clauses for the repealed Acts and a power to make regulations for transitional matters, if necessary.

The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts concerned. Rather than repeat the information contained in those notes, I invite the honourable members to examine the various amendments and accompanying explanatory material and, if any concern or need for clarification arises, to approach me regarding the matter. If necessary, I will arrange for government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill, the Government is prepared to consider, as has previously been the case, withdrawing the matter from the bill.

I commend the bill.

The Hon. B. H. VAUGHAN (Deputy Leader of the Opposition) [10.53]: The alternative government supports the Statute Law (Miscellaneous Provisions) Bill, which is a continuum of the splendid legislation introduced in this House during my time by the late the Hon. Paul Landa.

The Hon. VIRGINIA CHADWICK (Minister for Education, Training and Youth Affairs, Minister for Tourism, and Minister Assisting the Premier) [10.54], in reply: I thank the Opposition for its support for this important bill, which is one of a continuum.

Motion agreed to.

Bill read a second time and passed through remaining stages.

COURTS LEGISLATION (MEDIATION AND EVALUATION) AMENDMENT BILL

Second Reading

Debate resumed from 4 May.

The Hon. R. D. DYER [10.56]: The Opposition is happy to indicate its support for the bill. The brief history of this matter is that the previous Labor Government in 1983 established a number of community justice centres in this State to provide informal and accessible dispute resolution services by trained and supervised mediators. I was delighted that during question time today the Minister referred to a coloured brochure being handed out which advertised the services provided by community justice centres and focused on the role they can play in bringing families together. During my daily activities as shadow minister for community services sometimes tragic circumstances come to my notice, such as parents being distressed by a child leaving the family home.

I am interested to see not only that community justice centres are promoting the availability of their services but also that the Law Foundation of New South Wales - of which I am a member of the board of governors - has funded the printing of this brochure to promote the availability of those services. It is a striking and noticeable brochure and I am pleased that the availability of this service is being promoted in that way. If the Minister could make a small supply of the brochures available to me, I could hand them out to people.

The Hon. J. P. Hannaford: I will make them available.

The Hon. R. D. DYER: I am glad to hear that the Minister will make that brochure generally available, because I believe that community justice centres can play a significant role in assisting families to resolve disputes that might otherwise separate the family, perhaps permanently in some cases. In any event, as the Minister indicated in his second reading speech, community justice centres have provided a model for the legislation currently before the House. I also mention by way of background that as part of the steady development of alternative dispute resolution in this State the Australian Commercial Disputes Centre was established in 1986 by the Government, and it has become a provider of both mediation and mediation training services.

The Law Society of New South Wales has encouraged mediation, when appropriate, particularly in recent years. Since 1991 the Law Society has organised an annual settlement week. Recently, I had the pleasure of attending a launch by the Law Society of an evaluation of the 1992-93 settlement week. That program has proved to be rather successful. I note that the Attorney General spoke on that occasion and took the opportunity to foreshadow that the Government would be seeking to facilitate and encourage alternative dispute resolution. Having given that brief historical background, I wish to say that the basic purpose of this bill is to enable certain courts, such as the Compensation Court, the District Court, the Land and Environment Court, the Local Court and the Supreme Court, to establish a procedure for both mediation and what is termed early neutral evaluation of matters arising in proceedings - that is, civil proceedings and not criminal proceedings.

I suppose mediation is a relatively well- understood term but, for the purposes of the measure before the House, mediation is regarded as a structured negotiation process in which the mediator, as a neutral and independent party, assists parties to a dispute to achieve their own resolution of the matters in dispute. Neutral evaluation is perhaps a less well-understood concept. It is described as a confidential process of evaluation of a dispute in which the evaluator seeks to identify and reduce the matters in dispute and he or she identifies key facts. The matters in dispute are limited as to their extent, the relative strengths and weaknesses of each party's case are identified, and an opinion can be offered by the evaluator as to the likelihood of the court finding liability or finding in a particular way. In addition, an estimate can be made of the likely extent of compensation or damages that might be awarded to the parties.

It is important to note both in regard to mediation and in regard to neutral evaluation that the parties must agree to the party who is the mediator or the evaluator. It is also important to note that the process is voluntary and that either party can withdraw at any time when a particular mediation or evaluation session is occurring. I note that the court, whichever court it happens to be, is entitled to make orders to give effect to any agreement or arrangement arising out of a mediation session. Those are the bare bones of the legislation. The Opposition welcomes the fact that the Government is setting up the structural mechanism to enable this mediation or neutral

evaluation to occur, as the case may be.

I place on the record some technical concerns raised by the President of the Law Society in correspondence addressed to the Attorney General. Mr Fairlie's letter deals with four matters, the first of which relates to secrecy. I stress that the Law Society, as is the case with the Opposition, generally supports the objects of the bill. In regard to the matter of secrecy, Mr Fairlie instances clause 38J, which deals with the Compensation Court Act 1984. I should indicate that the bill is set out in such a way that there are various provisions relating to each of the series of courts affected by it. When Mr Fairlie refers to the secrecy provision affecting the Compensation Court he refers also to the equivalent clauses in the bill affecting other courts, such as the Supreme Court and the District Court. The Law Society expresses the view:

> A definition should be included with regard to the phrase "in connection with the *administration or execution* of this Part" for clarity.

Mr Fairlie adds:

> Subsection (a) disclosure of information by a mediator or evaluator should be conditional upon the consent of all parties to the mediation or evaluation, rather than only the person from whom the information originated, as any disclosure may also adversely affect the other parties to the mediation.
>
> Subsection (c) requires more specificity in terms of the grounds for disclosure, for example, reference to particular Statutes.

The second matter of comment relates to costs of mediation and neutral evaluation. Mr Fairlie cites clause 38F of the Compensation Court Act and equivalent clauses throughout the bill. He makes the comment:

> These provisions should indicate whether the costs payable for mediation or evaluation conducted by mediators or evaluators on the court list are to be regulated by the Court and if so, how and by whom.

The third matter relates to lists of mediators and evaluators. Reference is made to clause 38H of the Compensation Court Act and equivalent clauses throughout the bill. The Law Society states:

> Provisions regarding the compilation of lists of persons who are suitable as mediators or evaluators should indicate in them, or in the Rules, how suitability is to be determined and what selection criteria will be used.

The fourth and final matter raised by the Law Society relates to privilege in regard to defamation proceedings. The Law Society refers to clause 38I of the Compensation Court Act and equivalent clauses throughout the bill. The Law Society states:

> These provisions tend to be too broad as they may render inadmissible the agreement reached during the course of the mediation or evaluation. Where there is an agreement (oral or in writing) as a result of mediation or evaluation and one party subsequently refuses to honour the agreement, the other parties may be unable to enforce the agreement because it is privileged under this provision. Accordingly, it is recommended that subsection (c) be added to clause 38I(6) in the following terms:
>
> "(c) relating to agreements reached in a mediation or neutral evaluation session to settle the dispute or part of the dispute, the subject of the mediation or neutral evaluation."

Those are the comments the Law Society made in regard to matters of detail in the bill. I place them before the Attorney General for any comment he might wish to make. Subject to placing those matters on the record I am happy to indicate the Opposition's general interest in alternative dispute resolution and its support and indeed delight that the Government has seen fit to put in place a structure to facilitate the undoubted burgeoning of alternative dispute resolution in this State.

The Hon. JENNIFER GARDINER [11.9]: I also support the passage of the Courts Legislation (Mediation and Evaluation) Amendment Bill. This bill will amend a number of statutes to allow courts to set down alternative dispute resolution procedures for the mediation and neutral evaluation of matters arising in proceedings other than criminal proceedings. The bill provides broad parameters for individual courts to develop court annexed mediators and neutral evaluators, if they choose to do so. Alternative dispute resolution has the benefit of often providing a less costly means of accessing the justice system. One of the types of alternative dispute resolution specifically provided for by this bill is neutral evaluation - that 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 relative strengths and weaknesses of each party's case are assessed and opinion is offered as to the likelihood of liability being found by the court and the compensation or damages that might be awarded. In contrast to the traditional adversarial system, parties who enter into neutral evaluation gain an early, informed opinion as to the respective merits of the matter. They can then assess whether they wish to proceed or they can reach an agreed settlement. The implications for reducing delays in the court system are clear as some parties to a dispute may resolve the dispute outside the court. The evaluation process allows early information to be produced which may facilitate negotiations towards settlement, whereas under the adversarial system the information is not produced until the matter goes to the court.

This 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 will also have to agree as to who is to be the mediator or the 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 bill provides for the relevant judicial officer to compile lists of suitable persons to be mediators or evaluators. Such persons must comply with the new legislation and any relevant regulations and rules of the court.

A major implication of the bill will be that dispute resolution specialists will be able to draw from the whole spectrum of specialists; not just lawyers. Courts themselves will determine the qualifications of and standards for mediators and evaluators. Of course, parties may attempt to resolve their differences through alternative dispute resolution before the matter gets to a stage where a court-ordered mediation process is considered appropriate. There will be, however, certain privileges and protections flowing from court-ordered mediation and evaluation as a result of this bill. For a start, court-ordered mediation and neutral evaluation sessions will have attached to them the same privilege with respect to defamation proceedings as judicial proceedings and documents produced in judicial proceedings.

Evidence of things said or admissions made at such sessions are not admissible evidence in proceedings before a court, tribunal or body unless with the consent of the persons concerned. Such

evidence will also be admissible in proceedings relating to acts or omissions causing injury to any person or damages to property. These provisions mean that the alternative dispute resolution consultation can occur with a full and frank exposure of information free of fear from repercussions. There will be a narrow opportunity for a legitimate revelation by a mediator if he or she believes that such disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property.

It is pleasing to note that the judiciary is supportive of alternative dispute resolution procedures. This insertion of alternative dispute resolution into the court system itself is a great advance and one that has emerged in a relatively short period. It is another demonstration that the legal and judicial system is capable of embracing sensible but dramatic changes and doing so quite quickly. This is a profound change and one that will help answer a serious charge that has in the past been levelled at our New South Wales justice system, namely, justice delayed is justice denied. Mediation and evaluation procedures, under the umbrella of the court system, will have many benefits not the least of which will be a reductions in court delays and the cost of access to the justice system. I support the bill.

The Hon. ELISABETH KIRKBY [11.14]: The Australian Democrats support the Courts Legislation (Mediation and Evaluation) Amendment Bill, which is enabling legislation to allow courts to establish procedures for the mediation and neutral evaluation of matters in proceedings other than in criminal proceedings. The bill has followed the broad recommendations of the New South Wales Law Reform Commission in its 1991 report on the Training and Accreditation of Mediators. The Law Reform Commission did not believe that there was a need for government regulation for the accreditation of mediators. However, the commission did recommend that dispute resolution programs connected with the courts and tribunals operate in accordance with clear guidelines and adequate resources to ensure the integrity of the process and quality of service.

The commission argued against overly specific recommendations about the content of guidelines "because of the formative nature and diversity in application of dispute resolution processes in the justice system". One of the things that the Law Reform Commission did recommend was that there be a database of dispute resolution containing information about programs, agencies, practitioners and training. The Democrats support voluntary adoption of alternative dispute resolution processes as being a quick and cheap way of resolving disputes. I believe honourable members will be aware of the success of the Law Society's annual settlement week - an example of how well this process may work. Under the provisions of this bill a court may order a matter arising from proceedings other than criminal proceedings to be referred for mediation or neutral evaluation. This process is entirely voluntary and a party can withdraw at any time. The relevant court may make orders to give effect to any agreement or arrangement arising out of a mediation session.

Lists of persons suitable to be mediators or evaluators may be compiled by the Chief Justice, the Chief Judge, or Chief Magistrate. Qualifications and standards will be set by each court and the lists have to be reviewed every year. Mediation or evaluation in accordance with this bill will be given special privileges and protections distinct from other forms of mediation. These include the granting of the same privileged status to documents and materials produced in relation to defamation proceedings as judicial proceedings and documents produced in judicial proceedings. Evidence, admissions or documents prepared are not admissible in proceedings before a court, tribunal or other body.

A mediator or evaluator may only disclose information obtained during mediation or evaluation when necessary for the purpose of the administration or execution of the Act and when disclosure is necessary to prevent or minimise the danger of injury to any person or damage to property. Mediators or evaluators on the list will be protected from liability for all things done in good faith for the purposes of carrying out a mediation or evaluation. Earlier the Hon. R. D. Dyer referred to a letter received by him from the President of the Law Society of New South Wales, Mr David Fairlie. I too received a copy of that letter today. I will not weary the House by referring to it again; it has all been said by the Hon. R. D. Dyer. I hope that the concerns that have been raised by the Law Society, by David Fairlie, will be addressed in reply by the Attorney General so that the concerns can be laid to rest. I support the legislation.

Reverend the Hon. F. J. NILE [11.20]: Call to Australia supports the Courts Legislation (Mediation and Evaluation) Amendment Bill. The object of the bill is to enable certain courts to establish procedures for the mediation and early neutral evaluation of matters arising in proceedings, other than criminal proceedings. The amendments cover a number of areas. Schedule 1 to the bill will insert new provisions into the Act. The purpose of the new provisions is to enable the relevant court to refer matters for mediation and neutral evaluation if the parties concerned agree to it. However, the parties are not prevented from agreeing to and arranging for the mediation or neutral evaluation of any matter otherwise than in accordance with the new provisions. Also, matters arising in proceedings may still be dealt with in accordance with the Community Justice Centres Act 1983.

The amendments include definition of the terms mediation and neutral evaluation. Costs must be borne by the parties and mediation and neutral evaluation must be voluntary. A party may withdraw from a session at any time. The mediators and evaluators will be drawn from a list compiled by the Chief Justice, Chief Judge or Chief Magistrate of the relevant court. The list will consist of persons suitable to be mediators or evaluators for

the purposes

of the new provisions. Before being included in such a list the nominated person must agree to comply with the new provisions and any relevant regulations or rules of court. The amendments also provide that documents and other papers produced during a session will be covered by privilege. The bill provides for secrecy. These are practical improvements to the legislation, which we are pleased to support.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [11.21], in reply: I thank honourable members for their support of the legislation. The amendments will be beneficial to the improved administration of the legal system. However, some matters were raised, especially by the Hon. Elisabeth Kirkby, regarding submissions from the Law Society. The society drew attention to four issues, with which I shall deal to allay the society's concerns. The first related to secrecy and the definition in connection with the administration or execution of the part to be inserted in various Acts. The society drew particular attention to proposed section 38J of the Compensation Court Act 1984 as an illustration of the problem that was of concern.

The bill is largely modelled on the Community Justice Centres Act 1983. Section 29 of that Act refers to disclosure of information in connection with the administration or execution of the Act. The community justice centres have experienced no difficulty with this wording, and it is not considered practical to attempt to define what are fairly broad concepts in that regard. The Law Society referred in its letter to proposed sections such as 38J(a) of the bill, which refers to information being released with the consent of the person from whom it was obtained. The Law Society suggests that there should be disclosure only with the consent of all parties.

Again the proposed section has been modelled on the Community Justice Centres Act. Experience has shown that the provision has not presented any problems to date. Confidentiality generally pertains to the person who has the information and has provided it during the course of the mediation. If a person who has been a party to the mediation and has made information available chooses to disclose that information in the mediation session, it is really a matter for that person whether he or she wishes to waive confidentiality in relation to it. To require, as the Law Society argues, that all parties must agree to the disclosure would provide a third party who may have no substantive interest in the information with a right to confidentiality that he would not have in the ordinary course of events. That could have the effect of undermining the process of mediation.

The Law Society draws attention also to paragraph (c), among others, of proposed section 38J. The society argues that there should be more specificity in the legislation in regard to grounds of disclosure. The legislation has been drafted in this way following the model of the Community Justice Centres Act. For instance, there is a requirement under section 316 of the Crimes Act to make information available. There may well be other statutes that require similar disclosure of illegal activity. The intention of the proposed section is to ensure that a mediator who becomes aware of illegal activity will disclose that activity to the appropriate authorities.

The second issue raised by the Law Society is that it wants the Act to state that the court will regulate the costs payable for mediation or evaluation conducted by mediators or evaluators on the court list. I am surprised that the Law Society should ask at this time for regulation of legal costs. Last year a major debate was held on the reform of the legal profession. Having in that legislation got rid of the concept of legal scales in order to encourage competition for the provision of legal services, the Law Society now wants there to be reregulation in that area. In keeping with the approach taken by the Government of encouraging competition, and consistent with the provisions of the Trade Practices Act and all recent reports on this issue, the Government does not intend that the courts should control the costs payable. To do otherwise would be to establish an anti-competitive system. Market prices must prevail. It is not impossible for the Law Society, if it wishes, to publish a guide as to appropriate costs. Such a guide could be relied upon by the market.

One of the principles of mediation is that the parties should agree upon the mediator. One aspect of that is whether the parties can afford the mediator. If three or four mediators are available and one is charging $1,000

and another is charging $200, the parties should agree on the person they want to mediate for them. The third issue referred to by the Law Society relates to the establishment of lists of mediators and evaluators. The society wants the provisions of the Act or the rules to indicate how the decision on those to be included on a list is to be made and what should be the selection criteria. In effect, without saying so, the Law Society wants to avoid the principles enunciated in the report of the Law Reform Commission. The report advocated that there be the broadest possible range of persons on lists of mediators and evaluators.

Some members of the Law Society have said that only lawyers should be mediators. That statement could not be further from the fact. Mediators should come from the broadest range of people in the community with the necessary skills to deal with the issue that is to be addressed. It is the intention of the proposed legislation to leave the criteria to the individual courts to determine. Courts might well consider it appropriate to establish a number of separate lists of mediators and evaluators for different types of cases involving various mixes of skills and qualifications. Individuals and organisations may nominate people for inclusion on the court lists of evaluators and mediators. In accepting or rejecting such nominations the court will have regard to the qualifications and experience of a nominee for any particular list.

As I said in my second reading speech, it is not the intention to codify or set standards in the bill; nor is it intended to define precisely who can mediate or evaluate a particular matter. The provision of mediation and evaluation should remain open to as broad a group as possible, so that specialists in any field with appropriate experience and training may provide mediation or evaluation. In our complex and highly specialised world we can no longer think in terms of only lawyers providing this type of service. The heads of jurisdictions will be free to establish their own steering committees, if they choose to do so, to assist in the development and implementation of mediation and evaluation schemes in their courts.

I have a regulation-making power under this legislation, and if it comes to my attention that a constrained approach is being taken by the courts, I will be prepared to use that power to overcome such constraints. The fourth issue raised by the Law Society relates to privilege. The Law Society is concerned that privilege provisions in the bill are so broad as to prevent a party from enforcing an agreement reached at mediation. The Law Society should have no concern in that regard. In keeping with the voluntary nature of mediation and consistent with the approach of the Community Justice Centres Act, agreement reached at mediation sessions will not be binding and privilege will apply to it unless - and this is implicit in the bill - the parties file that agreement with the court. I refer to proposed new section 38G as an example. Once the agreement is filed with the court it has the same status as any other negotiated settlement. It will become subject to the rules of the court for enforcement of judgments, and can be executed accordingly. However, if the mediated resolution is that nothing of that nature should be filed in court, obviously that is the agreement between the parties and it will be dealt with appropriately. With those comments I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

CRIMES (FEMALE GENITAL MUTILATION) AMENDMENT BILL

Second Reading

Debate resumed from 4 May.

The Hon. FRANCA ARENA [11.32]: I was pleased to read in the *Weekend Australian* of last weekend the following:

> The World Health Organization renewed its appeal yesterday for an end to female genital mutilation, saying between 85 million

and 114 million women had been scarred by the practice.

The UN body said the practice, although mostly carried out in Africa and Asia, was increasingly found in Europe, Canada, Australia and the United States.

It is interesting that Australia has been mentioned at international forums on this issue. I spoke at length on this issue when I moved my motion last March, so I do not intend to repeat myself. I spoke about the three types of female genital mutilation. I said that it is a cultural practice and not a religious practice. It has nothing to do with the Muslim religion, and I seek to emphasise that. Honourable members would be aware of the horror of female genital mutilation and would condemn it. The need for this legislation is obvious. Though female genital mutilation is an offence of assault under the Crimes Act, most parents practising it in all good faith could be of the belief that it is done for the benefit of the girls and it is not an assault.

This is why specific legislation is needed to send clear messages to the community that female genital mutilation is not acceptable in any form and it will be an offence to aid, abet, counsel or procure another to perform female genital mutilation. This means that a person who arranges for another to perform female genital mutilation, or who assists at such an operation, will be dealt with by the law. Consent to such an operation or the fact that it is a traditional custom will not be a defence. Naturally, if an operation is performed for medical reasons, such as cancer or any other disease, it will be allowed. The legislation will apply to all residents of New South Wales, wherever they may be. If parents decide to take a young girl to Victoria, where such legislation is not in place, New South Wales legislation will apply if the family is resident in New South Wales.

I ask the Minister whether this will apply to people who have gone overseas for such an operation. For instance, if the operation is performed in Malaysia on a child who is a resident of New South Wales, will the perpetrators be prosecuted on return to New South Wales? Also, will the offence have a statutory limitation or will a girl aged 16 be able to prosecute relatives for having mutilated her 10 years previously? The penalty of seven years' maximum imprisonment should make it clear to perpetrators how seriously the community regards the offence of female genital mutilation. Naturally, education programs will be necessary for this sensitive issue. I am pleased that in his second reading speech the Minister stated that an interdepartmental committee has been convened to deal with education programs on this issue. I should be grateful if the Minister could keep the House informed of the progress made by the interdepartmental committee, which I was pleased to learn will be chaired by the Ethnic Affairs Commission.

One needs people with real sensitivity to deal with this problem, and the Ethnic Affairs Commission has the expertise and sensitivity to do a good job. Honourable members would be aware that the Family Law Council has produced a discussion paper and will finalise its recommendations by the end of May, and will issue a report shortly afterwards. I have been told by the staff of the Federal Attorney-General that Commonwealth legislation will follow. This is good news. I warmly congratulate the Minister on taking such quick action, and I support the bill.

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The Hon. Dr MARLENE GOLDSMITH [11.37]: For many years I have been concerned about this issue. My first acquaintance with female genital mutilation in a direct sense occurred at a high school when a general studies class of year 11 girl students I was teaching were discussing the practice. I was profoundly shocked to discover that one of the girls in my class had been genitally mutilated. Later inquiries disclosed that this had not happened in Australia but extramurally. For this reason I have pursued the cause of having female genital mutilation outlawed, as it rightly should be, as a barbaric practice in this State and I commend the Hon. Franca Arena for her efforts. She has outlined clearly the appalling effect that female genital mutilation has not only on female sexual capacity and enjoyment but also on female sexual function generally and female health and the lifelong pain females experience as a consequence of this practice.

I am delighted that the Attorney General has introduced this legislation and I commend him for it. I am

particularly pleased that the bill provides that the offence shall apply wherever it occurs if the female upon whom it is performed is ordinarily resident in New South Wales. That takes care of my concern about extramural female genital mutilation. Last year I had the opportunity to discuss this subject with United Nations officials in Geneva. They were particularly pleased because the World Health Organization, which for 10 or 11 years had been waging a strong education campaign against female genital mutilation, had finally succeeded in persuading the United Nations to adopt a general resolution opposing female genital mutilation on health, not cultural, grounds. My concern, and that of the Hon. Franca Arena, is not a cultural concern but one of health, about the fundamental human rights of female children and females generally in our society. The United Nations officials told us, as indeed did officials in the United Kingdom, that a major problem in countries such as the United Kingdom is that families take their little girls out of the country and back to their countries of origin to undergo this barbaric practice. If we are serious about legislation against female genital mutilation, such extramural provision should be made. I am delighted that such provision has been made in the bill.

Concerns about this issue have been raised with me, and I have entered into debates in the press about it. A number of people have asked me, "Do you oppose male genital mutilation and male circumcision as well?" Arguments by a number of people, including reputable medical practitioners, appear to equate the two medical practices. I refer to a letter by Dr Elizabeth O'Brien of the Northside Clinic at Greenwich, published in the *Sydney Morning Herald* on 15 February. As a result of her letter I wrote to the *Sydney Morning Herald*, and my letter was published. In that letter I stated:

> Dr Elizabeth O'Brien should know better than to equate male circumcision with female genital mutilation.
>
> In that it destroys the capacity for sexual pleasure, the latter is the equivalent not of the removal of the foreskin, but of the testicles. And in its more extreme forms female `circumcision' causes lifelong agony when urinating or engaging in sexual intercourse.
>
> To compare this barbarism with the removal of the male foreskin might mistakenly allay public concern as to the seriousness of the issue. The helpless female children who are subjected to such lifelong pain and dysfunction deserve better.

Dr O'Brien wrote again to the *Sydney Morning Herald* and stated that I had misrepresented her because she had not equated male and female circumcision. In her original letter she had stated:

> Come on, the AMA, speak without fear or favour and let's hear for it for both sexes of babies. In neither case can babies consent and in neither case is the circumcision/mutilation warranted.

Dr O'Brien did me the courtesy of sending me a copy of her letter. I then replied to her, stating that I was very pleased to have her address so that I could respond to her. My response was, simply:

> You and I may just have to disagree on the meaning of `equate'. To imply that it is just as bad to circumcise males as females is, in my view, equating these two procedures.

I continue to have concerns about those who equate male circumcision with female genital mutilation. It is a separate argument. I have general concern about attempts to equate the two procedures or to compare them to make it appear that one is as bad as the other. I emphasise that my opposition and that of the Hon. Franca Arena to female genital mutilation is in no way opposition to a religious practice. I am informed that the Islamic community and, indeed, the Islamic Council are firmly against female genital mutilation because they do not view it as a religious practice. Nor is it recommended in the Koran.

Indeed, the Islamic Council feared that this particular cultural practice would be interpreted as Islamic when it should not be. I pay tribute to a former Attorney General, the Hon. John Dowd, who intended to introduce legislation and did preliminary work in this area of great social concern. I know he will be pleased that the bill is now going through the House and that little girls in New South Wales will have its protection. I know he has written to the Attorney General about the legislation he proposed while he was Attorney General. I thank him for his ongoing interest and concern about female genital mutilation.

I turn to the education provisions in the bill. The Family Law Council concluded that the law should make female genital mutilation a crime but stressed strongly the need for education. I am delighted that education is part of the legislative package in changing the practice in this State. The proposed legislation will have a strong educative impact. The full weight of the law will support the ending of the practice and will also support those who wish to discontinue the practice but who experience cultural pressure not to do so. I commend my Federal colleague Trish Worth, the member for Adelaide, who raised this issue in the Federal Parliament on 21 February. She moved a motion that the House recognise that female genital mutilation is occurring in Australia and that there is no specific law to ban the practice.

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Her motion had a number of parts, one of which called upon the Federal Government to introduce legislation to outlaw female genital mutilation in Australia. I commend the Attorney General and the Government for introducing the bill, but I also take up the call of Trish Worth that it is not good enough that women, little girls, female children and babies in New South Wales will be protected under this law, for every female in Australia needs protection under it. I hope that the Federal Government will follow the lead of New South Wales and provide similar national protection for every female in our country.

The Hon. ELISABETH KIRKBY [11.48]: The Australian Democrats do not oppose the Crimes (Female Genital Mutilation) Amendment Bill. I made clear in previous lengthy debate on this subject that I strongly oppose the practice of female genital mutilation, which has been used and is still used to control female sexuality. At issue is the usefulness of legislation as a means of addressing the problem. The Australian Law Reform Commission in its 1991 discussion paper entitled "Multiculturalism: Criminal Law" made the following statement:

> The Commission does not consider that there is a case for the enactment of special legislation to prohibit female genital mutilation; the numbers affected are likely to be very small and there is a disproportionate risk that legislation would be counterproductive. The focus of policy should be on prevention rather than punishment. Generally the Commission favours action in corporation with the community to assess the extent of the problem, and to provide education and counselling directed to particular communities.

Concern has been expressed to me that the focus of public debate on female genital mutilation has been on the introduction of specific legislation. Little attention has been paid to the physical and emotional health and well-being of the women affected. The Immigrant Women's Speakout Association of New South Wales has had formal consultations and conducted interviews with key women's services, ethno-specific organisations, women from target communities and regional, State and national women's organisations, groups and individuals. The association states, in a submission in response to the discussion paper on female genital mutilation issued by the Family Law Council:

> This issue must be addressed in context of the sensationalism and racism that has been very much a part of the terms of reference in the broader debate in Australia. The Speakout has received complaints from African women, Arab women and Muslim women who have reported racist abuse from the wider community, including the media, and that children in schools have been targeted, yet there has been no attempt at intervention to date. An outcome which is of major concern for the women affected by this practice is that as a result of the misinformation and racism, mother-daughter relationships are breaking down and there is little, if any, existing support or culturally appropriate services in place to address this issue.

In other words, the misinformation and lack of sensitivity with which the debate on female genital mutilation has generally been conducted has:

> . . . effectively silenced and further marginalised the women affected.

My fear is that enacting legislation without putting appropriate education programs into place will simply drive the practice underground. No matter how concerned we are at the practice of female genital mutilation, in my

opinion legislation is not necessarily the solution. Certainly enacting legislation in isolation may prove to be counter-productive. I therefore agree with Speakout that the following matters must be addressed if the Government is intent on legislating, and quite obviously it is. These are the matters referred to by Speakout:

> . . . the immediate undertaking by appropriate agencies to fund a research program on the incidence and the extent of the practice of female genital mutilation in Australia making a series of recommendations prioritising the existing physical and emotional health needs of the women and girls affected by this practice.

The second quote is:

> . . . that Commonwealth, State and Territories allocate appropriate levels of funding and resources to be made available as a matter of urgency for specific health education awareness campaigns and programs designed and delivered in consultation with women in the target groups and health and education providers.

The third quote is:

> . . . the training health professionals and the relevant service providers to sensitise personnel to issues emanating from the research in order to deliver culturally sensitive services and programs.

The final quote:

> . . . the establishment of specialised care units and support services to provide culturally sensitive care to meet the existing health needs of women and girls affected.

It should be quite obvious from the evidence already to hand, although most of it is anecdotal, that there are girls at schools in New South Wales who have already had this barbaric practice carried out on them. Now that it is to be outlawed by way of legislation we must consider their emotional well-being and their sensitivity to the issue. After all, this legislation will be passed at a time when such girls would be unable to be helped by it. One of the many letters I received today was from the Law Society of New South Wales. It makes the following statement about the bill:

> The Law Society appreciates the opportunity to comment on the proposed legislation.

The Law Society explains that it is very difficult to do so at short notice because it is dependent on the voluntary assistance of its members to provide expert advice. However, it offers these comments regarding the Crimes (Female Genital Mutilation) Amendment Bill:

> The Law Society generally supports the stated objects of this Bill. However, it makes the following observations:
>
> 1. With regard to proposed Section 45(3)(a), an explanation of the phrase "necessary for the health" should be considered for inclusion, for example:
>
> "means a medical procedure required to
>
> (a) be performed to promote healing and/or for the purposes of reconstructive surgery after mutilation has occurred; or
>
> (b) remedy a physical malformation".

> As currently drafted the position of a medical practitioner is unclear because of a lack of definition as to "health" and "medical welfare". Is a practitioner who operates on an adult female to remedy a physical malformation that is not threatening to good health at risk under the proposed legislation?

2. It is noted that there is an absence of reporting requirements. Even if it is intended that Section 316 of the Crimes Act cover this aspect, it is recommended that there should be reporting provisions along the lines of Sections 70BB and 70BC of the Family Law Act relating to the reporting of child abuse.

3. With regard to the offence of "aids, abets, counsels or procures", there may be women in the community who would be in fear of mental and/or physical intimidation from their husbands or extended family if they do not coerce their daughters to undergo mutilation.

   Consideration should be given to the difficulty such women would be confronted with in relation to the offence.

I hope the Minister will be able to address these concerns in reply because I believe they are cogent. My understanding is that when legislation was introduced into the United Kingdom outlawing the practice of female genital mutilation, there was not a clause in that legislation that sufficiently protected medical practitioners. That has been a cause of concern in the United Kingdom since then. I do not know whether it has now been amended. I believe that, if it has not been already, the United Kingdom legislation is to be amended to take on board concerns similar to those that have been raised by the Law Society with me in regard to this bill. Finally, I question the data on which the Attorney General has based this legislation. Perhaps in reply he can explain to the House whom he consulted on the matter and how culturally sensitive those consultations were. Has due attention been paid to the women and girls affected by female genital mutilation?

What evidence does the Attorney have to show that existing mechanisms are inadequate to deal with the issue? Will he give a firm undertaking that appropriate education programs will be put into place and will be put into place as a matter of urgency? Earlier tonight the Attorney General was passing around the table the brochure that has now been prepared about the mediation procedures that are now available to people who wish alternative dispute resolution. What I would like to see accompanying this bill is some informative brochure, in appropriate languages, that will be widely distributed so that members of the communities likely to be affected are aware of the legislation and also aware of suitable support services. That is very important.

As honourable members are aware, when I spoke to the private member's motion on female genital mutilation about 10 days ago I recounted my experiences at the Human Rights Conference in Vienna in June last year. The problem of female genital mutilation was high on the agenda and women from all over the world, including North Africa, condemned the practice and called on all governments to introduce legislation to ban this barbaric practice. In Australia, New South Wales can be proud that it is leading the way. However, more than legislation alone is needed.

I echo the views of the Hon. Franca Arena. She asked the Attorney General and Minister for Justice what will happen if bigoted and hardline members of the communities concerned, who still demand that this practice be carried out, discover that it is an illegal practice in New South Wales. Will they take their daughters overseas, where the practice has not been banned, and what will happen to them when they return; will it be possible to prosecute the parents of those young girls who, by that time, will have been subjected to a practice that I am sure all honourable members abhor? I look forward to the Minister replying to those questions.

The Hon. ELAINE NILE [12.1 a.m.]: The Call to Australia group supports the Crimes (Female Genital Mutilation) Amendment Bill. The object of the bill is:

> . . . to make it an offence punishable by a maximum of 7 years imprisonment to mutilate external female genitalia or to aid, abet, counsel or procure such mutilation. An offence under the proposed section will be punishable even if committed outside of New South Wales if the mutilated person is ordinarily resident in New South Wales.

I congratulate the Attorney General on introducing this bill and I congratulate the Hon. Franca Arena on her recent private member's motion, because I believe that many Australian people do not have a clue about this practice. The media should be aware of it so that women who know nothing of this practice are informed about what is happening in this country as well as overseas. The *Australian Muslim Times* of 18 February contained an article entitled, "Call for Tighter Laws on Genital Mutilation". Previously in Brisbane a radio broadcaster

had assumed that this practice was part of the Muslim religion. He was pulled up quickly and apologised on air. The article in the *Australian Muslim Times* stated:

> Once again this issue is making headlines with the release this week of the Family Law Council discussion paper recommending new legislation and a concerted education campaign.

It is interesting that the Hon. Elisabeth Kirkby was speaking about education and not needing the legislation. However, in the recent Anti-Discrimination (Homosexual Vilification) Bill the opposite point of view was taken, that the legislation was needed rather than education. The homosexual community later said that legislation was not necessary and that all they wanted was the education campaign. The article continued:

> Already the practice is technically illegal under the child protection and assault legislation. In the paper however, it is said that the law is prone to misinterpretation, and that a single Act of Parliament is required to make it clear, that the practice constitutes child abuse. Also it is regarded necessary that there be legislation made to prevent the practice of children being taken out of the country to have the `operation' performed.

That provision is contained in section 45(2). Apparently in the United Kingdom this occurred when a child was taken to Somalia to have the procedure performed on her. The article continued:

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> The Family Law Council's paper states, that the practice is common in some 40 countries in the world, mostly African nations. It also states that there is anecdotal evidence of its prevalence amongst groups in Australia originating from those countries. The chairman of the AMA's Federal Council, Professor Priscilla Kincaid-Smith, said the association regarded the practice as a serious assault and suggested that doctors practising it should be prosecuted.
>
> A spokesman for the Australian Federation of Islamic Councils pointed out that it is wrong to suggest that the practice is a Muslim edict.
>
> "There is no sanction for this in Islam. It is not being practised as part of our faith by the mainstream Muslim communities", he said.

The Christian church also finds this practice repugnant. Its policy or biblical teaching is abstinence and virginity - it promotes abstinence before marriage and virginity. Just as genital mutilation is repugnant to us, the Government's policy of the condom culture is repugnant to Christians who accept Christian teaching. The newspaper contains an advertisement on the same page entitled, "NSW Health for a state of better health". It states, "Depression can affect anyone". No one can understand the effect that this practice must have on women, unless it has been performed on them.

The British legislation is called the Prohibition of Female Circumcision Act 1985. The wording is toned down. At least this Government has called it what it is - genital mutilation - and should be congratulated on doing so. However, the Government stands condemned for changing the word rape to sexual assault. That softened down the effect that rape has on women. Nevertheless, Call to Australia congratulates the Government on referring to the procedure as genital mutilation. The background papers that have been issued on the subject have been effective, useful and self-explanatory. The way the four different types of female genital mutilation have been described in the papers is sickening and horrific. The different ways of carrying out this practice were described as follows: ritualised circumcision, sunna, clitoridectomy and infibulation. Men who have been responsible in a sense for this practice must feel horror and revulsion when they see in writing what is involved. The background paper stated:

> The procedures are "generally performed by traditional midwives using unsterilised knives, razors or glass. No anaesthetic is used and several women may assist in restraining the girl while the procedure is performed." The procedure can be carried out on girls from a few months old to puberty, depending on local custom.

The paper further stated:

> The vaginal opening of infibulated women remains small until marriage when, on the day before the wedding: "women from the groom's family visit and examine the bride. They check to ensure that infibulation has been done and that she is a virgin. The genital area should be smooth as the palm of one's hand . . ."

I cannot understand why the paper then explains how to make intercourse easier. It stated:

> ". . . This `tailoring' of vagina to the size of the husband's penis is meant to ensure monogamy on the part of the wife."

If Christianity were taught in classrooms and it was the basis of our education system, virginity before marriage would become acceptable. We know what happens in other cultures. The paper went on to state:

> . . . the procedures involved may lead to significant adverse physical and psychological effects. Physical effects include pain, haemorrhaging, urinary infection -

The PRESIDENT: Order! I am having difficulty hearing the Hon. Elaine Nile because of the level of chatter in the Chamber and behind the Chair.

The Hon. ELAINE NILE: The paper continued:

> Physical effects include pain, haemorrhaging, urinary infection, tetanus, septicaemia, painful menstruation, bloating and impaired sexual response. In addition, there can be particular complications for infibulated women during childbirth and it has been suggested that it is common for infibulated women to under eat during pregnancy so that they will have smaller children. In addition, relationship difficulties and resultant anxiety and depression may be expected to occur.

Women undereat during pregnancy in order to have smaller children and to ease childbirth. That impacts on their health, the birth of their children and the fitness of children in the womb. Australia prides itself on being a modern and up-to-date nation and on having modern and up-to-date medical practices, yet until now nothing has been done about this problem. The paper also stated:

> There are at least two cases known to authorities in recent times and health professionals have reported treating women suffering the after-effects of the practice.

Only two cases are known to authorities, but I believe many more are not known because of the fear women have about reporting cases. Much more has to be done. Many more women have been suffering in this way. The Family Law Council is reported in this paper as stating:

> If Australia permits the continuation of female genital mutilation by those for whom it is a traditional practice it will be saying that what we, as a society, find unacceptable for some children in our society, we accept for other children. Also, if we condone the continuation of this tradition among those in our society who feel compelled to follow it, we consent to it and it is done with our complicity.

The Call to Australia group supports the bill.

The Hon. Dr B. P. V. PEZZUTTI [12.13 a.m.]: I support the bill. The practice of female genital mutilation is extremely rare in Australia. When the furore arose in October-November last year after the reporting of a number of cases, a number of interesting articles appeared in various medical publications. It was extremely rare for practising obstetricians and gynaecologists to know about such cases, let alone to treat any of these people during childbirth or on any other occasion. Although this practice was rare it was thought by the office of the then Attorney General to be covered by the Crimes Act and the Children (Care and Protection) Act. We had to face this issue and governments had to determine how to deal with this issue positively and sensitively.

Honourable members should read the briefing note from the Parliamentary Library written by Sharon Rose. That briefing note refers to the way in which this matter has been brought to the attention of the public and to the way in which it has been dealt in other countries. I wished to speak in debate on this legislation tonight so that I could refer to a statement made by the editor of *Medical Observer*, Margaret Rice, who said, "I believe that as a nation we must push the claim to human rights above the claim to cultural diversity". That is a terribly important principle that should be applied in New South Wales. I commend the Attorney General for taking steps to outlaw this practice, whether it is performed on a New South Wales resident or a resident in any other country.

The Commonwealth Government took the same steps when dealing with paedophiles, regardless of whether they committed paedophilia in Australia or in any other country. The behaviour of New South Wales residents in Australia or overseas must be covered by legislation. I do not believe that female genital mutilation equates to male circumcision. In future I would be more than happy to speak at length about the need for and the value of male neonatal circumcision, but this is not the appropriate time or place to debate that matter. Female genital mutilation or mutilation of any sort is abhorrent to me and to members of this Chamber. This State has taken the lead by introducing legislation, but it is a long way behind other countries which have dealt with this issue forcefully. Many speakers in this debate have referred to the fact that this is not a religious issue; it is very much a cultural issue. I support the bill. I believe its introduction is timely. It is sensitive legislation which I believe will be welcomed by the Australian community.

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [12.16 a.m.], in reply: I thank all honourable members for their support of this legislation. A number of questions have been raised which I should deal with in my response. This legislation is aimed at protecting children who are resident in New South Wales. The law relating to child abuse will also apply to such children. Female genital mutilation will constitute child abuse as defined in the Children (Care and Protection) Act 1987. Section 22 of that Act provides, in cases of child abuse, for a mandatory notification by the medical profession to the Director-General of the Department of Community Services. Officers in my department have consulted with officers in the Department of Community Services and the Child Protection Council regarding this issue.

It is mandatory for any doctor who has drawn to his attention that a child has had genital mutilation performed on her to report that to the Director-General of the Department of Community Services. An investigation can then be pursued. Other provisions in the Act relating to aiding, abetting, counselling and procuring an offence will then be enforced. This legislation will have effect not only in relation to procedures carried out in New South Wales but also in relation to procedures carried out in Australia or elsewhere in the world. Any adult who aids, abets, counsels or procures the carrying out of this procedure on a female resident in New South Wales, anywhere in Australia or elsewhere in the world, will commit an offence under this legislation.

The legislation carries a penalty of penal servitude for seven years. The offence of female genital mutilation is an indictable offence. There is no time limit upon the laying of a charge, whether or not it relates to mutilation or to aiding and abetting. If the charge relates to aiding and abetting it is not necessary to prove who carried out the offence; it is sufficient only to prove that someone was associated with the carrying out of such an offence. A parent or other adult associated with the carrying out of this offence on a child may well be the subject of a charge in relation to that offence.

The Hon. Franca Arena: Or took the child overseas.

The Hon. J. P. HANNAFORD: Yes, or took the child overseas for the purposes of carrying out the procedure. Therefore the legislation in this regard is very tight and extremely tough. It is aimed at setting a clear example of the attitude of the Legislature to these offences. The Hon. Elisabeth Kirkby raised the concern that women may find themselves in a difficult position with aiding, abetting, counselling and procuring offences

because of cultural issues. In our view the provision is necessary as it ensures that those persons who are present assisting in the performance of female genital mutilation or who obtain the services of another to perform FGM will not escape the law. The objective of the legislation is to protect children from being subjected to FGM; indeed, it will lend comfort to those who do not wish to continue with the practice but, due to cultural pressures, have felt constrained to allow it to continue.

Of course the decisions to charge and to proceed to trial are ultimately matters for the police and the Director of Public Prosecutions respectively, and I am not in a position to fetter the discretion of either of those agencies. The issues raised will be addressed in the community education program, which will be formulated by a number of administrations including the Department of Health, the Ethnic Affairs Commission and the Ministry for the Status of Women. The education program will be aimed at the health and medical professions as well as the relevant groups within the community. The education program will be sensitively administered by the office of ethnic affairs.

A number of questions were raised in relation to that program and, to reassure members of the House, I indicate that the Government has allocated $300,000 to the education program. The program will be conducted in three stages. Stage one will be an education program over 12 months targeted at health professionals. Stage two will be an education program over 12 months targeted at the general community and, in particular, the relevant community

groups. Stage three will be an education program for those who are required to become mandatory reporters of FGM under the legislation. The education program for health professionals is necessary in order to formulate and develop protocols, procedures and support for medical professionals in dealing with the victims of FGM, including those who have had the procedure carried out overseas.

The proposed community education program is necessary to inform both the general community and the relevant community groups of the nature and implications of the legislation. Appropriate community education is necessary to deal with any adverse reaction to the legislation and is a necessary part of the Government's strategy for dealing with FGM. An education program for those required to become mandatory reporters is essential and requires sensitive handling. Broader education as part of child abuse prevention initiatives for those working directly with children, for example teachers and counsellors, requires funding and will get that funding. This part of the program will primarily involve the Department of School Education and the New South Wales Child Protection Council. The programs will draw upon existing programs in public agencies and will be based on the need to integrate education regarding FGM into existing programs dealing with child protection issues with the aim of equipping the agencies to integrate FGM as an issue for further programs.

I reassure all members of the House that this issue is being very consciously addressed. In drafting the bill the Government also had the benefit of examining and following legislation already in place in the United Kingdom and the United States. As in those jurisdictions the bill is clear in prohibiting the practice of FGM, but is also clear not to interfere with legitimate forms of surgery. Thus this bill prohibits various acts of FGM unless they are necessary for the health of the person. The health of the person can be defined as either physical or mental health. In the vast majority of cases this will mean physical health. The bill makes necessary allowance for operations relating to cancerous or pre-cancerous conditions and other medical conditions.

The bill leaves this category open, for to do otherwise is to run the risk of inadvertently excluding a legitimate operation. The examples that have been raised of healing or for the purposes of reconstruction surgery following mutilation would clearly come under that exception. The bill also allows for operations that are necessary for the mental health of the person. This will allow for procedures such as the ones that have been raised: to remedy a physical malformation or to allow for forms of cosmetic surgery. Again, to define precisely the operations which are permissible would risk a legitimate operation being excluded. Moreover, such a course may implicitly create a loophole for the performance of certain forms of FGM. This has been the position taken in the United Kingdom and the United States.

The bill states that in determining whether an operation is necessary for the health of the person, only matters relevant to medical welfare can be taken into account. This provision ensures that operations cannot be performed for traditional or ritual reasons. I trust, therefore, that the comments I have made in response cover all of the issues raised by honourable members and have allayed any concerns they may have. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

NATIVE TITLE (NEW SOUTH WALES) BILL

STATE REVENUE LEGISLATION (AMENDMENT) BILL

STATE BANK OF SOUTH AUSTRALIA (TRANSFER OF UNDERTAKING) BILL

GAMING AND BETTING (TELEPHONE BETTING) AMENDMENT BILL

Formal stages and first readings agreed to.

ADJOURNMENT

The Hon. J. P. HANNAFORD (Attorney General, Minister for Justice, and Vice President of the Executive Council) [12.28 a.m.]: I move:

That this House do now adjourn.

MANLY HERITAGE TOUR

The Hon. PATRICIA FORSYTHE [12.28 a.m.]: I raise concerns about a so-called Manly heritage tour and abuse of that tour by groups in Manly under the guise of heritage. I raise the issue as a member of the National Trust and I acknowledge the excellent work of the trust in the promotion of heritage in New South Wales through, amongst other things, Heritage Week. My concerns about Heritage Week were aroused by a resident of Seaforth, Mrs Carmel Bradstreet, who wrote in a letter to the National Trust that, having enjoyed several excursions with the National Trust, she booked with her husband and three friends to attend the Manly heritage tour on Sunday, 24 April, at a cost of $25 per person. Upon going on the tour advertised by the National Trust she found that it was "an advertising tour for the Residents and Friends of Manly, the local member Mr Peter Macdonald, and the Manly Environment Centre and contained very little `heritage'."

From the "Heritage on the Move" calendar, a National Trust publication which Mrs Bradstreet has forwarded to me, one can see that it would be easy to believe that the tour was a legitimate heritage tour. It is included, amongst other things, with tours of areas promoted by Canterbury City Council, an open day by the Broken Hill District of the National Trust, "Heritage on the Move" by the Braidwood Heritage Day Committee, "History on the Move" by the Balmain Association, and the "Bondi Junction Stroll" by the Woollahra History and Heritage Society. Amongst the events listed was the Manly walk and picnic. It was described to be a walk through the centre of Manly, including a luncheon booking. The

contact was somebody from TEC Tours. I understand that TEC refers to the Total Environment Centre. As I read the letter from Mrs Bradstreet I suspect that is so and that is what it was all about. Let me read a little more from the letter written by Mrs Bradstreet:

We commenced at Manly Wharf walking to the Corso and through Ivanhoe Park and Mark Baxter, Chairman of the Residents and Friends of Manly conducted the tour.

The friends and residents of Manly are the political party one has in Manly when one does not have a political party. The letter continues:

The first 30 minutes were interesting, and informative and we then viewed the Manly Environment Centre and then, of all things, the local members' office!!

A further stroll to the water and on to Fairy Bower took us past several places of interest, again enjoyable. We then were served lunch and were met by Ms July Riezes who conducted a three quarter hour talk on how terrible the Water Board were and how pollution in Manly was being attended to by the Residents and Friends of Manly.

All of this happened on a Heritage Week tour promoted by the National Trust. The letter goes on to say:

We then proceeded past homes of interest and through St Patrick's College to the Water Board establishment at North Head where a very interesting talk and tour occupied approximately one and one half hours, the questions in the talk once again being "stacked" by an obviously biased group.

She then says that the day was not without pleasure, and continues:

. . . we do not regret our attendance, however, I feel it was a promotional exercise for the local lobby groups and the local member and not, as presented in your booklet, a Heritage Tour. I was embarrassed to have organised the day with my friends, having attended several other National Trust tours, to have them experience a day of propaganda and politics.

I am enclosing a copy of a tour booklet from the Total Environment Centre which itemised the day more correctly, but still did not fully explain the aims.

I am writing this letter in a spirit of advice, not criticism of the Trust, but feel you should know details of tours you advertise.

The letter was signed by Carmel Bradstreet. I raise this matter because I am a member of the National Trust. However, I do not hold the trust responsible for this matter because the Heritage Week calendar - and I have only pages 14 and 15 of it - lists on each page about 20 tours to be conducted during Heritage Week. The National Trust has been misled by a group which has clearly used Heritage Week as a front for the propaganda of a small group of people obviously interested in promoting the interests of the local member and, more particularly, in attacking the Government in respect of the Water Board and a range of other issues. I shall be taking the issue up with the National Trust, as I hope all of those who are members of the trust will do. I know that many honourable members of this place share an interest in the heritage of the State and are keen for the National Trust to promote positive events for heritage and not have it misused by a political group in Manly which is interested only in its own ends.

ELECTION OF NELSON MANDELA AS PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

The Hon. P. F. O'GRADY [12.33 a.m.]: I wish to speak about the election of Nelson Mandela as the first black President of the Republic of South Africa. Tonight on television Desmond Tutu showed his obvious delight at the election of Nelson Mandela. The comment was made that onlookers who were gathered inside the building where the ceremony was held would have been banned from that same building not so many years ago. South Africa has changed dramatically and quickly. When speaking of Nelson Mandela I am reminded of a warm spot that I have for Malcolm Fraser - and I have only one warm spot for him. He always adopted the correct position in regard to South Africa. He wrote in the *Australian* of 27 April that when he first met Mandela in gaol in 1986 - Mandela having been incarcerated for 22 years - the first question Nelson Mandela asked him was: "Fraser, can you please tell me: is Donald Bradman still alive?" That demonstrates the extraordinary spirit of the man. He had been in prison for 22 hard years, and it is reasonable to assume he would have had some bitterness. But he did not. He asked Malcolm Fraser a quite light and perhaps pertinent

question. The House should acknowledge Malcolm Fraser's contribution as an Australian who has consistently worked for the end of apartheid in South Africa.

On several occasions I also had the opportunity of meeting and talking to Eddie Fundi, who for a number of years was the African National Congress representative in Australia. I note that Mr Fundi is still active, and it is my hope that he will play a leading role in the new bureaucracy after this election. I wish him well. The Australian Labor Party has played a significant role in assisting the ANC in this election. I am certainly proud to be a member of the Australian Labor Party and am proud of the work the party has done and of the involvement of the party's national secretary, Gary Gray, in the promotion of our involvement in the South African election. Nelson Mandela, when convicted in 1964, said, amongst other things:

> I have fought against white domination, I have fought against black domination. I have cherished the ideal of a democratic and free society in which all people live together in harmony and with equal opportunities.

Mr Mandela repeated those words in his address to an election rally some 30 years later. Of Nelson Mandela the *U. S. News & World Report* of 9 May states:

> Though he suffered from tuberculosis in prison, he remains healthy and arises each day at 4:30 to exercise and eat a traditional South African breakfast of cold porridge and fruit.

When I eat my porridge each morning I shall think of Nelson Mandela and the many challenges ahead for South Africa. I hope that Australia can play a role in assisting and continuing to assist the development of South Africa. From a recent interview I noted that Nelson Mandela thought he should stop smiling

because it was not regarded as presidential. It is my hope that Nelson Mandela never loses his smile. I hope that he continues to lead his people out of the wilderness in which they find themselves. President of South Africa will be a very challenging and demanding job, but I am sure Nelson Mandela has the capacity to undertake and carry out that job with great distinction. [*Time expired.*]

LAW REFORM COMMISSION DISCUSSION PAPER ON ADOPTION

Reverend the Hon. F. J. NILE [12.38 a.m.]: On 9 May the New South Wales Law Reform Commission issued an interesting discussion paper containing recommendations with regard to adoption. Some reference has been made in the Parliament to the effect that the commission has not paid the Attorney General or the Government the courtesy of providing a copy of the document. Tonight I asked whether I might have a copy of the discussion paper in order that I might refer to it. Apparently, there is no copy of the discussion paper either in the Parliamentary Library or in the hands of any Government member - including the Attorney General. I find it remarkable that the Law Reform Commission would fail to pay due respect to the Government.

The Hon. J. P. Hannaford: I have one copy, that is all.

Reverend the Hon. F. J. NILE: That is the advice I received from the Attorney General's office tonight. The key recommendations in the report by the New South Wales Law Reform Commission are as follows: no exclusion of applicants on the basis of their sexual preference; age requirements to allow parents to be up to 41 years older than the child, but not more than 55 years of age; no requirement that parents should be infertile; the birth mother should not be allowed to consent to adoption until 30 days after the birth, followed by a 30-day cooling off period, after which time the decision would become irrevocable; adoption should be viewed critically against all other options for permanent care. In the case of intercountry adoption, the collection of information which could later assist the child to trace his or her origins, as provided for in the Adoption Information Act, should be a priority and the Act should be amended to support the policy of open adoption.

I believe a number of those recommendations should be rejected. It has been announced that community comment on the paper and recommendations is sought. I urge all concerned citizens of New South Wales to respond to the discussion paper and to make clear their views. I would support some of the recommendations

but would strongly oppose others, such as the recommendation relating to no exclusion of applicants on the basis of their sexual preference. That should be rejected. I oppose also the puzzling recommendation that adopting parents can be up to the age of 55 years. That is quite bizarre. I oppose also the requirement that parents need not be infertile. That is the main reason couples seek adoption, and that recommendation seems to be a contradiction. I find it strange that the New South Wales Law Reform Commission has made such radical recommendations when in 1971 3,882 adoptions were arranged, and in 1991 the figure had fallen to 154, and is still decreasing. Only a handful of babies or small children are available for adoption. Unfortunately, because of the pill and other procedures - sometimes with good intentions - many females are now infertile, resulting in an increase in the number of infertile women, whilst the number of children available for adoption has dramatically decreased.

The situation has become so embarrassing that the Government has scrapped waiting lists for parents wishing to adopt children. Rather than there being 5,000 couples waiting two or three years for adoption, the Government has recognised that in reality many couples will never have the opportunity to adopt, and has scrapped the waiting list, to avoid giving couples false hope. A small number of adoptions are proceeding but how the priority and preference is worked out has become a mystery. The other issue of concern is the application of the statement by the Law Reform Commission that the welfare of the child should be paramount. In my view the Law Reform Commission has not given consideration to the issue at all, especially as it has recommended that homosexual couples be allowed to adopt children. [*Time expired*.]

Motion agreed to.

House adjourned at 12.43 a.m., Wednesday.