

Legislative Council

Wednesday, 8 April, 1981

Crimes (Sexual Assault) Bill and Cognate Bill (first reading)—National Companies and Securities Commission (State Provisions) Bill and Cognate Bills (first reading)—Questions without Notice—Police Regulation (Superannuation) Cognate Bills (second reading, third reading)—Crimes (Sexual Assault) Bill and Cognate Bill (second reading)—National Companies and Securities Commission (State Provisions) Bill and Cognate Bills (second reading)—Precedence of Business—Adjournment (Port Stephens Shire Council).

The President took the chair at 2.30 p.m.

The Prayer was read.

CRIMES (SEXUAL ASSAULT) AMENDMENT BILL

CHILD WELFARE (AMENDMENT) BILL

Bills received from the Legislative Assembly.

Suspension of Standing Orders

Suspension of so much of the standing orders as would preclude these bills being considered simultaneously, except in Committee, agreed to on motion (by consent) by the Hon. D. P. Landa.

First Reading

Bills read a first time, and ordered to be printed, on motions by the Hon. D. P. Eanda.

Suspension of Standing Orders

Suspension of certain standing orders agreed to on motion by the Hon. D. P. Landa.

NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) BILL

SECURITIES INDUSTRY (APPLICATION OF LAWS) BILL

COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) BILL

COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (APPLICATION OF LAWS) BILL

CORPORATE AFFAIRS COMMISSION BILL

CRIMES (SECURITIES INDUSTRY) AMENDMENT BILL

Bills received from the Legislative Assembly.

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QUESTIONS WITHOUT NOTICE

PERSONAL DEVELOPMENT COURSES

The Hon. M. F. WILLIS: I address a question without notice to the Minister for Education and Vice-President of the Executive Council. I refer to the Minister's answer yesterday to my question about personal development courses in schools, in which he stated he would not be issuing any direction to school principals to advise parents of the content and resource material being used in personal development courses when their consent to their children participating in such courses is being obtained. How does the Minister reconcile that statement with the statement contained in his release to the news media of 15th March in which this appears:

Human relations and sexuality units in the course **will** only be taken with the consent of ~~the~~ parents and with their knowledge ~~of~~ the make-up and design of the courses in their school.

The statement in the same release further reads:

Instructions to principals state that the parents of the children to be involved are fully **consulted** and informed about the consent and coverage of the units and the resources to be used.

In view of the contents of the news media release I again ask the Minister, will he issue instructions that when the consent of parents is sought to their children participating in personal development courses, the parents, before giving their consent, will be advised of the content of the courses and the resource material being used in them?

The Hon. D. P. LANDA: The simple fact of the matter is that already that procedure operates in secondary schools and in primary schools. If considered appropriate, any directions to school principals will be issued by the Director-General of Education. I do not propose to allow any political interference in this matter. It is for the professionals to weigh up the matter, which is in a sensitive area, in a professional way. The Government is extremely desirous of allaying any concern that is felt and will be happy to make available any details to concerned parents. Commonsense dictates that the school principals will make available details sufficient to enable the parents to make a decision on whether they wish their child to take a personal development course.

ATTACK ON THE HON. P. J. BALDWIN

The Hon. R. B. ROWLAND SMITH: I address a question without notice to the Minister for Education and Vice-President of the Executive Council. The Minister will recall my questions of 9th September, 1980, 22nd October, 1980 and 3rd March, 1981, regarding information on the progress of the police investigation into the vicious attack upon the Hon. P. J. Baldwin. In view of the inordinate amount of time that has elapsed since this horrendous attack on a member of the Parliament I again ask whether the Minister has referred my question to his colleague in another place, as he promised to do on 3rd March. If he has, what information can now be given to honourable members and to the general public on the progress of the police investigation, or any relevant details, which may have been obtained in regard to this crime?

The Hon. D. P. LANDA: The answer to the first part of the honourable member's question is, yes. The answer to the second part is, not at this stage. The matter is being competently handled by the police of this State.

MIGRANTS' LEGAL AND MEDICAL FEES

The Hon. J. KALDIS: I direct my question without notice to the Minister for Education and Vice-President of the Executive Council. What relief is available to non-English speaking members of the community who must incur high costs in obtaining equal treatment in workers' compensation cases mainly associated with legal and medical conferences?

The Hon. D. P. LANDA: I thank the Hon. J. Kaldis for his question. Members on both sides of this House know the honourable member has a long history of concern for, and has given able assistance to, members of the migrant community in this State. Since becoming a member of the Legislative Council and a fellow of the Senate of the University of Sydney he has been able, all the more, to assist migrants and other people in the community. I should like to take this opportunity to congratulate the honourable member. I am only too happy to answer his question.

In 1980 the Ethnic Affairs Commission of New South Wales established a workers' compensation interpreting unit. The major portion of the activity of the interpreting service relates to free interpreting in workers' compensation court hearings, and both legal and medical conferences conducted by the Workers' compensation Commission's medical board and the workers' rehabilitation unit. This interpreting service has resulted in savings in costs of up to several hundred dollars to persons unable to speak English, involved in work accident cases. The trade union movement of this State also makes available its resources to members, both English speaking and others, to enable them to pursue their legal rights. Also, within union membership there are skilled migrant officers assisting others who come to this country to work, enabling them to obtain full benefits under the accident laws of this State. I am sure that the Hon. J. Kaldis, who has a close level of contact with the migrant community in this State, will bring to the attention of the Government other aspects where additional help, assistance and concern may be given and shown by the Government for migrant people.

DECENTRALIZATION OF INDUSTRY

The Hon. J. J. DOOHAN: I desire to ask the Minister for Education and Vice-President of the Executive Council a question without notice. Is the Government concerned that such a high percentage of the population of New South Wales is concentrated in Sydney, Newcastle and Wollongong? Does the Government favour

giving assistance to industries to encourage activities in other areas of the State? If so, how does the Government equate that objective with acceptance of the increased rail charges imposed on 1st January, 1981, by the State Rail Authority? Is the Minister aware of the real concern these charges have caused people in country areas, particularly those with small businesses located in towns adversely affected by drought? In view of this, will the Government reconsider its decision?

The Hon. D. P. LANDA: As the Hon. J. J. Doohan will be aware, the Government is actively engaged in decentralization programmes.

The Hon. F. M. MacDiarmid: Does the Minister really believe that?

The Hon. D. P. LANDA: Yes. The Government is actively engaged in decentralization programmes in order to relieve industrial congestion and the centralizing of facilities in the three main conurbations in this State. Since coming to office the Government has quadrupled the amount of money spent on decentralization programmes in New South Wales. The Government introduced payroll tax concessions that have been of welcome assistance in that regard. As for freight rates, the Government has had to weigh the difficulties facing some areas of the rural community with the economic factors of rising costs that have affected the community generally. The latter, in no short measure, have been the result of poor economic management by the federal Government.

The Hon. W. L. Lange: Why has the State Government been so selective?

The Hon. D. P. LANDA: The Government has been selective only because it made a most sincere attempt to be receptive to the **problems confronting** farming communities, particularly those in drought areas. That is why, on the last occasion, the Government made a decision to exempt from the rises the major bulk handled **grain** produce. In that way the Government demonstrated to country people of New South Wales its sensitivity to problems occurring in the bush. It is fitting that members of the House should know that while the Government is making serious attempts at decentralization, with which the Hon. J. J. Doohan is so sincerely concerned, the Hon. W. L. Lange spoke on a television programme knocking the Albury–Wodonga growth centre.

The Hon. W. L. Lange: The corporation.

The Hon. D. P. LANDA: The Hon. W. L. Lange wants to quack like a duck and ruffles his feathers like a duck, but when he is called a duck he runs for cover. The fact is that the Hon. W. L. Lange is knocking the Albury–Wodonga development which is within the region he represents in this place. Though he must have had some support to come to this Chamber, since the marked success of Mr Mair, the member for Albury in the other place, he can expect less support. When the voice of the Hon. W. L. Lange is heard it is heard as one of the knockers of the area in which he lives. It is a tragedy that members should come to this place expressing concern about country electorates and their problems but at the same time knocking genuine attempts by the Government at decentralization. I know that the Hon. J. J. Doohan is sincerely concerned about decentralization.

The Government exempted the major line hauls of primary produce because of the drought. As the Hon. W. L. Lange should know, New South Wales has the cheapest rates for cartage of grain among all States of the Commonwealth. It is cheaper per kilometre tonne to carry grain than to carry coal. These concessions are designed to be receptive to the matters the Hon. J. J. Doohan has outlined in his question. It is curious that when the Opposition talks about freight rises there is no

mention that under the previous Government in the period of fourteen months between September 1974 and October 1975, there was a 30 per cent increase in freight rates. That shows how little the coalition Government was concerned about increasing freight rates.

The Hon. R. B. Rowland Smith: The Minister knows that at that time freight rates had not been increased for years before that. He should get his facts straight.

The Hon. D. P. LANDA: The state of the rail system in New South Wales—its run down conditions and the poor service it offered—were the reasons why the people of New South Wales threw the coalition Government out of office. They were awake to what was happening. There is no point in members of the Opposition in this place saying that rates were suddenly increased because they had not been raised for a long time.

The Hon. R. B. Rowland Smith: Can the Minister say whether they now *run* on time?

The Hon. D. P. LANDA: The railway system of this State is now much better than it was when run by the coalition Government. In those days trains did not run on time, and sometimes not at all. When they did appear they were in such a dilapidated and unsafe condition as to be a national scandal. This Government has committed major resources to improving the rail system. It has been most sensitive to the economic problems facing people in the community, particularly those within the country sector. Though the Deputy Leader of the Opposition said that freight rates were put up only because they had not been increased for some time, the fact is that they increased by 30 per cent in fourteen months.

The Hon. J. R. Hallam: They rose three times in fourteen months.

The Hon. D. P. LANDA: Quite so, and it was not for years and years that they did not rise. In July 1971, three years before that increase, there was another 15 per cent slug. There is no point in any Opposition members trying to mislead the people. They know better than that.

The Hon. R. B. Rowland Smith: It is the present Government that is doing the misleading.

The Hon. D. P. LANDA: These charges are directed to the smaller items such as half load carriage, which is not the most efficient method of **cartage** of goods and must be reflected in the costs borne by the State Rail Authority. The proposed changes were necessary because the weight based pricing mechanism has become administratively awkward and economically necessary. The system has remained virtually unchanged since 1855. The existing ratings merely attracted deficit producing, light and bulky freight items. The new general freight tariffs are based upon the cubic capacity of goods rather than weight. This development is a vital component of the State Rail Authority's plans——

[*Interruption*]

The Hon. D. P. LANDA: This is a vital matter. I am surprised that the Deputy Leader of the Opposition and Leader of the Country Party shows such little interest in freight rates that he engages in conversation with the Leader of the *Opposition*. That demonstrates the interest they have in the State and reveals their lack of sincerity.

The Hon. M. F. Willis: We were analysing the Minister's answer. It seems to be an election speech.

The Hon. D. P. LANDA: Honourable members are aware of the value of the judgment of the Leader of the Opposition on elections and pre-selections. Some of us have benefited financially by the acquisition of certain lottery tickets. The fact of the matter is that these are vital programmes of economic management that will benefit rural producers. Under the former administration a 30 per cent increase took place in fourteen months. The present Government imposed a 7 per cent increase in October 1976 and a further 8 per cent in October 1977. In July 1979—that is two years later—there was an increase of 15 per cent, and in January 1981 when the rates were reviewed there was no increase in the bulk cartage of primary products. Compared with the record of the previous administration, there has been better management under the present Minister, who is undoubtedly the best Minister for Transport in this State's history. Honourable members on this side of the House are aware of that. All that remains to be done between now and October is to apprise the community generally of it.

EMPLOYMENT OF MIGRANTS

The Hon. J. KALDIS: I ask the Minister for Education and Vice-President of the Executive Council what action the Government is taking to make better use of oversea trained persons who cannot find work commensurate with their abilities because their qualifications are not recognized in this State.

The Hon. D. P. LANDA: Once again the Hon. J. Kaldis has shown his great concern for the migrant community and the Australian community generally by ensuring that Australia is able to put the skills of migrants to the best possible use. I am grateful that he has brought this matter to the attention of the House. The Government is well acquainted with the fact that large numbers of oversea trained people could better utilize their skills to their advantage and that of the community if they were allowed to practise in their chosen fields. However, there is not always an easy solution in all individual cases.

The Government, recognizing this problem, set up in 1979 an overseas qualifications counselling unit within the Ethnic Affairs Commission. The unit is at present assisting between 700 and 800 persons a year to direct their talents where the greatest advantage lies. It offers an advisory service that has led to placement of persons in positions appropriate to their qualifications, retraining in cases where courses are available, discussions with accrediting authorities such as the Australian Medical Association, the Institute of Chartered Accountants and many others in order that qualifications criteria might be reviewed, and placement in suitable alternative fields of employment achieved. The unit has assisted 1 400 persons since it was established in 1979.

BARRELL INSURANCE CASE

The Hon. P. S. M. PHILIPS: I address a question without notice to the Minister for Education and Vice-President of the Executive Council. What action does the Government propose to take arising out of the decision in the Barrell case?

The Hon. D. P. LANDA: That is obviously a matter of policy, which I am not at liberty to comment on until it has been discussed by Cabinet and finalized in the proper way.

DROUGHT ASSISTANCE

The Hon. N. M. ORR: I ask the Minister for Agriculture a question without notice. Prior to the drought was the sheep population in the Bourke shire 1.3 million head? Has the drought reduced that number to 333 000? Is the maximum restocking

loan \$30,000 for each applicant? Will the Minister agree that that amount is totally inadequate when sound merino breeders, when available, sell at up to \$40 a head and minimum restocking needs in the western areas are at least 3 000 to 4 000 breeders per property? Will the Minister use every endeavour to have restocking loans increased to a more realistic level?

The Hon. J. R. HALLAM: I do not have available the precise statistics on the decrease in sheep numbers in the Bourke shire though I am aware that in New South Wales in recent years sheep numbers have dropped from 72 million to 49 million. The decrease in the Western Division, especially in Bourke shire and Walgett shire which are in their third year of drought, has been especially dramatic. In some parts of those shires sheep numbers have been reduced by between 60 per cent and 90 per cent. The figures quoted by the Hon. N. M. Orr may well be correct. As to the substantive part of the honourable gentleman's question, I invite his attention and the attention of other honourable members to the fact that late last year the maximum amount of restocking loans was increased from \$12,000 to \$30,000. In 1976 the figure was \$10,000. The amount offered for restocking now is three times what was offered by the Liberal Party—Country Party Government in 1976.

The Hon. N. M. Orr: The value of sheep has trebled, also.

The Hon. J. R. HALLAM: Restocking loans, which I might mention are not offered in Western Australia, are available to farmers in necessitous circumstances. Repayment terms are seven years with a 2-year holiday period. It is not reasonable to expect to be able to restock a property completely with a restocking loan. Requirements vary to a great extent from region to region and even within regions. Restocking loans are granted for the purpose of assisting farmers to restock.

The Cabinet natural disasters subcommittee meets from time to time and reviews the levels and extent of drought aid. Last year between May and November carry-on loans were increased from \$5,000 to \$40,000, the second \$20,000 being for drought affected farmers in their second year of drought relief. This Government's drought aid programme is as good as or better than that in any other State. Carry-on loans and restocking loans combined amount to \$70,000, and farmers in the Bourke area would technically qualify for them. It is not necessary at present to review the level of the restocking loan. That is not to say it will not be reviewed should the need arise. The Government has acted responsibly in this matter and will continue to do so. Only four or five applications have been received for restocking loans and approximately 3 000 carry-on loans have been allocated. Some 14 000 farmers have been assisted with the transportation of fodder and livestock.

BARRELL INSURANCE CASE

The Hon. P. S. M. PHILIPS: I ask the Minister for Education and Vice-President of the Executive Council whether the Government Insurance Office will have to increase its premiums by as much as 100 per cent as a result of the Barrell case decision.

The Hon. D. P. LANDA: The ramifications and implications of the decision in the Barrell case are now under the active consideration of the Attorney-General and Minister of Justice in the other place, and the Treasurer as the authority responsible for the Government Insurance Office. Detailed discussions will be held with

the industry. The Attorney-General and Minister of Justice is desirous of having the matter considered at the earliest possible moment. This will be done by the Government. The implications of the decision relating to premiums and the complete financial stability of the insurance industry are well known to the Government, and they were regarded as matters of serious concern the moment the judgment was handed down.

TRAVEL CONCESSIONS FOR SENIOR CITIZENS

The Hon. N. M. ORR: I ask the Minister for Education and Vice-President of the Executive Council a question without notice. Will the Minister inform the House when the extra free rail trip for returned soldier aged pensioners promised by the Premier and Treasurer during Senior Citizens Week will be made available to those eligible?

The Hon. D. P. LANDA: I shall obtain information from the Premier and Treasurer in the other place and I shall advise the honourable member of the position in due course.

POLICE REGULATION (SUPERANNUATION) AMENDMENT BILL

POLICE REGULATION (RETIREMENT) AMENDMENT BILL

POLICE ASSOCIATION EMPLOYEES (SUPERANNUATION) AMENDMENT BILL

Second Reading

Debate resumed (from 7th April, *vide* page 5345) on motion by the Hon. J. R. Hallam:

That these bills be now read a second time.

The Hon. F. J. DARLING [3.1]: Having read the record of the debate in the other place, on behalf of the Opposition I inform the House that we on **this** side support these cognate bills.

The Hon. J. R. HALLAM (Minister for Agriculture) [3.2], in reply: I thank the Opposition for its support of these important measures.

Motion agreed to.

Bills read a second time.

Committee and Adoption of Report

Bills reported from Committee without amendment, and report adopted, on motions by the Hon. J. R. Hallam.

Third Reading

Bills read a **third** time, and returned to the Legislative Assembly without amendment, on motions by the Hon. J. R. Hallam.

CRIMES (SEXUAL ASSAULT) AMENDMENT BILL
CHILD WELFARE (AMENDMENT) BILL

Second Reading

The Hon. D. P. LANDA (Minister for Education and Vice-President of the Executive Council) [3.7]: I move:

That these bills be now read a second time.

The object of the bills is to remedy major defects in the laws relating to sexual assault. The reforms will bring the law into conformity with current community opinion. Also, they will provide laws that will facilitate conviction in appropriate cases, subject to the protection of the rights of the accused. As well, they will provide laws that will protect the victims of rape within the legal process and will serve an educative function in further changing community attitudes. This historic legislation proves **the** Government's commitment to rape law reform. These reforms have massive community support, and well they should. Rape is an act of violence aimed at subjugation and humiliation. This Government acknowledges that these reforms will not rid the world of rape, but rape law reform is an integral part of the process of change.

Rape entered the law as a property crime of man against man. Rape was viewed not as a sexual assault, but as a trespass against a man's property. Rape could not be envisaged as a matter of female consent or refusal; nor could a definition acceptable to males be based on a male and female understanding of a female's right to her bodily integrity. These reforms reflect the leap forward that has occurred in recent times. Until now, rape victims have been reluctant to report the crime and seek legal justice. This is because of the shame of public exposure and because of the complex double standard that makes a female feel culpable, even responsible, for any act of sexual aggression committed against her. Also it is because of possible retribution from the assailant—once a woman has been raped, the threat of a recurrence understandably looms large—and because women have been presented with sufficient evidence to come to the realistic conclusion that their accounts are received with harsh cynicism. Change, in such a basic matter, does not come easily. Getting these reforms has been a long, hard struggle. The Government has placed on record its appreciation of the tenacity and enthusiasm of the scores of people, particularly women, who have worked to achieve this end. Women from all spectrums have been united in their support for reform, for women have understood that rape is not about sex; rape is about power and violence.

In outlining the reforms I note first those reforms that will bring the law into conformity with current community opinion by making laws gender neutral; by keeping trial proceedings generally open, with provision for support people being able to stay with a victim if a judge decides to close the court; by the removal of immunity for husbands; by the removal of immunity for males under 14 years of age; and by the abolition of the provision that proof that a girl is a prostitute is a defence to a charge of unlawful carnal knowledge. I shall speak in detail on the key reforms. The legislation will impose criminal liability on persons, rather than on males or females. Gender neutrality is reflected in the wording of the bills. The principle of equality of all persons before the law is advanced by the fact that the wording of the proposed legislation is gender neutral to the greatest extent reasonably possible. A sexual assault is equally traumatic whether the victim is male or female, and the gender of the assailant does not affect the offensive nature of the attack. Gender neutrality is important also to place the laws on sexual assault on a similar footing the general criminal law.

I note that many of my remarks during this debate are not gender neutral. That is because much of what I say is comment on the existing situation, which is far from gender neutral. In bringing the law into conformity with current thinking the proposed legislation will nullify the rule applicable under the common law that a husband may not be convicted of raping his wife. Commenting on this, the *Catholic Weekly* editorial of 23rd November, 1980, stated that the reform:

Seems to be in line with church teaching—that marriage is of two free and equal persons, whose matrimonial consent gives to neither party absolute power over the body of the other. As such, it deserves our support.

That view was widely shared in the community. Only one group, Women for the Family, Women's Division of the Australian Federation of the Festival of Light, felt strongly enough to speak against this proposal at the public hearings conducted by the Women's Advisory Council. The Sydney Barrister, Miss J. Coombs, appearing for the Festival of Light, attempted a defence of the present law in terms that are, in my view, unacceptable. She said:

... suppose an instance where the wife does not wish to have children and the husband wishes to have children and he may wish to have intercourse on a fertile day and this is part of his marriage right.

That sort of reasoning is intolerable. It would be inappropriate to legislate any package of reforms in the area of sexual assault without also doing away with the present immunity of the husband. Another outdated anomaly that the legislation will remove is the old and unrealistic common law presumption that a male under 14 years of age is incapable of having sexual intercourse, and therefore is incapable of rape. Under the criminal law juveniles between 10 years and 14 years of age are presumed incapable of forming a criminal intent, and quite properly the onus is on the prosecution to rebut that presumption in a particular case. Of course, no child under 10 years of age can be convicted of any criminal offence. Juveniles in sexual assault cases will now be in the same position as they are in any other criminal case. That reform leads one into the next set of reforms. These are aimed at facilitating conviction in appropriate cases subject to the protection of the rights of the accused, through the introduction of a gradation of offences in four categories with alternative verdicts; the elimination of judge's warnings on the validity of uncorroborated evidence of an alleged victim; a broader definition of sexual intercourse; new provisions in relation to sexual assault; and juvenile discretion on the right to jury trial. Again I shall speak to key provisions only. As Professor Virginia Nordby, the Michigan reformer said:

There is much current debate about the deterrent or rehabilitative value of institutional confinement as to the total crime problem. But working within the present system, it is clear that the certainty of punishment is the key—the most significant deterrent.

Because rape is almost always a furtive, secretive crime, it is usually difficult to prove, but evidentiary rules and judicial interpretations throughout the years often have made it even more difficult to get convictions. A clear goal of law reform should be to close these loopholes. In addition, certainty of conviction is often jeopardized by overly severe penalties which do not match the societal concern about the criminalized conduct. Juries tend to compromise on the issue of guilt because the maximum penalty is life imprisonment.

The proposed legislation accepts that view and will introduce a new series of sexual assault offence categories. Though previously there was simply one offence of common law rape, with penalties ranging right up to penal servitude for life, under

the new scheme a number of different levels of offences of sexual assault will be created, the maximum penalties reflecting the varying degrees of seriousness of each offence. The four categories will be, first, under proposed new section 61B, inflicting grievous bodily harm with intent to have sexual intercourse, for which the maximum penalty will be 20 years' penal servitude; second, inflicting actual bodily harm, or threatening to inflict such harm by means of an offensive weapon, with intent to have sexual intercourse, for which proposed new section 61C will provide a maximum penalty of 12 years' penal servitude. The third category of offence is under new section 61D (1), sexual intercourse without consent, for which the maximum penalty is 10 years' penal servitude when the victim is under 16 years of age. Proposed section 61E deals with the fourth category of offence, indecent assault, which carries the same penalties as now apply.

A major aim in creating this structure of offences has been to emphasize the violent aspect of the offence as distinct from the sexual aspect. In the past by virtue of the definition of the rape offence the law has focused principally upon the question of whether sexual intercourse occurred without consent. The occurrence of violence was seen as secondary, merely as a means of proving that the intercourse in fact occurred without consent. Recently there has been a strong demand that the focus of legal attention should rest upon the violence and the Government accepts that demand as reasonable. Though it is argued that in cases of serious violence the focus in sexual assault laws should rest upon such violence rather than upon the unwanted intercourse, nonetheless the unwanted intercourse is a reprehensible outrage, and must be specifically delineated as such in the statutes. It would not be sufficient to utilize the general laws of assault to control or punish sexual violence, for the community condemnation of the sexual element would not be expressed with sufficient force.

I should make it perfectly clear that the penalties set out under the new law will not weaken the effect of the law. In truth they will strengthen it. The penalties will be invoked by the judges taking into account all the circumstances of each case, and will be much lower than the maximum possible of penal servitude for life. In 1979, 46 persons were sentenced for rape in the New South Wales Supreme Court. Of that number, none was sentenced to longer than 16 years, and only 7 were sentenced to more than 10 years. In fact, 85 per cent were sentenced to 10 years or fewer. The 1979 sentencing statistics show that the setting of penalties in the new law at maximums of 7 years, 12 years and 20 years for the three major categories is proper and justifiable.

Another measure that will be implemented by the proposed legislation is the abolition of the mandatory requirement upon judges to warn juries that it is unsafe to convict the accused upon the uncorroborated evidence of the alleged victim. Judges will have the same power as they have in other criminal cases to comment upon the weight of evidence. There is no room to argue for maintaining a special rule in sexual assault cases. That brings sexual assault law into line with general criminal law. No unfairness to accused persons can result from that amendment. The term sexual intercourse, which encompasses a range of sexual activities, is used in the proposed categories of sexual assault offences. The full definition appears in proposed new section 61A.

The law in New South Wales states that rape is not committed unless there is penetration of the vagina by the penis. There are assault offences in which other forms of penetration occur. Many victims regard those acts of penetration—which are, of course, indecent assaults—as being more degrading than vaginal penetration. An adequate definition of the sexual behaviour to be regarded as unlawful is fundamental to the recognition of the seriousness of particular acts. The extended definition of sexual intercourse more accurately delineates the particular acts referred to under the proposed categories of offences. That will allow the community to be aware of the precise

The Hon. D. P. Landa]

behaviour that is prohibited, and will ensure that the principle of gender neutrality is given substantive effect. The legislation also confronts the problem of a sexual assault victim's natural unwillingness to complain in the legal context of the offence. In fairness to the accused, where an alleged sexual assault victim delays complaining about the offence or makes no complaint, he or she will be entitled, as in any other criminal case, to cross-examine upon such delay or lack of complaint.

The complex psychological reasons for many victims of sexual assaults hesitating to complain or failing to complain must be taken into account, and, at trial, brought to the jury's attention. Accordingly, a judge in a sexual assault trial will be required to warn the jury that there may well be good reason for a victim's lack of complaint or of delayed complaint. Untruthfulness on the victim's part cannot be assumed in such cases. The Government is highly conscious of the need to protect the rights of the accused. The accused retains the traditional right to silence and right to counsel as well as the right to have a preliminary hearing at which he or she gets notice of the evidence against him or her, and the right at trial to make an unsworn statement from the dock, subject to certain limitations. In this context it is appropriate to consider the cognate legislation, the Child Welfare (Amendment) Bill. This legislation represents an important step forward in the protection of the rights and needs of children being dealt with by the criminal justice system.

The right to a jury trial for indictable offences will no longer be solely at the discretion of the magistrate presiding over the committal proceedings. The juvenile offender will have the right to elect to have a jury trial. Of course, as now occurs, the most serious juvenile offences such as murder will continue to be dealt with automatically by the higher courts. The most serious sexual assault offence will be dealt with in the same way. This piece of legislation will overcome the concern expressed by some people during the community consultations that children, even in the less serious sexual assault cases, would always be tried before the higher courts.

Under the present law when a victim gives evidence in court concerning a sexual assault, the accused may cross-examine the victim to show that she is not a truthful witness. This entitlement applies throughout the criminal law generally. For example, if a complainant has a previous criminal conviction for dishonesty, the accused's counsel may legitimately cross-examine upon such conviction. The jury is naturally entitled to draw its own conclusions about the witness' credibility from this type of cross-examination. The accused is, also, according to long-established and quite proper legal practice, protected from having his criminal and sexual history revealed to the court determining his guilt, except in very narrow circumstances. It is a recognition by the Government of the importance of trial by jury. Thus a situation may, and does, arise where the accused may have two or three prior convictions for rape, a fact well known to the police and, sometimes, to the victim, and while his prior record is concealed from the jury, he can instruct his counsel to ask the victim questions of a humiliating and often outrageously prejudicial nature. That is intolerable.

I have no quarrel with the rule that the prior record of the accused should be kept from the jury, except in the narrow circumstances allowed by the law. This is a vital rule as without it fair trial would be impossible and a person once convicted would be forever at the mercy of prejudice. I stand with the defenders of accused's rights on that point. But, a balance must be found. If the accused must have protection, so must the victim.

I come now to the final set of reforms. The Government seeks to find that balance between the right of the accused and the victims through the introduction of six reforms which aim at protecting the victims of rape within the legal process.

They are the prohibitive rules relating to admissibility of evidence relating to sexual reputation of prior sexual behaviour of victims; the retention of the word rape only as a heading; de-emphasis on the need to prove the victim's consent and the introduction of provisions under which non-consent will be deemed; and acceptance of a victim's written statement rather than a verbal statement at a preliminary hearing if the accused pleads guilty. In pack rape situations, where defendants are caught and charged separately some time apart, limitations will be placed on the repetitive cross-examination of the victim. A statement from the dock by the defendant at a preliminary hearing will be limited to exclude matters that could not be raised on oath at a subsequent trial.

The reforms will provide a legal and administrative system under which victims of sexual assault may feel confident that they can report the offence and know that they will be treated humanely, that they will not be unfairly harassed in court and that a just penalty will be imposed on any guilty offender. I hope honourable members have heard an end to comments like: "I have heard that you get a really rough time"; "I ~~am~~ not going through that, they won't believe me"; "I am not standing up in front of people and talking about this"; and "I couldn't stand being grilled." In the past the rules about cross-examination have been grossly abused so that virtually the entire sexual history of the victim may be brought out, much to her humiliation and embarrassment.

Offensive and irrelevant questioning about a victim's prior sexual behaviour is a major deterrent to the prosecution of legitimate charges. Contemporary community standards require that it is not reasonable for the law to allow a conclusion of untruthfulness to be drawn on the witness stand merely because a witness may have had consenting sexual intercourse with a person or persons other than the accused. And, yet this happens. Counsel for the accused may ask about, for example, a victim's first sexual intercourse, or sexual intercourse with somebody she was engaged to years before, even though commonsense dictates that that is totally irrelevant. No one can reasonably blame any woman who makes a decision not to complain of a sexual assault in order to protect herself from the present law, but the situation is most unsatisfactory. In view of the reasonable exceptions that my colleague the Attorney-General has delineated, this will be seen as a fair principle.

Consideration was given to the argument that there may be other unforeseen circumstances in which cross-examination on sexual history should legitimately be allowed as relevant to an issue in a case. According to this view, a general discretion should be vested in the courts to determine the relevance of it, and to allow cross-examination in appropriate cases. This approach has been adopted in some other jurisdictions—for example, in Victoria and South Australia. Deliberately such an approach is not being taken in the legislation before the House. None of the many examples that have been considered is persuasive of the necessity for a general discretionary power to allow cross-examination on sexual history where the judge decides it is relevant.

An accused person will still be entitled to say in his or her defence that he or she honestly believed that the other person consented, where consent is an issue. But the accused will not be entitled to use the victim's prior sexual behaviour, except where the legislation provides that it is relevant to bolster a defence alleging consent to intercourse. The accused will have full and proper scope within the ordinary rules of evidence to engage in questioning on the facts of the case. The law should not—and under this legislation will not—allow the accused to go beyond this point with humiliating and irrelevant questioning of the victim about the details of his or her sexual

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history. I add that in the past year or so some judges have attempted to take a more restrictive and sensible approach to cross-examination in rape cases. Though this effort is appreciated, the long history of precedent and the public demand for reform necessitates clear legislative intervention.

The term rape is no longer to be used in any definition of the four categories of sexual assault being introduced by the bill. However, those violent acts that now constitute the crime of rape are clearly and effectively included in the new categories of sexual assault. It is felt that in removing the word rape from any definition of sexual assault the stigmatizing label rape victim will decline in usage and eventually fade out altogether. The stigma associated with the word rape is one of the many factors that contribute to those unwarranted yet understandable feelings of shame and humiliation that discourage victims from reporting sexual assaults.

The legislation will not remove entirely consent to intercourse as an issue, but it downgrades it in emphasis. In sexual assault categories 1 and 2 the primary emphasis will be placed on any violence that occurred, and the Crown must prove only an intention to have sexual intercourse. Because of this shift in emphasis it is expected that the detailed questioning on the anatomical aspects of penetration and intercourse, which has in the past been routine, will be diminished for sexual assault of the first and second categories.

As the question of consent or non-consent to sexual intercourse will necessarily be in issue for category 3, the new law will provide some relevant clarification. The legislation explains various circumstances that will be deemed to amount to **non-consent**, notably where the consent is obtained by threats or terror. This term is well-known to the courts, but the section makes it clear—as it is clear in relation to the first two categories—that the offence will be complete where the threat is directed against a third person, as well as against the actual victim of the forced intercourse. This rule would apply, for example, where thugs waylay a couple and threaten to bash up the boyfriend unless the girl consents to sexual intercourse. The legislation makes it clear that the victim of a sexual assault will not be deemed to have consented merely because no actual physical resistance was offered. Obviously the law should not compel the victims of sexual assault to risk even further injury by fighting back physically against what may be overwhelming force. The question is not whether a victim of a sexual assault fights back; it is **whether** he or she consents freely and voluntarily.

Where the accused indicates an intention to plead **guilty** at an early stage, a written statement, rather than verbal evidence, of the victim may be tendered at the preliminary hearing of a sexual assault case. **This** will help reduce to a minimum the trauma of a victim involved in recounting, at least twice, details of the sexual assault, at both the committal stage and during a trial. **A** further protection will be afforded victims of pack rape. **A** limitation will be placed on repetitive cross-examination in committal proceedings of the victim of a pack rape where the defendants are caught and charged separately, some time apart.

The provision relating to the dock statement made by accused persons is also being amended. Limitations making the provision consistent with the new rules about prior sexual behaviour will apply. Irrelevant imputations about the victim's sexual history, of the type which are excluded if the accused had given evidence on oath, will not be permitted. People who have been sexually assaulted have been violated in a most traumatic way. **A** better deal for these victims is long overdue. The reforms cannot eradicate rape but they will give impetus to the changing community attitudes, which is the only way that eradication can occur. Take, for instance, the removal of immunity of husbands from prosecution for rape within marriage. There will not be a

flood of prosecutions brought by malicious wives against husbands. The legislation will encourage wives, husbands and children to realize that the Government, and society generally, will not tolerate violent assault within the family. I believe that these humane reforms will have a far-reaching effect on the lives of rape victims and the community generally. I commend the bills to the House.

The Hon. L. A. SOLOMONS [3.31]: The Opposition gives the Government credit for a correct motivation in bringing the bills before the House. Indeed, if it were not for the purpose of giving that credit, clearly the Opposition would be opposing this legislation. The Opposition believes that in some respects the motivation behind the legislation is based on misconceptions arising from pressure brought to bear by many women's groups concerned by the experiences that they, or some of them, have had, from the infliction of sexual degradation upon them by criminal elements within the male portion of the population. However, the Opposition does not believe that there is pressure within the community for the concept of rape within marriage, and it is implacably opposed to that concept. In that matter the Opposition will move in Committee some amendments that I shall foreshadow during the debate.

The Opposition does not believe that it is difficult to obtain convictions for rape. Indeed, it has been the experience of most practising lawyers that, of all crimes in the calendar, the one for which juries will convict is rape. Often it has been said of juries in this State that invariably they give the benefit of any reasonable doubt to an accused. But ask any practising lawyer with wide experience in the criminal law about where his client stands if he is to appear before a jury on a charge of rape. He will tell you that his client is in danger. If the facts are sufficient to enable a magistrate to commit an accused rapist for trial, it nearly always follows that there will be a conviction. I have been involved at the legal level in thirty or forty major rape cases. I recall a hideous occurrence involving twelve males. One of the accused had precious little evidence presented against him, so much so that His Honour Mr Justice Le Gay Brereton carefully instructed the jury to put aside the situation of the other eleven accused. He exhorted them to consider the case of the twelfth accused carefully and to deliberate on whether the evidence involving him was different from that relating to the others. His Honour spent almost half an hour pointing out to the jury different ways in which the evidence relating to the other eleven accused differed from that of the twelfth man. My view, and that of eminent Queen's Counsel whom I was instructing, was that the judge had made a clear direction to the jury not to convict the twelfth man. But he was convicted. Though he went to gaol for a period somewhat less than the others, nevertheless he went to gaol.

I bring this story to the House to draw the attention of Government supporters to the fact that there are two sides to every story. Though correct, the only story we have heard in recent times has been about the terror, horror and degradation of the female victim of rape. Let us not forget that no complaint is easier to make than that of rape. When a man is charged with rape there is no more difficult charge for him to beat. That is why for over almost 300 years judges at common law in the Westminster system have developed rules and safeguards to make certain that innocent men are not convicted of rape on the uncorroborated evidence of a female. To a great extent those rules are being tossed overboard in the Government's desire to do whatever the Women's Electoral Lobby wants to have done.

I do not suggest for one second that there is not room for improvement in the administration of the law. What concerns me is that, by introducing this bill, the baby will be thrown out with the bathwater. The possibility, long foreseen within the common law, of an innocent person's being convicted of rape, will become more obvious.

During my address I hope to show honourable members how I see that that may become possible. First, it is necessary to get this matter into its correct perspective to understand the real basis for the concern felt by women. I perceive, I believe correctly, that it is not a concern that guilty men are acquitted of rape. That does not happen. Some concerns remain; at least one appears to be dealt with in this bill, though most are not.

The background of rape at common law is that it is an offence committed by a male against a female. It can, as most sociologists claim and as the Minister in his second reading speech has said, be committed in private. In a hideous way, in the so-called gang bang form, it can be committed in a horrible and degrading public manner. It is essential that a person who complains of rape should go to a police station to lay the complaint: go through the normal process of law for the preparation of a case; go to a committal proceeding before a magistrate and, if the magistrates find a *prima facie* case established, appear at the trial before a judge and jury of the Supreme Court in its criminal jurisdiction. Within that structure some problems arise. Before I analyse that structure let me indicate how febrile can be the nature of complaint giving rise to a charge of rape. I shall refer to one or two cases in which I have been involved at the legal level.

I have some knowledge of one case in which a young lady had been out on seven nights with a young man. In her evidence she said that on each occasion sexual intercourse had taken place between them. On the morning of the eighth day of this succession of occasions her father, suspecting that something was wrong, told her that in no circumstances was she to see the young man again. When she arrived home on the eighth night, having had sexual intercourse, she saw her father on the doorstep of the house with a whip in his hand. He had spotted her with her boy friend. She immediately let out a piercing shriek of rape. Fortunately, the young man was able to avoid being committed because in cross-examination all of these were elicited. I have already told honourable members of the case of the twelve respondents, all of whom spent varying periods in gaol.

There are permutations and commutations of varying types on the way the complaint can arise. In another case that occurred in a country town not far from my home city of Tamworth a girl had had sexual intercourse during the previous month with virtually every male member of her school class. The nature of these activities was such that the district was featured in a front page article in a Sydney Sunday newspaper—a matter of much concern to local residents. The girl was caught almost *in flagrante delicto* by the schoolteacher, who suspected this activity was going on. The girl screamed rape.

I do not want it to be thought that by giving these examples I am suggesting that persons who are subjected to the hideous experience of being raped go to court for the purpose of misleading the court or telling lies. I am simply saying that, of its nature, rape is a crime in which sometimes the only real evidence is evidence of complaint. That is why the common law, over almost 300 years, has established various safeguards with respect to corroboration and complaint. It has always been thought to be proper, within certain bounds, that the complainant should be subject to strict cross-examination. Why should she not be? Or, under the new measure, why should he not be? A person who is convicted of this crime will be locked up for a long time. He has a right to ensure that every effort is made to establish his innocence. Cross-examination, as the Minister will surely acknowledge, is the greatest eliciter of the truth in the hands of a skilful advocate. It is true that cross-examination can be cruel and terrifying. This is particularly so with a female witness. But it is also true that if her testimony is accepted, the person charged will go to gaol for an extremely long period. That is the basis of the common law safeguards.

The Hon. D. P. Landa: Neither of the examples given by the honourable member will be affected by this legislation.

The Hon. L. A. SOLOMONS: That is so, but I could give a number of other examples—and I shall do so—when I come to deal with complaint and corroboration. I give these examples merely to reveal how easy it is to complain of rape and to show that there is a basis, particularly in the case of a young girl——

The Hon. D. P. Landa: It is just as easy to complain of **theft**.

The Hon. L. A. SOLOMONS: That is so, but the common law has provided rules about theft. This is not a bill to remove the requirement of *asportatio* or *animus furandi*; this is a bill to make it easier for the Crown to prove charges of rape, among other matters. The problems that the Government should turn its attention to when enacting legislation of this type are twofold. This legislation makes an attempt to deal with one of them. The first is the method by which a person who has been raped makes a complaint. She goes to a police station. Almost 90 per cent of this State's police stations, at the time when rapes are committed, are manned by male staff. There is a predominance of male staff in the police force.

That makes it difficult enough for the complainant. The number of police-women is limited. Though they do a superb job, there are too few of them. Especially in country towns it is most unlikely that there will be anyone in the police station but the local detective who must deal with everything from rape to stock stealing. He must take the unfortunate woman through the police station, where there will be a few sniggering males and a couple of drunks, and take from her a statement. He then calls a government medical officer who, frequently, will not be her own medical practitioner. She is examined by the government medical officer, and by this time she is probably close to screaming point.

Then come the committal proceedings. In the past, those proceedings have been open to the scrutiny of the press; the name of the person concerned, unless she is under 18, is published. All of the allegations made at the committal proceedings were before the public, including those members of the public who will form the panel from which the jury will ultimately be chosen to try the person charged. Then finally comes the hearing before the jury. At both the committal stage and at the hearing the complainant is subject to stringent cross-examination. From my experience, the real matter of complaint is the complainant's experience at the police station, the sniggers and the **half** smiles. There are too few experienced **women** police and too **few** women medical practitioners to **carry** out the investigations and medical examinations. **That** is where the trouble starts. Then the woman must contend with the publicity that follows, particularly at the **committal** stage, for after her experiences at the committal stage she is numb and can take anything that can be meted out to her. Now the public is aware of all the facts.

The only thing in these measures that assists the complainant—and it is proper that she should be assisted—is the court's discretion to limit publicity at the hearing or prohibit publication of some of the evidence at all stages of a charge. I am in **complete** agreement with that, but it seems to me that the real problem associated **with** the complaints made by a woman could have been handled in a much more **simple** way. I would have done it in two major ways. First I would have all of the evidence at the committal stage in charges of rape taken *in camera*. Second, I would allow the judge a discretion—which he will be given under this bill—to prohibit publication of the evidence of the complainant in any Supreme Court proceedings, and to take the evidence of the complainant in *camera*.

I should wish to see established a flying squad of female police, preferably with a female medical examiner, available at a moment's notice to travel to where a woman makes a complaint of rape. If this is done, instead of women complainants having to bare not only their soul, but sometimes reveal far more personal parts before some crusty old detective-sergeant, it will be made a little easier for those who have been through the worst degradation that a woman can suffer and who have then had insults piled upon injury.

The Hon. R. F. Turner: The Government has established help centres.

The Hon. L. A. SOLOMONS: I accept that fact. Anything that is done in that way is useful. The rape help centres are of little assistance to the girl in the country, or the girl in the suburbs without experience in these matters who suddenly finds herself in a position of having been raped. That young girl complains to her father and her father takes her to the police station. I have a shrewd suspicion, from my practical experience, that at the rape centres—in many instances for good reasons—some of the personnel will tell the woman complainant about the shocking experience ahead of her, and as a result no complaint is lodged. I have had at least one experience of this occurring.

The Hon. H. B. French: Is not that what they are all about?

The Hon. L. A. SOLOMONS: With respect, that is not what they ought to be doing.

The Hon. H. B. French: But there is a general reluctance.

The Hon. L. A. SOLOMONS: There is a general reluctance, and this will continue. These measures will not do a thing about that, except offer to a complainant, first, some possibility that a judge or a magistrate may or may not close the court and, second, some limitation of cross-examination, which I do not believe is justified. If a girl alleges rape, she should be willing to be cross-examined. A rape trial is like a murder trial. I remember the American film "Anatomy of a Murder" in which somebody said that a murder trial is not a Sunday school picnic. Neither is a rape trial. Women will be just as reluctant to scream rape under this proposed legislation as they have been in the past.

The Hon. R. F. Turner: The centres are called help centres not rape centres.

The Hon. L. A. SOLOMONS: That is right. The proposed measures seek to move away from the word rape. Whether that is good. I do not know. I was surprised that the word rape was retained in the subheading. I do not know why that is so. The proposed new heading states:

Offences in the nature of rape, offences relating to other acts of sexual assault . . .

If it is sought to move away from the use of the word rape, I do not understand why the word has been retained in that subheading. That is not a criticism of the legislation. Under the new interpretation provisions the word rape will have no effect. I turn now to the question of rape in marriage. The proposed measures are a radical departure from the present law. If one examines the remainder of the measures, with the exception of the neutralizing of genders and the fact that under this proposed legislation women will now be equally liable to be prosecuted for rape as are men, there is little difference in the law provided by these bills. All of the offences referred to

exist under the present law. The bills do not create any new offences. *All* they do is provide that some of the offences *will* attract a lesser penalty than at present. If it is part of the desire of the Government to do what the women's lobbyists would have the Government do, namely, to make women less liable to sexual offences, that is *a* rather strange contradiction.

Every offence referred to in the proposed legislation, apart from those that now may be committed by women, is already an offence under the common law or the Crimes Act. There is no change in the nature of the offences. Rape in marriage is a new concept. What is clear is that the common law has been moving from the traditional prohibition against any concept of rape in marriage to a concept whereby it has become now the custom to convict persons guilty of rape if there has been a judicial separation by an order of the court and where they are actually living apart. If the alteration to the law proposed by these bills had been the same as that recently introduced in Victoria, the Opposition would raise no objection. The Victorian legislation provides that if an order exists that the parties may live apart, then there is no safeguard and marriage cannot be raised as a defence in a rape trial. This is as the law should be. Where the parties are within the actual marriage bonds and living in *coverture*, it seems to me that so many permutations may arise that to introduce rape between persons living in those circumstances is an attack upon the concept of the united family.

Every person who has been married knows the tensions that may be engendered in a marriage. I do not suppose I should introduce any levity into such a serious debate, but I am reminded of the remark of an elderly lady when interviewed on television on the occasion of her diamond wedding anniversary. She was asked by the young reporter interviewing her if having lived with a man for sixty years had she ever contemplated divorce, to which she replied, "Good heavens no. Murder often; divorce never". All honourable members know the basic commonsense of that viewpoint. That is why honourable members view with horror the suggestion of an unlimited blanket whereby a wife may allege that her husband *has* raped her, even though living together in the closest bonds. That complaint may arise from a particular spat in the heat of the moment, which action she may later bitterly repent. However, once the complaint is made, the grinding processes of the law commence. Honourable members will be more concerned when they look at the provisions of proposed new section 61D of the Crimes Act, which relates to the third category of offence and deals with sexual intercourse without consent. That proposed new section provides that for the purposes of the commission of an offence under that section:

. . . a person who has sexual intercourse with another person without the consent of the other person and who is reckless as to whether the other person consents to the sexual intercourse shall be deemed to know that the other person does not consent to the sexual intercourse.

If a wife says "Not tonight, darling; I have a headache" and the husband insists, the wife *will* really have a snout on him. Should he revoke her power to draw money out of the bank and she complains to the court, he could be in real bother. The Opposition accepts that, provided it is the intention of the measure.

The Hon. D. P. Landa: Is the honourable member suggesting that when the woman refuses intercourse to her husband, that right should somehow be abrogated?

The Hon. L. A. SOLOMONS: No, I am not suggesting that, but I *am* saying that the woman might not express her consent and under this provision the husband is deemed to know that she does not consent. If the Minister examines proposed new section 61D (2), he will realize that it cannot be read in any other way. It has been laughingly referred to in the press as negligent rape. In the example to which I referred

if the husband, immediately before or just after the act, has not been solicitous enough to ask his wife whether she really consented to that act, he is deemed to **know** that his wife did not consent to sexual intercourse. That will apply if a husband is reckless enough to take it that, having done the same thing with the same woman on many previous occasions, naturally she consented. If one reads into that the breadth of the concept of removing the marriage tie, one can see why the Opposition is concerned about that **part** of the measure.

The bills have been canvassed at length in the other place and I shall not deal any longer with generalities. Rather I will refer to the provisions of the main bill to demonstrate why the Opposition believes that they give rise to matters of special concern. In his reply to the debate the Minister might state the Government's view on the Opposition's concern. I propose to deal with schedule 1 and the new offences that will be created by proposed new sections 61B, 61C and 61D. I should refer first to proposed section 61A, for the Minister told the House that that section will take away the difference in the law between man and woman. It will provide also for a widening of the definition of sexual intercourse so that it will take into account activities other than mere penetration, which was the criterion for the charge of rape under the common law, and will create offences that women as well as men may commit against unwilling partners.

The Crimes (Sexual Assault) Amendment Bill deals with the major category of sexual assault in proposed section 61B. At the same time I should refer to the category of sexual assault provided for in proposed section 61C. The scheme of the provisions is to grade down sexual assaults in precisely the same way as the law has provided graded-down physical assaults. A physical assault may occasion grievous bodily harm or actual bodily harm, or it might be a common assault. That concept is well known to the law. A charge alleging one of those offences may be graded down by a jury. A jury might bring in a conviction on one of the lesser offences. That is part of the scheme for the offences proposed in the bill. One should look carefully at the **wording** of proposed sections 61B and 61C. The real problem envisaged by the Opposition in the application of those two sexual offences is in the wording of proposed new section 61B, which provides:

(1) Any person who maliciously **inflicts** grievous bodily harm upon another person with intent to have sexual intercourse with the other person shall be liable to penal servitude . . .

The Opposition accepts that provision absolutely. However, one wonders what **would** happen if a man who inflicted grievous bodily harm either immediately thereafter or some time later decided that, having put that other person into a state of impotence by inflicting grievous bodily harm, he would rape her. Let me take the obvious situation of a woman who has an argument with a man; the man hits her and renders her unconscious; he goes outside, forms the intention to rape the woman, returns and commits rape. If those facts were proved in evidence elicited before a **jury**, what would happen to that man? For what offence would he be liable? Instead of attracting the appropriate penalty, he would attract only a penalty for having had intercourse with the woman without her consent.

That anomaly was pointed out to the Attorney-General and Minister of Justice in the other place. I am given to understand that not only was it pointed out to him in that place, but also that it was drawn to his attention by his advisers that this is a lacuna in the proposed legislation and it could be overcome. The way to overcome it is to provide that the act attracts a penalty whether grievous bodily harm has been inflicted before or after the rape is committed. It might well be that the grievous bodily harm could be done at about the same time as the rape or immediately thereafter.

The classic example of it is when a person who inflicts injury sets out to silence a screaming woman. The injury could be inflicted beforehand. It is possible that a person who committed such an offence might plead that at the time he inflicted the injuries he had no intention of raping the woman, and thus escape penalty. I invite the Minister's attention to the Opposition's criticism of the wording of proposed new sections 61B and 61C.

I have referred already to the Opposition's concern about proposed section 61D. I shall deal now with the problems associated with the new concept of rape in marriage. The Minister will have an opportunity to take advice on the matter and might speak to it in his reply to the debate. Proposed section 61E deals with two offences: indecent assault and assault coupled with an act of indecency. That is not new to the law. The proposed legislation will place those offences and other offences in the same part of the Crimes Act.

The last part of item (5) of schedule 1 relates to alternative verdicts with respect to newly named offences. That is not new. It is precisely the common law and statute law with respect to assault whereby a jury still can, and always has been able to, scale down ordinary assaults in the degree to which I have adverted. Item (5) of the schedule will simply abolish the common law offence of rape. As I intimated, the offence has been a common law offence. It was never precisely defined in the statute but the law was well known. The case law was well established. I do not believe that it has ever been a real criticism of the law that there was any doubt about what rape comprises. I am in complete agreement with the widening of the connotation of what is sexual intercourse. That the offence may be committed by persons other than males is a proper innovation and one with which the Opposition completely agrees. Widening the offence to other than penetration is also proper. Lest it may be thought that I am being critical, I make it perfectly clear that I am not.

Items (7), (8) and (9) are relating and procedural. I do not propose to weary the House with respect to them, except to say that they provide for a situation where any person who is, after the proclamation of the Act, charged with the offence of rape, will be charged having regard to the provisions of this legislation and not under the provisions of the other legislation. There are some exceptions to which I shall refer later.

In my view item (10) is the first of the items that comes to grips with any part of the real sociological problem. It provides that proceedings, or any part of any proceedings, in respect of one of the offences referred to earlier in the schedule, may be held *in camera*. My view, as I said earlier, is that I would rather have seen the whole of the committal proceedings and such part as any judge may agree to, of the trial proceedings, held *in camera*. There is a double-barrel effect. It is a 2-edged sword. As well as the women suffering dreadfully from adverse publicity at committal proceedings, the preconceptions in the minds of a jury could go either way. In matters as personally sensitive as violent physical attack on a woman the jury should come to deal with the matter with as open a view as possible and the woman should be protected as much as possible. My only criticism of proposed section 77 is that it leaves the matter to the discretion of the presiding judicial officer, whether it is a magistrate or a judge. I should like to see it go further, but I shall not discuss it at length now.

Items (11), (12) and (13) are relating and abolishing sections. Item (14) is the next item in which one comes to part of what may be seen to be the nub of this legislation. It relates to the warning to be given by a judge on lack of complaint in some sexual offence proceedings. The view of the Opposition is that this is a classic case of throwing out the baby with the bath water. Complaint has been one

of the traditional methods by which the truth of a complainant in a rape case has been tested. Honourable members must understand that a complaint is hearsay and is not normally acceptable in a court, but courts in their wisdom over many years of experience have realized that complaints may well be the nub of whether the complainant is telling the truth or not and, accordingly, over the years have laid down strict guidelines. Without endeavouring to cover all the areas, basically the rule is that a complaint must be made to the first person to whom it can be made practically, that is, literally at the earliest practical time.

The complaint must not be other than voluntary. It must not be suggested by anybody. Also, the complaint must not be made in response to a type of cross-examination. If the complaint fits into the categories I have enumerated, it has always been accepted by the court. The common law judges appreciated that in the hard fire and trouble of experience, that was a method of getting to the truth of the situation where there may be little other evidence. The proposed amendment will deprive a judge of some discretion in his summing up of the evidence on complaint irrespective of the cogency of the evidence before him. Proposed new section 405B (2) provides:

Where on the trial of a person for a prescribed sexual offence—

That is an offence of the type referred to earlier in the schedule. It continues:

. . . evidence is given or a question is asked of a witness which tends to suggest an absence of complaint in respect of the commission of the alleged offence by the person upon whom the offence is alleged to have been committed or to suggest delay by that person in making any such complaint, the Judge shall—

The word shall is the word about which the Opposition complains. The proposed new section continues:

- (a) give a warning to the jury to the effect that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false;

I am sorry for the length of my address but if I wanted to weary the House further I could draw attention to numerous texts on the criminal law and common law on rape in which judges have said that the question of complaint is a matter for the jury. As it may well be one of the most important factors in determining the credibility or otherwise of the complainant, surely the judge is the person to decide that. If the proposed new section were reworded to say, not that the judge shall decide it but if the judge deems it proper he shall do so, it would be left to a judge to determine whether or not it is obvious from lack of complaint that the complainant has something to hide.

The Hon. D. P. Landa: The judge can do that in any case.

The Hon. L. A. SOLOMONS: By the measure the judge shall do it, whether or not he believes it is proper.

The Hon. D. P. Landa: That does not preclude his option of warning the jury that perhaps it is evidence that can be used to the advantage of the accused.

The Hon. L. A. SOLOMONS: That is right. Having heard the evidence, the judge may determine that that is not justified.

The Hon. D. P. Landa: That is not for the judge to decide. That is what happens with judges.

The Hon. L. A. SOLOMONS: That may not be a matter for him, but it is for the judge to warn the jury that the absence of complaint does not necessarily indicate that the allegation that the offence was committed is false and it is for him to inform the jury that there may be good reasons why the victim of sexual assault may hesitate making, or refrain from making, a complaint about an assault. Obviously, if there were such a reason, she could give it in evidence. It may be that the judge may deem that in doing his duty in giving a proper charge to the jury, he should draw to the attention of the jury this absence of complaint. Under this legislation he is bound to say to them, "Of course, gentlemen, notwithstanding what I say, I must warn you that the absence of complaint does not necessarily indicate that the allegation that the offence was committed is false." It seems to me that is the baby being thrown out with the bathwater.

The next part of item (15) is that part of the proposed amendment which adds a new section 405C to the Crimes Act providing that on the trial of a person for a prescribed sexual offence the judge is not required by any rule of law or practice to give, in relation to any offence of which the person is liable to be convicted on the charge for the prescribed sexual offence, a warning to the jury to the effect that it is unsafe to convict the person on the uncorroborated evidence of the person upon whom the offence is alleged to have been committed. This is a total abrogation of the common law, which has always required that the judge, in his charge to the jury, must tell the jury that it is unsafe to convict on the uncorroborated evidence of the person upon whom the offence has been alleged to have been committed. Not one satisfactory example, in my view, has been made to show why the corroboration rule is being thrown out.

In the first part of my address I spoke of the matters relevant to the way in which a cry of rape can be given and an innocent man placed in jeopardy. One of the safeguards has been corroboration. Some factual matter must corroborate the complaint. The iron tight web of evidence that has been spun in the common law is to be tossed out. I could understand that being done if rape were a hard matter to secure conviction for, but my experience is that juries do convict. It is with concern that I see the corroboration rule being abrogated. We may find we are left with a situation where a judge may tell juries that there is no corroboration, though he does not have to do so, but it is no longer a requirement such as the common law demanded. Not being a rule, it is probable that a judge will not advert to the fact that there is no corroboration, and the jury will be left to make up its own mind on the evidence.

Item (15) of schedule 1 deals also with depositions in previous proceedings. The Minister has dealt with that subject. The Opposition accepts the Minister's explanation that the purpose of this procedure is to provide that a person who is charged, for example, in a pack rape where separate trials are allowed, shall not be put through the ordeal of separate examination at the behest of each of the defendants. Provided the system works in that way, the Opposition has no concern for it. However, there is some concern about the breadth of the application of proposed subsection (3) of proposed new section 409A. That seems a little wide. We do not seek to take objection to it at this juncture but it as a matter to be watched in practice. Personally, having regard to the predilection of the courts to order that people who commit these offences be tried together, I feel it is unlikely that that proposed section will have any practical effect. For that reason, I am not concerned. Proposed new section 409B is a real cause for concern. I cannot raise my voice louder in concern than to read to the House an article by John Slee, legal correspondent, published

yesterday in the *Sydney Morning Herald*, under the name and seal of the president of the New South Wales Bar Association, Mr R. P. Meagher, Queen's counsel. That **article** said:

A proposed law to limit severely the extent to which a woman's sexual history can be told in court created serious risks of injustice against men accused of rape and other sexual offences, the president of the New South Wales Bar Association, Mr R. P. Meagher, **Q.C.**, said yesterday.

He said that the new law apparently aimed to ease the distress and humiliation of women obliged in court to submit to questions about their previous sexual experiences.

"But that is not a real issue. The fact is that a rape case is a very nasty experience for everyone, just as a murder case is."

Instead of easing the distress of complainants in court, the new law might in fact make them worse.

Evidence considered relevant and admissible under the present law would not be admissible unless it complied with certain restrictive tests—and then only if the judge thinks its value outweighs any distress caused to the complainant.

Mr Meagher said: "Once the law defines narrow conditions under which evidence of previous sexual history can be admitted, the defence will find it necessary to make detailed applications—in the absence of the jury—to satisfy the judge that conditions have been met.

"Such applications, in which the defence explains why it is necessary to bring evidence of past sexual history, are likely to be very lengthy and therefore be more painful to the complainants than under the existing law."

Under the present law, defence counsel did not seek to put before a jury evidence of a woman's previous sexual experience lightly.

"If you do, and there is no such evidence, you've put a noose around your client's neck."

He said the council of the Bar Association considered the proposed new law yesterday and protested against the provisions of the proposed section 409B, a very long provision which will limit severely the admissibility in sexual offence cases of evidence relating to the complainant's prior sexual experience.

"The council views with grave disquiet any legislation which might result in the conviction of an accused person of a serious crime in circumstances where he was prevented by law from putting before the court facts which, if believed, might have justified his acquittal."

He said that the fact that a complainant has had previous sexual experience can be important in a rape case, or any other case dealing with sexual offences, in determining the following:

Whether the accused intended to commit the crime;

Whether the complainant consented to the acts complained of.

Whether the complainant's evidence overall can be believed.

"The effect of the proposed limitations on evidence will be to exclude in many cases evidence which might otherwise go to these questions.

"A person may go to gaol because he has been precluded from telling the truth. That's a very serious risk.

Those of us who know Mr Rodney Meagher, Q.C., are aware that he would not lightly go to the trouble of publishing a submission of that nature in his capacity as president of the Bar Association. The Opposition views the provisions of this clause with some concern for it is obvious that the Government, in framing the legislation, was aware that there would be a need in a number of cases for this evidence to be made admissible. We now have a web of law—a clause consisting of three and a half pages, giving the various exceptions and providing a complicated network indeed. No doubt this will be the subject of judicial interpretation——

The Hon. D. P. Landa: Is the honourable member suggesting that prior sexual history of persons other than the defendant is relevant?

The Hon. L. A. SOLOMONS: Yes, I am. As the Minister is aware, the judge will have a discretion on the admissibility of evidence. Anything which to the judge seems relevant on the question of the credibility of a witness is proper to be admitted in a matter for which the penalty may be twelve years or more in gaol.

The Hon. D. P. Landa: She can be tested on her credibility; that is a different matter.

The Hon. L. A. SOLOMONS: Past sexual conduct may be one of the matters that go to credibility. For example, in the case I referred to——

The Hon. D. P. Landa: That is a misconstruction of the test of credibility.

The Hon. L. A. SOLOMONS: It is one part of the test of credibility, and that is the only way I put it. I am dealing only with that part of it. Credibility may be tested in many other ways, but that is one way in which credibility has been tested traditionally. In some cases it is the only way in which the complainant's credibility can be diminished. I have in mind the evidence of the young lady who had sexual intercourse with virtually every male member of her class. She was cross-examinable at that juncture on what she did the night before or the night before that or a month earlier, to elicit her pattern of conduct in determining whether it was likely that on the last occasion she was raped.

The Hon. Kathleen Anderson: That would not excuse a man for raping her.

The Hon. L. A. SOLOMONS: Of course it would not. The question is whether she **was** raped. That is a problem with this legislation. Much of it seems to say that a person shall be deemed guilty rather than be deemed innocent until proven guilty.

The Hon. D. P. Landa: Can the honourable member not see the monumental injustice in saying that a person's promiscuity on previous occasions takes away her right to say no?

The Hon. L. A. SOLOMONS: Of course. In one case of which I am aware there were five accused in a rape case. There can be no doubt that all five of them had intercourse with the girl with her consent earlier in the evening. There is no doubt also—and the jury agreed—that they raped her later on the same night. But at least the jury was entitled to hear evidence of what occurred on that night. It may well have been that the jury would not accept it. In that case, they did. I agree that this is not the be-all and the end-all of the matter, but in the Opposition's view it must be taken into account in determining the truth. That is basically what is behind the concern expressed by Mr Meagher on behalf of the Bar Council. The only other matter to which I wish to invite the attention of the House is the provision contained in proposed new section 409c which limits, in a way in which the Opposition is not quite certain, the right of an accused person to make a dock statement. Proposed section 409c states:

409c. (1) In prescribed sexual offence proceedings referred to in section 409B, a person may not, in any statement made under section 405, make reference to a matter which would not, by virtue of section 409B, be admissible if given on oath.

(2) Where a person has made reference, in a statement made under section 405, to a matter which would not, by virtue of section 409B, be admissible if given on oath, the Judge shall tell the jury to disregard that matter.

The problem is, having regard to the complexity of proposed section 409B, how will an accused person decide, when seeking to make his dock statement to the jury, that something he says will not attract the attention of his Honour and be disallowed? Does it mean that in the middle of the dock statement the judge should say that, having regard to the statutory provision, the accused should not say what he intended to say? Should the judge stop the accused and hear argument on whether what the accused wishes to say offends the provisions of section 409B? Having heard argument, will he then say, if that is the position, that he refuses to allow the accused to go on and make his dock statement? How will this section be administered? The accused may have only his dock statement standing between him and conviction. By this stage no doubt he would have become a shambling idiot. Anyone who has acted for persons in this position and has had to get them to make a dock statement knows the type of ordeal with which an accused is faced.

The Hon. Kathleen Anderson: The complainant also is subjected to an ordeal.

The Hon. L. A. SOLOMONS: I am in complete agreement with the honourable member on that, but I am not talking about complaint; I am talking about the dock statement.

The Hon. Kathleen Anderson: I am talking about the things that can be said in a dock statement.

The Hon. L. A. SOLOMONS: That may be so. I do not know how it can be done. What will be expected of judges under the provisions of proposed section 409c? How will they administer the section?

The Hon. D. P. Landa: It will be a matter for the discretion of the judge. He is in charge of the trial.

The Hon. L. A. SOLOMONS: I am asking the Minister why subsection (2) invites the judge to let the accused say anything he wishes and, that matter having gone on to the record, the judge may later have to tell the jury to reject past of it.

The Hon. D. P. Landa: That will be in the judge's discretion.

The Hon. L. A. SOLOMONS: It will be interesting to see how it is done.

The Hon. D. P. Landa: It will be done in the same way as answers to questions are controlled.

The Hon. L. A. SOLOMONS: Perhaps so. Proposed section 409c contains the words, "a person may not . . . make reference to such a matter" in a dock statement. If a person starts to make such a statement one can imagine the Crown prosecutor objecting and asking the judge to hear legal argument on the matter, whether in the presence of the jury or not. What will the judge do then? The proposed section provides that a person may not make reference to such a matter. Proposed subsection (2) states that the judge shall tell the jury to disregard the matter. I shall be interested to see how that will work out.

This is complex legislation that will have a profound effect upon the community. The Opposition does not propose to oppose the legislation at the second reading stage as it is a move to reform the existing law. For the reasons that I have sought to give, and those that will be advanced by other Opposition members during the course of this debate, it is the Opposition's belief that these bills do not get to the basic causes of the dissatisfaction of women with respect to rape prosecutions. Most of all, the proposed measures will not encourage women who have been harmed to make complaints; nor will they render the concern that those women possess more palatable.

The purpose of the legislation is not clear. It will be harder for a male person, particularly a person wrongly accused of such an offence, to defend himself. I suppose only time will tell, but the Opposition suspects the proposed measures will seek to throw the baby out with the bathwater. At the Committee stage the Opposition will seek to move amendments with respect to the first two sexual assault categories to overcome the problem created by the proposed measures which state that it is not an associated offence to commit the act of violence prior to the commission of rape, and particularly the measures proposed relating to rape in marriage. At this juncture the Government is given the benefit of making a definite attempt to reform the law of rape. The fact that the Opposition disagrees with this particular method of doing it is perhaps a matter of machinery nature.

The Hon. DOROTHY ISAKSEN [4.41]: At the outset of my speech on this legislation I wish to take to task the Hon. L. A. Solomons for his opening remarks in which he inferred that the Government had been railroaded or pressurized to introduce this legislation by women in the community who had been victims of this crime and had psychological hangups about their experiences that caused their agitation. I assure the honourable member that many people in the community, men and women, have strong feelings about this legislation. Many citizens are concerned about the treatment of complainants in the courts of this State. Some members of the legal profession are concerned. It is wrong for the Hon. L. A. Solomons to infer that only women who have been victims of this crime and have some personal reasons —

The Hon. L. A. Solomons: Thus far it has been women only in the community who have suffered this crime.

The Hon. DOROTHY ISAKSEN: The Hon. L. A. Solomons inferred that women who were victims of this crime had psychological reasons for agitating for this legislation. I assure the honourable member that is not the fact. I have great respect for the attitude of the Hon. L. A. Solomons towards the laws of this State. I am appalled at his argument that the previous sexual experiences of victims should be used in evidence in the courts. One of the reasons for the introduction of this measure is to alter that situation. I go further and say that it is the attitude also of such persons as the Hon. L. A. Solomons that has rendered this legislation necessary.

Rape is the only crime that subjects its victim to the added ordeal of fighting an outmoded, outdated and archaic legal process where the victim becomes the accused; where the trial can become as traumatic as the crime. For too many rape victims, the real trauma of the crime begins in the courtroom. It is there that her past is dragged into the spotlight and magnified to the extent that often the victim's habits are on trial, not the rapist's. Because of this attitude, many rape victims are reluctant to go to the police. Rape is the least reported crime. A study of women as the victims of crime, conducted by the Australian Institute of Criminology in Canberra, found the non-report of rape runs at around 72 per cent. The study was based on figures supplied by the Australian Bureau of Statistics after a nationwide survey of 18 694 women.

Some rapes which occur within a family unit go unreported for fear of police action against the offender. Other reasons advanced were: the women thought it was a private and not a police matter; too confused or upset to notify authorities; not sure the offender would be caught anyway; thought police would take no interest in the case; afraid of reprisals; would handle the situation herself. In 1979, according to the Australian Bureau of Statistics, the number of reported rapes in New South Wales was 419, which suggests there are probably about 1 500 rapes in this State a year, of which about 1 100 are unreported. It is a terrible indictment on our society that, knowing these things, we have taken so long to do something about them.

Honourable members are appalled and horrified at violence but, because rape has something to do with sex, it becomes controversial. It gets hung up on all the myths and taboos. Because it is about sex it is not nice to talk about it. Rape is not nice. It is not a crime of passion. It is a crime of violence, of degradation and appalling cruelty inflicted by one human being upon another. No person, whether they be male or female, should escape the law if they commit this crime against another person, whether the victim be male or female. This legislation should be an example of how the community can be consulted before so-called controversial legislation is introduced. Never before has proposed legislation been so widely discussed or the views of the community so widely sought as in this instance.

The Premier and Treasurer, the Attorney-General and Minister of Justice, the New South Wales Women's Advisory Council, and the women's co-ordination unit of the Premier's Department are to be congratulated for the way they have handled the introduction of these bills. Also to be thanked are the many women's organizations, the legal fraternity, the police and health workers who, with their wealth of experience in this area, have advised the Government. Recognition should be given to the compassion, understanding and advice given by leading church authorities, who have assisted in making the passage of these bills much easier. In 1977, the Attorney-General tabled in Parliament a report prepared by the criminal law review division on the subject of rape law reform. In May 1978, the New South Wales Women's Advisory Council organized a seminar, attended by more than 200 women from various organizations, to discuss the report and make recommendations. At that time, considerable divisions existed on how these changes should be brought about. The debate created so much controversy that the Government did not proceed with the legislation.

In May last year, a national conference on rape law was held in Hobart, which gave a very clear indication of how far attitudes, both within the legal profession and the general community, had progressed. The New South Wales Women's Advisory Council has consulted such leading women's organizations as the Country Women's Association, business and professional women, National Council of Women, Union of Australian Women, Liberal Party women's group, Australian Labor Party women's committee, Women Lawyers Association, Women's Electoral Lobby, the Young Womens' Christian Association, the Catholic Women's League and the Presbyterian Women's Association. So much for the comments of the Hon. L. A. Solomons about the type of women who agitated for this legislation.

The Hon. L. A. Solomons: From the list read by the Hon. Dorothy Isaksen, it would appear that she has just agreed with my remarks.

The Hon. DOROTHY ISAKSEN: The Hon. L. A. Solomons said that these women had experienced the trauma of rape.

The Hon. L. A. Solomons: Never.

The Hon. DOROTHY ISAKSEN: That was the inference contained in the honourable member's speech. Modern legal perceptions of rape are still steeped in ancient male concepts of property. From earliest times, rape was viewed with horror—not as sexual assault per se, but as an act of unlawful possession, a trespass against a man's property, that is, his wife, his daughter, or his sister. To a woman, the definition of rape is fairly simple: a sexual invasion of the body by force, an internal assault from one of several avenues and by one of several methods, constituting a deliberate violation of emotional, physical and rational integrity and a hostile, degrading act of violence. Why, then, is it so difficult for the crime of rape to be enforced in the law, and the position of the victim so tenuous?

Historical attitudes to women being the property of men still play a large part in community attitudes to rape. Those attitudes are reflected in the law and are enforced by a number of interwoven myths that surround the crime. The myths relate to the definition and incidence of rape: who rapes, who is raped and where, and the supposed difference between male and female sexuality. Myths and taboos are an integral part of our culture and as such are accepted as the reality. It is only on close examination that one becomes aware of the contradictions posed by the myth and the reality. Perhaps the most obvious myths about rape are that rape is an isolated crime of sexual perversion; that nice men are not rapists; and nice girls do not get raped. Because people have a preconceived idea of a rapist as some sort of monstrous figure leaping out of bushes, they cannot relate to a well-dressed, subdued man in the dock as a violent rapist. The reality is in direct conflict with the huge emphasis placed on women dressing in a non-provocative manner and staying at home. It would appear that it is no safer to be at home than it is to be on the streets with a stranger.

A nationwide survey of 30 000 women conducted by the Australian Women's Weekly in 1980 found that 8 women out of every 100 in Australia claim to have been the victims of rape. Most of the victims say that their assailant was either a friend or a casual acquaintance; 36 per cent of victims said that their attacker was a casual acquaintance; 31 per cent said that the man was a friend; 17 per cent said that he was a stranger; 13 per cent said that he was their husband and 11 per cent said that he was a member of the family. Victims of rape have always been reluctant to report the crime and to seek legal justice, because of the shame of public exposure or because of the complex double standard that makes a female feel culpable, even responsible, for any act of sexual aggression committed against her. The Australian Women's Weekly survey asked the question: Do women who get raped ask for it? There was a massive "No" response, with only 5 per cent agreeing.

I shall refer now to some specific reforms incorporated in the bills. The first relates to gender neutrality. It is proposed that males and females should be equally protected under the criminal laws relating to non-consenting sexual behaviour. Too often one hears of sexual assault on young male prisoners in the State's gaols—in many instances that being a worse penalty for the prisoner than that imposed by a court. The HELP centres set up by the Government in major hospitals to care for the victims of sexual assault report that an increasing number of men are seeking attention. Last month at Parramatta a young woman was stabbed and sliced at least ten times with knives and glass in an attack that lasted for three to four hours; four women have been charged with malicious wounding. The victim had serious internal injuries. Police allege that one of the four women involved in the attack had sexually assaulted the victim. In the bill the word rape is not used in the definition of any offence relating to non-consensual sexual activity. All definitions of non-consensual crime of a sexual nature are described as various types of sexual assault. I agree with Helen Coonan, a solicitor of the Supreme Court of New South Wales, who in her paper to the Hobart conference on rape law reform said:

There can be no doubt that our community has endowed the word rape with emotive overtones. Furthermore rape has a common law meaning inappropriate to define the types of sexual assault which the law should recognize and proscribe. Terminology to be preferred in legislation referring to sexual offences is that which moves away from "rape", which has done little service to the majority of its victims in the past, and continues today to protect aggressors from conviction rather than women from assaultive acts of a sexual nature. A preferable term would be sexual assault, sexual abuse, sexual attack, or sexual injury.

The proposed legislation will abolish the immunity that protects men against prosecution for rape within marriage. Marital relationships should involve caring, mutual respect and consideration, and each party to a marriage, by virtue of that marriage should not forfeit the full protection of the law. The law clearly recognizes that a husband is not entitled to steal his wife's property, to assault her, to indecently assault her, to kidnap or to falsely imprison her. Research into domestic violence reveals that women suffer not only unlawful beating by husbands but are sometimes forced to engage in unwanted acts of sexual intercourse, often involving brutality. Professor Duncan Chappel, Professor of Criminology, had this to say about rape in marriage:

At common law it was not possible for a husband to be prosecuted for raping his wife. The justification for this rule was said to be that as part of the contract of marriage a wife agreed to submit to the sexual demands of her husband—the wife lost any bargaining power when it came to matters of sexual intercourse. The rule seems to have dated from a period when wives were viewed as chattels belonging to their husbands, possessing very limited rights to own individual property or to do many other things in the context of marriage. The rule epitomizes those aspects of rape laws which many women find so offensive and it has formed a special target for those who have been seeking reform in this area. As such it seems to have generated far more heat than almost any other aspect of rape law reform, presumably treading on many sensitive male toes.

In his paper Professor Chappel then proceeds to consider the South Australian law governing the offence of rape in marriage:

What has happened since December 1976 in South Australia concerning spousal complaints of rape? Have the fears of those who opposed the legislation been justified?

Professor Chappel then referred to the only two cases of rape in marriage that had come before the South Australian courts. He wrote:

The wife had been living apart from the husband, several injunctions having been issued by the Family Court requiring him not to interfere with or to make contact with his wife. The husband in fact consistently breached these injunctions and sought to have intercourse with his wife, hitting her several times and breaking her jaw in the course of persuading her to submit. She did so and subsequently the matter was brought to the attention of the police who then prosecuted . . .

The only other complaint of rape in marriage made to the authorities involved a wife who was prepared to have normal sexual intercourse with her husband but her husband insisted on having anal intercourse to which she objected. Despite these objections he used force to overcome her objections and she subsequently reported the matter to the authorities.

In that case the couple were reconciled and no further action was taken. Summarizing his findings about the South Australian law, Professor Chappel said:

The rape in marriage reform in South Australia demonstrates how an apparently highly contentious criminal law can, in practice, ultimately be implemented in society with scarcely a ripple. Most of the debate about this particular criminal law reform was about ideology rather than about substantive matters. Indeed, if people had looked further afield they could have forecast the likely outcome of the reform. Sweden, which introduced a rape in marriage law in 1965, has had very few prosecutions brought under its provisions, suggesting that South Australia is by no means unique in this regard. Thus other states which may be considering similar reforms need not fear the various dire consequences which have been pointed to by critics of the proposal.

This bill has been carefully constructed to maximize its effectiveness in deterring offenders and protecting the victims and potential victims of sexual assault. Under the existing law of rape the maximum penalty is life imprisonment, regardless of whether the assault is grave, accompanied by severe violence, or is accompanied by minimal violence. It needs to be bluntly stated that the present law of rape has failed. Certainly it has failed to deter offenders and it has failed to protect victims. It is quite wrong for the Opposition to argue, as it did in the Legislative Assembly, that the bill, because of the way the law is to be restructured, will in some way condone or trivialize rape. This suggestion is so much irresponsible rubbish and needs to be firmly labelled as such.

Let me explain the reasoning behind the structure of the proposed offences and penalties. First, the present law is gravely defective in that it positively discourages offenders from pleading guilty. In 1979, 81 per cent of persons brought before New South Wales higher courts on indictable offences pleaded guilty. This figure covers all serious offences such as murder, robbery, fraud, and so on. Only 37 per cent of offenders charged with rape pleaded guilty.

When a plea of guilty is entered the offender is simply brought up for sentence. There is no need to empanel a jury and for witnesses to give evidence to convince the jury of the accused's guilt. That procedure is much less traumatic for the victim of a sexual assault than a full trial. The victim does not have to relive the incident by detailing all the sordid details in the witness box, as the Hon. L. A. Solomons would require. The victim is not subjected to cross-examination, which is a harrowing experience in most legal cases and excruciatingly so for the victim of a sexual assault. One must ask why in rape cases do few offenders plead guilty compared with other serious crimes? The answer is certainly not that fewer offenders are guilty. According to the Bureau of Crime Statistics and Research, the conviction rate for rape is just under 80 per cent.

The real reason for the discrepancy in plea rates is that in all rape cases—the most grave as well as the least serious—the potential penalty is life imprisonment. Lawyers are extremely reluctant to advise a client charged with rape to plead guilty. Persons accused of rape are reluctant to plead guilty. They are aware that there is no upper limit to the sentence they might receive. In fact the penalties for rape vary considerably, depending on the nastiness of the offence and the surrounding circumstances. It makes good sense, therefore, to restructure the law so as to provide a graduated scale, a ladder so to speak of sexual assault offences.

Experts in the criminal law field advise that by replacing the single offence of **rape** with a graduated scale of offences, the percentage of persons charged who enter a plea of guilty will dramatically increase, probably to about double the present rate.

This will come about because offenders facing court proceedings will be confronted, not with an indeterminate sentence, but with a fixed term of years as the maximum that they could receive. If they are charged with a category 1 offence, involving grievous bodily harm, the maximum penalty will be twenty years imprisonment. For category 2, the maximum penalty will be twelve years. For category 3, the maximum penalty will be 7 years or 10 years if the victim is under 16 years of age. For category 4, the maximum penalty will be 4 years or 6 years if the victim is under 16 years of age. These penalties reflect the level of punishments currently being imposed by the Supreme Court of New South Wales.

Most penalties imposed are actually lower than 7 years. Penalties of 3, 4 or 5 years are fairly standard for what might be called an uncomplicated rape not involving the infliction of physical injuries other than the imposition of the intercourse. Thus the third category, providing for a maximum of 7 years, covers this type of case. If actual bodily harm is inflicted—such as cuts, bruises, wounds, and so on, or if the victim is threatened with an offensive weapon such as a gun or knife, category 2 will apply and the maximum penalty will be 12 years. If grievous bodily harm, which the courts interpret as meaning really serious bodily harm, is inflicted with intent to have sexual intercourse with the victim, category 1 will apply and the maximum penalty will be 20 years' imprisonment. I hardly need point out to the House that this is a very heavy maximum penalty, as befits a horrifying crime.

The Premier and Treasurer has stated that this is an historic measure. It is one of the most important reforms the Government has presented to the Parliament. As a member of the Australian Labor Party, and a woman member of Parliament, I am proud to be associated with the passage of these bills. Only a few months ago my daughter related to me a story of a young friend of hers who appeared to be under a kind of nervous strain. Later the young girl confided that she had been raped after leaving a surf club dance. It had been a terrifying ordeal for her, and the trial was about to begin nearly 14 months after the offence. She was terrified that her workmates would find out about it. Also she was terrified at being left alone in the home when her parents went out. The girl was further terrified about what would happen to her in the court. She expressed the opinion that she wished she had never told anyone about the incident. The man received a light sentence, yet that young girl will continue to suffer, probably for the rest of her life. It is my hope that the legislation will clearly define who is the accused and who is the victim, that more perpetrators of this brutal crime will be brought to justice and that in the long term this legislation will bring about a lessening of man's inhumanity to man, or in the gender neutrality of the verbiage of the bills, a lessening of one person's inhumanity to another person.

The Hon. VIOLET LLOYD [5.7]: Doubtless all honourable members will agree with the closing remarks of the Hon. Dorothy Isaksen. The yardstick for the value of the legislation will undoubtedly be whether the proposed changes will assist women who have been subjected to the crime of rape in living out their lives afterwards. The questions that honourable members should be asking themselves include this one, what are the reasons for the bill? Honourable members should not allow themselves to be sidetracked by too many extraneous issues. What actually caused the pressure for reform of the rape law? As the Hon. Dorothy Isaksen said, 72 per cent of women who are raped do not report the offence. Does the bill make it easier for those women? Does it help to overcome the problem facing young girls and women of reliving the experience, for the purpose of securing a conviction? What provisions are made for any counselling that may be necessary to help someone who has been through this dreadful experience face the future?

In his introductory remarks on the bill the Premier and Treasurer referred to consultation that had taken place. The Government is to be commended for it. When the Government has endeavoured to introduce legislation without going through the process of consultation I have been critical, time and again. The Premier and Treasurer made specific reference, as did the Hon. Dorothy Isaksen, to the women's group of the Liberal Party. Clarification is needed. The women's group of the Liberal Party, with a number of other groups, participated in a position paper that was prepared by the Women's Advisory Council and the co-ordination unit. At no time did the women's group of the Liberal Party have any idea of what went into the legislation.

That group does not retract any of its remarks. The position paper put out by the Women's Advisory Council makes it clear that they are in opposition to rape within marriage. It must be borne in mind, however, that within the position paper there was no option for rape in marriage in circumstances of separated spouses or any other circumstances; it was simply straight-out opposition to rape in marriage. The women of the Liberal Party in the women's groups did not support that part of the position paper, even though they were in agreement with most of its other parts. In discussing matters like this it is often said that women are referred to as being the property of men. They quote many arguments about many situations that have occurred in past centuries. One ought to produce other references to present a different angle.

I should like to refer to a statement made by William May, associate professor of moral theology at the Catholic University of America, about Pope Paul VI's encyclical *Humanae Vitae*. It contained this statement: "The forcing of the conjugal act upon an unwilling partner is a lack of love in marriage". The encyclical quoted religious sources dating back to the 14th century to bear out the premise, that "even in marriage a woman is not simply a man's property for his use". It went on to say that such actions are not healthy sexual desires but are the objects of sexual gratification, and said also that it is wrong for a man to turn his wife into an object for his own use. Perhaps that is what we are getting at here when we talk of rape in marriage.

The Minister referred to Professor Virginia Nordby, a professor from Michigan university who was at Hobart and spoke at great length to a meeting on the question of rape. She was not brought out by Tasmania or by the Women's Advisory Council; she was brought here by the Australian Law Reform Commission. Her comments concerning rape were based upon the practicality or the impracticality of trying to do something about it within marriage unless a certain circumstance existed. That circumstance, as the Hon. L. A. Solomons mentioned earlier, was basically that separation must be a fact or legal. A number of cases show that if that situation occurs, the question of securing a conviction for rape against a husband is not difficult. I should like to refer to several cases that have been decided in which husbands have been held to be guilty of rape and the victims were their former wives.

In the case of *Rex v. Clarke*, 1949 Second All England Reports at page 448, it was said that a husband had forcible intercourse with his wife despite a justice's order containing a non-cohabitation clause. It was considered that the only way in which the implied consent of marriage could be resurrected was by voluntary resumption of co-habitation by the wife. At the material time the wife had not resumed cohabitation. Thus it was held that the husband was not entitled to have intercourse with his wife without her consent. I do not think anyone would disagree with that judgment.

The Hon. D. P. Landa: In that case the deciding factor had been the decision of a judge who had given an order on when co-habitation was or was not occurring.

The Hon. VIOLET LLOYD: I agree. I should like to mention a case where a wife petitioned for divorce and was granted a decree *nisi*. After the decree *nisi* was issued it was alleged that the husband had raped his wife. The accused husband contended that the indictment should be quashed on the ground that no offence was committed as the prosecutrix was still his wife until the decree absolute was pronounced. His argument was rejected. It was considered that the decree *nisi* effectively ended the marriage. Further, there could be no questioning that upon issue of a decree *nisi* a wife's implied consent to marital intercourse would be revoked. In cases like that it is clear that the Minister has an argument to prosecute for rape within marriage. That point has been made. It is in line with a case reported this morning in the *Sydney Morning Herald* concerning a husband in Melbourne who was charged and convicted of having raped his wife. The parties to the marriage had been separated since January this year.

The Hon. D. P. Landa: What does the Hon. Violet Lloyd say about a wife who wants to live in the family home but does not want to have sexual relations with her husband?

The Hon. VIOLET LLOYD: May I ask the Minister how he proposes that problem should be handled?

The Hon. D. P. Landa: Let us deal with it in principle first. In that circumstance is such a woman entitled to bring a prosecution or lay an information? Does the Hon. Violet Lloyd concede that?

The Hon. VIOLET LLOYD: I concede that such a woman is so entitled. But I am asking the Minister about the practicality of it. No law is good if it will not work.

The Hon. D. P. Landa: I shall explain that matter in reply. It is up to the courts to hear evidence and for juries to make a decision on the facts.

The Hon. VIOLET LLOYD: May I ask the Minister one more thing? If a married couple are not living separately within the home and if there is a slight argument or disagreement as a result of which the wife goes to the police in accordance with the provisions of this bill and complains that her husband has raped her——

The Hon. D. P. Landa: But he has not?

The Hon. VIOLET LLOYD: When he has raped her in fact, what happens?

The Hon. D. P. Landa: If after a slight argument he has raped her, in my view she would be entitled to at least commence proceedings for rape if she wishes. After all, rape is rape.

The Hon. VIOLET LLOYD: But that is only if she wishes to commence proceedings. Where is the opportunity for her to change her mind? Surely, once legal proceedings are set in train they continue remorselessly. Where is her opportunity to change her mind? Will the Minister explain that in reply?

The Hon. D. P. Landa: Yes, I shall explain that.

The Hon. VIOLET LLOYD: I should be grateful for the Minister's explanation as it is a most important question. There is no doubt that police are unwilling to interfere in so-called domestic offences, but we are about to ask the police to participate in this much closer relationship between husband and wife. I know the principle and I agree completely that both wife and husband have rights, but the law will be no good unless it can be made to work. Otherwise this legislation will be just so many words written on paper.

Though the Government claims credit for these innovative reforms, I remind honourable members that the New South Wales Women's Advisory Board initiated reforms in the rape law. The House should record its appreciation of the work done by that body, which was disbanded when the present Government assumed office. I was interested to see included among the persons who are still involved in the work done leading up to the presentation of this legislation, the names of Dr Greg Ward and Dr Redshaw, who were with the board before it was disbanded and have since continued their work. At the time of the 1976 elections when the Liberal Party and the Country Party were in government, two provisions that have been included in the bill were part of the policy of those parties. I refer to the provisions on closed courts and the inadmissibility of a woman's past sexual history. I am extremely pleased that this legislation is before the House. I have raised some practical questions that I should like the Minister to answer. When one tries to explain to members of the community, particularly women, the effects of the amendments, they are interested to know how the new legislation will work.

The Hon. DELCIA KITE [5.22]: The need for this legislation is well demonstrated in a cartoon that appeared in the *Sydney Morning Herald* on Saturday, 21st March. The cartoon was by George Molnar and showed a man chasing a frightened woman and saying:

But listen lady, since Mr Wran substituted "sexual assault" for "rape" there is no stigma attached to it.

This must surely qualify as the most brainless, malicious and sexist comment made publicly about the attempt by this Parliament to reform the laws relating to sexual assault. George Molnar generally draws cartoons and writes captions that reveal his misunderstanding of current events and his appalling reactionary politics. This one takes the cake. These days the majority of sensitive and adult people recognize that the days of the rape joke are gone. For too long the women in our community have been oppressed and slighted by male chauvinism thinly disguised as humour. If Mr Molnar and the editor of the *Sydney Morning Herald* believe there is anything humorous about the activities of the lout depicted in the cartoon, they are badly mistaken. The cartoon represents the kind of tacit encouragement to sexual molestation that women have had to put up with in male humour for too long. Women will not tolerate it any longer.

If Mr Molnar is suggesting in his clumsy attempt at **intimidatory** humour that the new laws will make legal behaviour that previously was illegal, he is merely being mischievous. Let me state with absolute clarity that no sexual assault that was previously illegal under the old law is being made legal by these measures. This legislation will protect men and women far better than the medieval law of rape, which has previously been applicable. It has been suggested that it will be less effective because the term rape has been deleted. I point out to the House that the Womens Advisory Council and those who drafted the bill foresaw the argument that would inevitably be made by such well-known and out-of-touch reactionaries as Mr Molnar. They deliberately retained in the bill the following heading: "Offences in the nature of rape, and offences relating to other acts of sexual assault, etc.". That heading will appear before section 62 of the Crimes Act, and it allows me to say to the House that the term rape has not been entirely removed from the Crimes Act. Its function as a heading is to indicate that the offences that replace rape do, in fact, fully and comprehensively replace it. There should be absolutely no doubt about that.

I wish to raise, also, the question of penalties. I have been involved in numerous discussions about this legislation. I am confident that women in the community will regard the penalties established by the new law as adequate, because those penalties will ensure that more sexual assault offenders are brought to justice.

In 1979 only 39 per cent of persons charged with rape pleaded guilty. This compares unfavourably with the general figure of 82 per cent of pleas of guilty by persons charged with criminal offences in the higher courts. The reason for that discrepancy is that the penalty for rape is a maximum of penal servitude for life. Because of that theoretical maximum penalty, alleged sexual offenders are extremely reluctant to plead guilty. Everyone is aware of that.

Of course, no one charged with a crime should be compelled to plead guilty. Everyone is entitled to a fair trial. However, the structure of the law should not actively discouraged from pleading guilty those who are truly guilty. Under the new law, persons charged with sexual assault not resulting in serious violence will be much more likely to plead guilty. The maximum penalty for an offence under category 3 will be 7 years' penal servitude. That penalty is sufficiently long to provide an effective deterrent. This is especially so because deterrence depends very much upon the likelihood of apprehending the offender. Under the new law, it is much more likely that victims will report sexual offences, and therefore it is more likely that the number of offenders who escape apprehension will be reduced. Women do not want punitive laws to impose heavy penalties upon a few offenders. They would prefer less severe laws that do not allow offenders to escape. I congratulate the members of the many and varied women's groups that pressed for these reforms, and I congratulate the Government for embodying them in legislation.

The Hon. N. M. ORR [5.28]: Though there is a deal of good in this legislation, several of its provisions prevent my supporting it. The Hon. L. A. Solomons has dealt with the legal problems and inconsistencies contained in the legislation and I do not propose to enter into a discussion of those matters. I am concerned that no crime should go unpunished and that no section of the community should be left unprotected. However, the legislation, in protecting one section of the community, has left the gate open for another. As the lawyers have said, the present law protects women against assault to a large degree. By using the words sexual assault instead of the word rape, the Crimes (Sexual Assault) Amendment Bill merely makes a cosmetic change. A rose by any other name is still a rose. Rape, whatever one may call it, is still rape. For generations to come it will still be regarded as rape.

The Hon. D. P. Landa: Does the honourable member have difficulty with the change of name from rape to sexual assault?

The Hon. N. M. ORR: No. My point is that it is farcical for the Government to say that the change in some way lessens the stigma on the victim. People will always associate sexual assault with rape. Why not leave matters as they were? That part of the legislation alters nothing but the name. I am concerned that the proposed measures will alter the contract of marriage. The basis of a family is the marriage contract. In the past people have accepted in the main the biblical concept of Christian marriage by entering into a contract of marriage. That applies to most members of this House. By that contract of marriage one accepts the responsibilities that exist in a marriage.

The Hon. Dorothy Isaksen: A responsibility to be raped?

The Hon. N. M. ORR: Not to be raped; the honourable member should not attempt to put words in my mouth. A responsibility is accepted that each has an equal right to the other person's body. No one would disagree with that proposition.

The Hon. Dorothy Isaksen: With consent.

The Hon. N. M. ORR: The measures proposed in these bills will open the gate. The Government is saying that a woman has to say only, "My husband raped me" and she can take him to court. The husband then has to prove that it did not happen. Who can really ascertain the truth of the events that occur in a bedroom? I have clear memories of the bad old days of maintenance laws when the wife was shackled up with somebody down the street and the husband was in gaol because he could not get work and was unable to keep up his maintenance payments.

The Hon. D. P. Landa: What about the times that the husband goes away and leaves no money and the wife does not shack up with anybody?

The Hon. N. M. ORR: There were more instances of the point I make than there were of those referred to by the Minister. In small townships often the local constable would say, "Bill, get out of town, or else I shall have to put you in". Sometimes the husband stayed in gaol for weeks, even months. The Minister knows that is so, as he is a member of the legal profession. These bills will return the law to that situation. One does not know what might be done by a bitchy woman, or a woman who for some reason has a bad liver or suspects her husband has done the wrong thing.

The Hon. Dorothy Isaksen: He might have bad breath.

The Hon. N. M. ORR: That interjection reveals just how a woman might become upset over a minor matter that she has against a man. Such a woman may complain that her husband had raped her.

The Hon. D. P. Landa: Does the Hon. N. M. Orr have any objections to a person being prosecuted for rape in marriage when it can be proved? Say a witness comes in at the moment of the assault?

The Hon. N. M. ORR: If these bills provided for that situation only, I would agree, but they do not. The proposed measure says that a woman has only to say, "I have been raped" and the husband may be charged. Even if she changes her mind within the next two hours, the legal process would have been put into operation and the egg takes a lot of unscrambling once it has been scrambled. The Minister is well aware of that. He is a legal man. That is the point I make. The present law gives females in our society all the protection they need.

The Hon. D. P. Landa: What about all the protection to which they are entitled, not what the Hon. N. M. Orr decides they need?

The Hon. N. M. ORR: That is another question that I shall not argue at this stage. Under the proposed legislation any person may allege rape.

The Hon. D. P. Landa: But they have to prove it.

The Hon. N. M. ORR: The man has to prove his innocence.

The Hon. Deirdre Grusovin: No woman takes a decision like that lightly.

The Hon. N. M. ORR: In a bedroom situation, what court can work out what really happened where somebody is out of sorts and a bit of a scrap occurs at home and the wife goes to the local police station and says, "I have been raped"? Who is going to unscramble that situation, particularly where there is no history on either side? Recently the Parliament dealt with anti-discrimination legislation. This is the worst form of discrimination against men that can exist.

The Hon. Deirdre Grusovin: Yes, it takes away their age old right of rape..

The Hon. N. M. ORR: It does not; it takes away their rights.

The Hon. Deirdre Grusovin: Their rights to what?

The Hon. N. M. ORR: Hell hath no fury like a woman scorned. The proposed law seeks to put the onus of proof upon the man. When he is in the bedroom at twelve o'clock at night and no one is within cooe, he would have difficulty proving that he did not rape his wife. A man has his rights and they should be protected.

The Hon. D. P. Landa: The right to what—sexual intercourse?

The Hon. N. M. ORR: No, the right to freedom. Husbands and wives have equal rights at law. The proposed legislation does not give equal rights to husbands and wives, because a husband is required to prove that he did not rape his wife.

The Hon. Dorothy Isaksen: A husband may charge his wife with rape under this legislation.

The Hon. N. M. ORR: I have never heard a man complain about that, yet. While a woman has every right to be protected, the proposed legislation puts men at risk in their own bed chambers.

The Hon. R. D. DYER [5.36]: I am privileged to have the opportunity of speaking to these bills, which undoubtedly are major initiatives of the Government. The basic principle of the bills is to reform the criminal law relating to rape, to make the law and procedure relating to rape and sexual assault more effective in the protection of the victim while retaining proper provision for due process and a fair trial for offenders. In particular, the bills seek to place greater emphasis upon the violence aspect of rape and to minimize the trauma caused to the rape victim by the trial procedures and overcome the present tendency not to report rape offences.

Before I proceed, I should like to respond to some remarks of the Hon. N. M. Orr. The first comment I wish to make is that in the case of rape within marriage the onus rests not on the accused but on the prosecutrix. It is not a case of the husband having to prove that he did not do it; it is very much a case of the prosecutrix being required to prove that he did in fact commit the offence. Not only does she have to prove it, but it has to be proved according to the criminal standard—beyond reasonable doubt. There is no substance in the facile comments of the Hon. N. M. Orr as to where the onus of proof lies. The Hon. L. A. Solomons made a substantial contribution to the debate. I do not wish to be unduly critical, but I make the comment that the Hon. L. A. Solomons approached these bills from an excessively legalistic point of view.

The Hon. L. A. Solomons: That is the approach that the courts will adopt, of course.

The Hon. R. D. DYER: The point I seek to make is that rape is not merely a matter for the courts, or for the law, or for the administration of justice; it is a matter also of sociological importance. It is a matter of great importance to the women concerned. To seek to deal with this subject as though it can be confined within the four walls of a court and within the rules of evidence is to overlook the way women view this offence. Women see it as a denial of their dignity and a degradation and they seek some redress. It is for those reasons that the term rape is being discarded.

The Hon. N. M. Orr may think that is a superficial matter. It is not a superficial matter for a woman who has been raped. A stigma attaches to the term rape. Women wish to remove that stigma and be rid of it. For that reason women in the community object to the term rape. If they want to use the term sexual assault, they should be entitled to do so. A major aspect of the bills is the categorization of offences.

The first category deals with an assault that consists of inflicting grievous bodily harm with intent to have sexual intercourse. That offence attracts a penalty of 20 years penal servitude. That is the most serious of the four offences. The offence dealt with in the second category is that of sexual assault that consists of actual bodily harm, or threatening acts of bodily harm with intent to have sexual intercourse. The penalty in that case will be 12 years penal servitude.

The third offence consists of a sexual assault without consent, or what might be called in the existing law, rape *simpliciter*. The penalty provided will be 7 years penal servitude, or 10 years penal servitude if the victim is under 16 years of age. The last category consists of minor sexual assaults that incorporate the present offence of indecent assault under the Crimes Act. The penalty for such offences will be 4 years penal servitude, or 6 years penal servitude if the victim is under 16 years of age. The question might be asked: what is the importance of grading offences in that way? At the moment there is one offence of rape under the Crimes Act and that offence attracts a maximum penalty of life imprisonment. I should refer honourable members to an editorial of the *Sydney Morning Herald* on 9th August, 1980, dealing with the gradation of offences. That editorial said:

Part of the difficulty surrounding rape is that the law provides only one offence to deal with situations which range from where the male goes further than the woman intended, to where a stranger attacks a woman. The law does not distinguish between slight and serious cases. The council—

and that is the women's advisory council to the Premier.

—makes a persuasive argument for a graded system of sexual assaults so that juries would consider the less emotive crimes of indecent assault rather than the highly charged crime of rape.

The rationale behind splitting offences into categories is that in many cases women are dissuaded by so-called friends, relatives or acquaintances from lodging a complaint on the basis that if they did, the accused would face the prospect, **indeed the** possibility, of being imprisoned for life. In many cases that factor tends to work against the reporting of rape offences. The Liberal Party women's group made a comment to the women's advisory council on that aspect. The point they made was that, though they agreed in principle with the grading of offences, they were concerned about the cutoff point of each grading. They said that inevitably there would be shades of grey at the upper and lower levels of each grade. That is fair comment.

Under the existing law there is an entire spectrum of grey, from the least serious case to the most serious case. Whenever one has a classification of any subject area, whether it be the criminal law or in general life, one will have some grey area toward the edges. I submit strongly that that is far better than the present situation whereby an offence of rape can attract a maximum penalty of life imprisonment—though that sentence is not now imposed—down to a minor term of imprisonment. As I have said, that tends to act against the proper and prompt reporting of rape offences. I should say something briefly about the level of reporting of rape offences. A general characteristic of crimes is that there is a grey area, a part of the iceberg that is under the water—crimes that are not reported to the authorities and are not prosecuted. I suspect that the non-reporting of rape offences is much more prevalent.

Dr Paul Wilson of the University of Queensland has written a book entitled *The other side of rape*. Dr Wilson conducted a study of unreported rape in Brisbane. He had a low level of advertising in the press, on radio and on television, in which he asked persons to report their experiences. During the period of the survey between December 1974 and August 1976, seventy victims of unreported rape approached him.

Of ~~that~~ number, forty-five of the rapes involved single rapists; nine involved two or three offenders, and ten involved more than three offenders. Though weapons were used in a minority of cases, physical force or the threat of physical force was commonplace. In twenty-one cases the offender used his fists physically to intimidate his victim and in most cases the victim received blows to the head and body. In an equal number of cases the offender threatened to use his fists and usually indicated his intention to the victim by clenching his fist and threatening to strike her.

Dr Wilson noted that almost 70 per cent of all unreported rapes were committed by relatives or acquaintances. The reporting of rapes involving non-acquaintances is higher than shown in most theoretical studies. Those figures are similar to the figures quoted in the study carried out by the Sydney rape crisis centre. Here again is objective evidence of circumstances where the victims of rapes and serious assaults that in many cases involve weapons or striking with a fist did not report the alleged offence. In Brisbane, over a fairly short period seventy persons have not reported the offence. In a significant proportion of the cases the assailant was a relative or an acquaintance. That tends to reinforce the viewpoint that the women did not approach the authorities because of their closeness to the assailant, the acquaintanceship that they had, or their possible fears for the consequences to the assailant if they prosecuted and the result was the imposition of a lengthy term of imprisonment.

The Hon. L. A. Solomons: This measure will not in any way remedy that situation.

The Hon. R. D. DYER: I disagree with the Hon. L. A. Solomons. The measure will encourage the reporting of sexual assaults, because the offences are to be graded. If the case involves rape *simpliciter*, there will be a much greater likelihood of a woman approaching the authorities because she knows that the maximum penalty is much less than that provided by the existing law. I shall deal now with the immunity of husbands from prosecution for rape within marriage. The law is that unless and until a decree nisi for divorce, a judicial separation or a separation agreement has been obtained, a husband cannot be convicted of the offence of raping his wife. The traditional legal doctrine, and to some extent an ecclesiastical doctrine, is that by marriage a wife consents to sexual intercourse—and I should add, wherever, whenever and however. That is a relic of the medieval era, or at the very latest, the Victorian era. Perhaps the most famous example of matrimonial rape appears in the *Forsyte Saga* where John Galsworthy wrote:

The morning after a certain night on which Soames at last had asserted his rights and acted like a man, he breakfasted alone . . .

Little wonder. The quote continued:

. . . the incident was really of no great moment: Women made a fuss about it in books; but in the cool judgment of right thinking men he had but done his best to preserve the sanctity of marriage, to prevent her from abandoning her duty . . .

That sort of attitude should be long dead and gone. It is something that is not consistent with attitudes that are prevalent in the 20th century. It is not consistent with the attitudes that should prevail in the Christian church, or for that matter any church that upholds proper human values. Marriage should be a loving and caring relationship, not the imposition by one party of his or her will upon the other party, irrespective of the health, disposition or convenience of the other party to the marriage.

I shall refer to the other States. The South Australian Parliament has already removed the presumption of consent between married persons, although it imposed a number of qualifications. The Hon. Dorothy Isaksen has already referred to a conviction secured under that legislation. It was a serious case, in which the woman sustained a broken jaw. I hesitate to think that any honourable member would maintain that a woman who had sustained such a grievous injury should not be entitled to maintain a prosecution for rape and secure a conviction. Conduct such as that cannot be countenanced in any way or regarded as being within the proper bounds of the marriage contract.

The Hon. L. A. Solomons: It is the sort of case for a grievous bodily harm charge.

The Hon. R. D. DYER: That is so, but if it is good enough to be a case involving the occasioning of grievous bodily harm, and came about during the course of demanding sexual intercourse, why is it that the State and the wife are not entitled to prosecute for rape? Clearly the offence has all the elements of rape. Obviously there was a complete absence of consent, if a woman is so abused as to have her jaw broken. It is utterly legalistic and indefensible that anyone could maintain that a woman, in such circumstances, should be content with some lesser charge, albeit the serious charge of assault occasioning actual bodily harm. In 1976 the Western Australian criminal code was amended to remove the presumption of consent while a husband and wife are separated and not residing in the same residence. It is true that this measure goes beyond that.

The measure is intended primarily to be educative. I doubt that a large number of prosecutions will be launched. Not many prosecutions have occurred in South Australia. Equally, it is likely that few convictions will be recorded, but it must be brought home to men that they are not entitled to rape, beat and break the jaws of their wives. If the measure has the effect of educating men into a realization that it is a grave offence, not only against a wife but against society, the measure will have achieved an important objective. I find it extraordinary that honourable members opposite should find this to be a matter for amusement.

The Hon. J. W. Kennedy: Does the Hon. R. D. Dyer suggest that every man walks around breaking his wife's jaw?

The Hon. R. D. DYER: I do not suggest that but in the community there are, whether the Opposition realizes it or not, drunken husbands who come home, belt up their wives and rape them.

The Hon. R. B. Rowland Smith: That is covered by the common law.

The Hon. L. A. Solomons: The Hon. R. B. Rowland Smith meant that it is covered by the criminal law.

The Hon. R. D. DYER: It is not sufficient for rape to be covered by the criminal law. Other action should be available in circumstances as grave as that. I had not intended to deal with the matter of complaint, until it was raised by the Hon. L. A. Solomons who, I think, is making far too much of it. Why should there be any special rule for the law of rape in regard to evidence of complaint?

The Hon. L. A. Solomons: It has been for the benefit of the complainant.

The Hon. R. D. DYER: The Women's Advisory Council made a proposal that the law should be altered to exclude from sexual assault trials any evidence that the victim either did not complain or did not complain at an early time after the occurrence of the offence. The council representatives said that evidence that was directly relevant to the alleged facts of the case only should be admissible. The submission was that there are good reasons why a woman may hesitate about making a complaint of sexual assault to the police. The council representatives said that though an early complaint may assist in the investigation process and should be encouraged for that reason, there is no logical connection between the time the complaint is made and its veracity. That point is well made.

The Women's Advisory Council appreciates that though in some cases evidence of early complaint may assist in producing a conviction, that factor is outweighed by the fact that many legitimate claims are defeated by an element of delay. It is unfair that convictions should be incapable of being obtained by reason only of the fact that in some cases the complaint is not made promptly. There could be duress, family relationships or relationships with friends which would lead a woman not to make a prompt complaint. After all, rape is a traumatic and anguishing experience for a woman. It is little to be wondered that in some cases women have doubts about whether they should report the matter promptly, or at all. The fact that they have those doubts and that delays arise in making complaints, in my view should not prevent a woman from proceeding with a prosecution. The prosecution should not be damaged by evidence being given that the complaint was not made promptly.

I shall refer to one or two other aspects of the measure. One aspect is corroboration. The Hon. L. A. Solomons referred to the existing rule that a judge is required to **warn** that it may be dangerous to convict on the evidence of the victim alone. Earlier I had some doubt about the propriety of the provision but I had a discussion with the director of the criminal law review division, Mr Woods. He advised me of the terms of the likely amendment. In fact that is how it is in the bill before the House. Proposed new section 405C (2) provides that on the trial of a person for a prescribed sexual offence the judge is not required by any rule of law, or practice, to give that particular warning. Those words are important. The fact that the judge is not required to give the warning does not mean that he is not entitled to give it. The trial judge has a discretion. That is an entirely proper provision.

To say that a judge must give a warning to a jury in every case that it is dangerous to convict on the uncorroborated evidence of a female is virtually to imply that women need to have a special rule of evidence applied to them because they are prone to making false statements and their evidence is not to be believed. That is a sexist and unsatisfactory aspect of the law. I strongly support that proposed reform and I believe that the Hon. L. A. Solomons is wrong in criticizing that aspect of the bill. The concept of prior sexual history has been a running sore, and is probably one of the main actuating causes for this present legislation. The *Sydney Morning Herald*, in an editorial of 9th August, 1980, stated:

In one celebrated rape case a 19-year-old girl was asked 1,650 questions during which her claims were savagely attacked, regardless of her feelings or reputation. Justice is hardly served when a victim is more on **trial** than the defendant. The proposal that evidence of past experiences should only be allowed on an application to the court with the jury absent **would** be adequate to cover those cases when evidence of this nature is required.

In 1969 Detective Sergeant Doyle, a man who has now reached a more exalted office in the police force, delivered a paper to the Institute of Criminology concerning prior sexual experience. On that occasion he said:

The law allows the testing of her credit, and there can be no quibble about that. She can be asked about each and every previous act of intercourse with anybody at any time of her life. For example, if she is then twenty-five years old she will be asked about some isolated sex act with a man she was engaged to marry five years before. Presumably this is relevant to the question of whether she might have consented to the rape on this night whilst walking home from the railway station. Never, of course, could anybody ask the accused whether he has previously been convicted of rape as relevant to the question of whether he might rape again.

He made the further comment:

There is a lopsided notion of justice to bend over backwards to assist the accused in sex crimes, making it little wonder a majority of girls and women are adopting the course of concealing rape, and keeping it as their most valued secret.

The Opposition, time and again during this debate, has said that this bill will do nothing to increase the reporting of rape offences to the police, and the institution of prosecutions against the offenders. That is simply not so. One of the **most** pressing and cogent reasons why women are unwilling to prosecute is that they are unwilling to have their reputation tarnished by dreadful cross-examination on their entire sexual history, a matter that could be quite unrelated to the prosecution in question. Girls and women suffer a dreadful ordeal when they are subjected to a lengthy cross-examination on sexual relations that they might have had with a boy friend or other persons in previous years. But that does not alter the fact that on that particular occasion they were raped. Does it not matter if an employer rapes his employee that the girl is then expected to be cross-examined as to whether she has had intercourse with her boy friend six months before? It is irrelevant. It is absolutely scandalous that that sort of cross-examination should be allowed.

The last matter to which I shall refer when dealing with the question of prior sexual history is the fact that a judge will be entitled, following the passage of this measure, to admit various categories of evidence as giving prior sexual history. The Hon. L. A. Solomons referred to a factual situation where five **males** raped a woman. The evidence was that she had consented earlier during the evening. In my view in at least that set of circumstances the judge is entitled to let in evidence of prior sexual activity.

The Hon. L. A. Solomons: I agree with that; that is quite correct.

The Hon. **R. D. DYER**: As the Hon. L. A. Solomons has conceded that point, I shall not persevere with it. The importance of this reform is that women no longer shall have their reputation besmirched by reference to irrelevant matters. This bill is indeed a significant reform. It will achieve a proper balance between the rights of the accused, within the process of a fair trial, and the interests of the community in securing convictions against persons who commit breaches of the criminal law. No less an important aspect of the measure is the fair and humane treatment of women who are the victims of rape.

The Hon. **MARIE FISHER** [6.8]: With other members who have participated in this debate I welcome the opportunity, as a female member of the House, to praise the Government for its initiative in making laws and procedures relating to

rape and sexual assault both more effective and more protective of the victim. I find the definition of sexual offences, the categorization of offences and the proposed penalties for sexual assault to be commendably thorough. In two areas only shall I comment briefly for the matter was well canvassed by previous speakers. The first relates to changes in trial procedures and the second relates to domestic violence, that part of the bill which removes the existing immunity from prosecution for husbands alleged to have committed sexual assault within marriage. That provision seems to have flushed out the lunatic fringe within this House and outside it, and certainly has brought to members of the House a great deal of literature, especially from the women of the family division of the Festival of Light.

As honourable members have already received these communications from the vociferous minority, I shall not subject the House to a detailed expose⁶ of their comments except to say that they seem to see this clause in particular as a sop to the radical feminists who are opposed to the traditional institution of marriage. How they arrive logically at that result I cannot quite work out from the documents that have passed over my desk. Neither have I been able to make much of comments in some of the documents produced in this House tonight. The writers of those documents appear to be living in cloud cuckoo land. Certainly, if they are aware of what is occurring, they are uncaring about the extent of the violence in sexual assaults by husbands to which women are subjected. Religious groups have adopted far more humane and rational approaches to the question. I should like to refer to the comment of a representative of the Catholic Women's League on the matter. On 22nd September, 1980, Dame Gallagher wrote:

We can see no reason why a married woman should have less protection under the law than one who is single. The opportunity should be available to her to protect herself from sexual assault . . . whether the assailant be her husband or any other person.

I cannot, and clearly neither can Dame Gallagher, accept the premise that to allow complaints of rape within marriage will be to destroy the institution of marriage. Perhaps I take a more rational view of marriage than other members of this House. In a true marriage the union is of two free and equal persons whose matrimonial consent gives neither party absolute power over the body of the other partner.

Such cases as will be brought by wives charging rape against their spouses will not be easy to prove. Only a few have occurred in South Australia and of these only one succeeded. The proposed change is enormously valuable as a legislative warning that violence within marriage is not acceptable within our community. The setting of new maximum penalties for the three major categories of sexual assault will reinforce this warning. I do not understand fully the objections raised by the Hon. L. A. Solomons and the Hon. N. M. Orr on this matter. The dire prognostications that the flood gates will be opened and that malicious women suffering from headache will charge their husbands with rape were utterly trivial and specious. One wonders what sort of a world those honourable members live in and what sort of view they have of women. They appear to hold the view that out in the real world cartoon-like women are intent on imposing themselves on poor timid men such as Thurber used to draw in his cartoons. The objections raised by the Hon. L. A. Solomons and the Hon. N. M. Orr tell a good deal more about their psychological attitudes than what they think about the legislation. The world is not peopled by psychotic, malicious women with bad livers who are likely to leap out of their beds one morning, go immediately to the police station and charge their husbands with rape. I was disappointed to hear the Hon. L. A. Solomons, in particular, proceed along those lines.

The Hon. L. A. Solomons: We were not concerned about what will happen but what can happen under the proposed legislation.

The Hon. MARIE FISHER: Those things cannot and will not happen. It is unreal to believe they will. I turn now to the change in trial procedures. Again I commend the Government. I agree wholeheartedly with the Attorney-General and Minister of Justice in his condemnation of the old law as being thoroughly bad and contributing to the well-known reluctance of women to report sexual violence that has been wreaked upon them. The myths that were embodied in the old law—that good women do not get raped; bad women ask for it—led to a totally humiliating cross-examination in which the victim became virtually the accused. Those myths are to be removed. It is time they were. The trial will still be an ordeal for the victim, but at last the victim will have the protection of section 409B (3) which provides that "evidence which discloses or implies that the complainant has or may have had sexual experience or a lack of sexual experience or has or may have taken part or not taken part in any sexual activity is inadmissible". Specific exceptions flow from that, each covering an area where fairness requires some evidence by way of cross-examination on prior sexual history. That may be permitted at the discretion of the judge or magistrate, who must be convinced that the evidence is valuable and necessary and outweighs the distress or humiliation of the witness. That is a far greater protection for the victim than the previous judicial discretion to disallow any irrelevant question. I submit that it is still completely fair to the accused person.

As the Hon. R. D. Dyer said, women are the most offended group from acts of sexual violence, and the effect of the procedural changes relating to the conduct of a trial should give many more women confidence to report acts of sexual violence. I expect there will be an increase in the number of rape cases taken before the courts, not, I stress, an increase in the incidence of rape or sexual assault with violence. That point has been made by the Festival of Light, though I do not see how that organization arrives at its conclusions logically. An increase in the number of rape cases will not lead to an increase in the crime of rape, but as women become more confident they will report more of these offences and the offenders will be brought before the courts. I hope and expect that the increased willingness of women to report these acts will be a most effective deterrent to would-be rapists, and the increased maximum penalties and categorization of attacks will be of equal force in preventing sexual attacks with violence.

One area of this subject is outside the scope of the legislation. I refer to the treatment of sexual offenders in our prison system and the fairly high rate of recidivism among such offenders. I welcome the penalties in the bill as a reflection of social abhorrence of the acts covered by them, but it is of some concern to me that the treatment of prisoners is inadequate. I am not being critical of the Corrective Services Commission, the responsible Minister or of the thoroughly commendable attitudes of the present commissioner, Dr Tony Vinson. Dr Vinson's concern to make the prisons places of humane rehabilitation is thoroughly laudable and realistic. However, I invite the Government's attention to the necessity to consider the offender as an object of concern too, if only to protect women in the future. It seems to me that it is necessary to increase funding to extend treatment and counselling of offenders while they are in gaol so that the recidivist rate among offenders will be lowered and to restore these persons to full human status in society. In one sense I suppose one could say that the rapist is as much a victim of society as his victim, and his rehabilitation is as important to our society as our support and care for the victims.

All in all, and even given the exclusion from the legislation of any attempt to decriminalize homosexual acts between consenting mature persons, this legislation is a major reform. It enters a difficult area when it seeks to deal fairly and effectively

with sexual offences. The Government has drawn extensively on the experience of other Australian States to attempt to arrive at the best legislation possible. I expect the operation of the legislation to be carefully watched to ensure that fairness to the victim and justice to the accused are achieved. I expect they will be and that reasonable misgivings will be dispelled by the operation of the legislation. Minor defects will be corrected legislatively by a government that has demonstrated more concern for women than any previous government of this State.

The Hon. B. J. UNSWORTH [6.18]: I support the passage of this legislation. I shall address my remarks in particular to proposed section 61A (4) of the Crimes (Sexual Assault) Amendment Bill which relates to the crime of sexual assault in marriage. Those provisions remove the immunity that husbands previously enjoyed from being charged with rape or sexual assault on their partners. The Opposition has announced its intention to move some amendments to the bill. I understand that the amendments will provide for exemption from section 61A (4) for a husband who is living with his wife. Apparently the Opposition draws a distinction between a husband's rights within marriage if he is living with his wife and his rights when the couple are separated.

This issue has caused me some concern following an experience I had some years ago while in the United States of America. Towards the end of 1978 when I was visiting that country a celebrated case came before the court in Salem, Oregon. It concerned a husband who was charged with raping his wife. It was the first case of its type to come before a court in the State of Oregon and, for that matter, was the first case to be brought before any American court based on legislation that by then had been introduced in only six States of the union. The case received nationwide prominence on television and in the press from one end of the United States of America to the other. I could not recall accurately the details of the case, only that the husband was acquitted and that the wife had said later, after they were reunited, that it had all been a big mistake. Last week I went to the trouble of going to the United States information centre to research the microfilm copies of the *New York Times* to try to refresh my memory of the case. It is important that I relate the circumstances of the reports of this event to the House because it does much to explode the views put forward this evening by some Opposition members. Clearly the American case does not in any way parallel the cases that have come before the South Australian courts flowing from the introduction of similar legislation in that State. I located a copy of the report I was seeking in the *New York Times* of 27th December, 1978. That report is headed "Oregon Man Found Not Guilty On a Charge of Raping His Wife" and states:

A jury of eight women and four men found John Rideout not guilty today of a charge of first-degree rape brought by his wife Greta.

The trial was the first of its nature in Oregon since the state revised its rape law in 1977 to eliminate the immunity of husbands to such charges. Mr Rideout is also believed to be the first man in the nation to stand trial on a charge of raping his wife while they were living together.

The acquittal by the Marion County Circuit Court jury, which was unanimous, came after three hours of deliberation.

Greta Rideout was not in court when the verdict was announced. At a friend's house later, however, she said: "I don't think justice was done. Justice was not done."

After the verdict, her husband told reporters, "I am very happy." His attorney, Charles Burt, would not let him discuss the case or its ramifications.

Yesterday, Mrs Rideout, 23 years old, and Mr Rideout, 21, gave their **conflicting** accounts of what happened on October 16th, date of the **incident** that led to the rape charge.

Mrs Rideout testified that her husband beat her into "submission" and raped her. Mr Rideout admitted that he slapped his wife on that date, but he said that the sexual activity afterwards "was voluntary".

Mr Bourke said he did not believe that the verdict settled the legal question whether husbands have immunity from rape.

That acquittal, receiving nationwide publicity, caused me some concern when I was contemplating the implications of the legislation that is now before the Parliament. A fascinating editorial in the *New York Times* on the issue is germane to the matters that honourable members have to consider when debating these bills. The editorial is as follows:

Marriage, Rape and the Law

For the first time in American history, a man has been tried for the alleged rape of his wife. In the case that has just ended in Oregon, a jury believed the man's story. But the verdict is not as important as the fact that the trial took place at all.

A few years ago, no state would have even recognized a woman's right to accuse her husband of rape. All states then were bound by the 17th-century view that "a husband cannot be guilty of rape upon his wife for by their mutual matrimonial consent and contract the wife hath given up herself in this kind to her husband".

In the last few years, however, four states have abolished this notion of marriage and expanded their anti-rape laws to protect wives against forced intercourse with their husbands. New Jersey's new law takes effect Monday.

To many, such legislation may seem either futile or outrageous. Some point out that even rape involving strangers is difficult to prove since witnesses are generally lacking to corroborate the story of the alleged victim. Given the subtle sexual relationship between a husband and wife, rape of a wife by a husband would be vastly harder to prove.

Yet law can do more than punish; it sets the standards of permissible behaviour in a society—and in a marriage. In this symbolic sense, an end to the common-law notion that rape is permissible in marriage is long overdue. A society that considers it a crime for a man to beat his wife should certainly consider it a crime for him to assault her sexually.

There are obviously parallels between the new laws against rape in marriage and earlier laws against wife-beating. Those also shocked contemporary critics, who warned about the difficulties of enforcement and cautioned against invading the sanctity of marriage. The courts have hardly been overrun with wife-beating cases in the intervening hundred years, and family-law specialists say the statutes have had a beneficial effect, not only by discouraging men from beating their wives but by leading some couples to therapy, some to divorce.

It will always be difficult to prove that a husband has raped his wife. Juries will always have to weigh the word of husband against wife with virtually no corroborating evidence. Such problems are likely to deter many such prosecutions. But the very existence of laws against rape in marriage should serve to reduce violence and abuse in the home.

The Hon. B. J. Unsworth]

The editorial succinctly **sums** up the issues, which are simply that the law **will** now provide a deterrent against husbands who may contemplate offering violence to their wives or raping their wives—in other words, in seeking to have sexual intercourse without the consent of their wives. That deterrent will do much to assist the many hundreds of thousands of women who suffer at the hands of violent, abusive and intolerant husbands. It is not appropriate for honourable members to **contemplate** the circumstances that may or may not come before the courts. However, it is important for honourable members to contemplate the fact that in the hands of the courts this deterrent will ensure that women will not have to come before the courts and undergo the humiliation about which honourable members have heard from other speakers in the debate on these bills. As a footnote to the case to which I have referred—this occurred after I left the United States of America—may I say that the celebrated John and Greta Rideout did not finish up like Cinderella and Prince Charming. A later report that I came cross points out that after two and a half years of married life John and Greta separated on four occasions, and subsequent to the rape charge Greta finally filed for divorce. Clearly those two people did not have the sort of compatibility that would ensure a lasting union.

When introducing the measure before the House the Minister for Education and Vice-President of the Executive Council made the important point that the legislation will degenderize the crime of sexual assault. On a number of occasions I have told honourable members of my experience when dealing with people within the State's corrective institutions. In a recent debate in this House I informed honourable members of discussions that I had with a prisoner about day release. He spoke of the high incidence of homosexual rape within the prison system. He said that homosexual rape takes place not for the sexual gratification of the rapist, but in an endeavour to secure psychological domination of the victim. In other words, the degradation of the victim at the hands of the rapist is such that the victim subsequently can be dominated by the assailant. Those pressures are part of the prison system.

While the bill has been before the Parliament all honourable members would have been subjected to a fair amount of gratuitous advice. I have received literature from the Festival of Light, the Australian Labor Party gay group and other organizations representative of the homosexual community. Honourable members would be aware that yesterday in the other place it was proposed that an amendment be moved to the bill. That amendment would have had the effect that sexual intercourse between consenting males would not be regarded as a crime in accordance with the provisions of the Crimes Act. That proved to be an anticlimax. Though the proposed amendments, **which** have been commonly termed the Petersen amendments, received wide publicity and were the subject of a demonstration outside the House yesterday, apparently they did not come to fruition.

In the second reading debate in the Legislative Assembly certain **comments** were made that reflect upon me as an individual. I take this opportunity within the provisions of the standing orders to ensure that any reflection upon me is dispersed. In reply to the second reading debate in the other place the Attorney-General and Minister of Justice announced his support for the proposed Petersen amendments and said that he would support them as a private member. He said further that he did not agree with the Labor Party's policy on conscience voting, though he recognized that homosexual law reform is a conscience issue for Labor Party members. The Minister then proceeded to involve me in the remarks that he made. He said:

I join with Malcolm Fraser, Doug Anthony, Ian Sinclair, and even with the Hon. B. J. Unsworth, the secretary of the Labor Council of New South Wales, who wrote to me demanding reform of homosexual legislation.

For the first time in my political career I stand four-square with Malcolm Fraser, Doug Anthony, Ian Sinclair and Barrie Unsworth in demanding for a minority of persons in the community justice and decency and an amendment that is decades overdue.

I did not write to the Attorney-General and Minister of Justice demanding homosexual law reform. I repeat, I did not write to the Attorney-General and Minister of Justice. In making such a reference, quite clearly the Attorney-General and Minister of Justice has misled the Parliament. As the secretary of the Labor Council of New South Wales I received correspondence from an organization that is affiliated with the council, the University Academic Staff Association of New South Wales. The acting secretary of the association wrote to me in the following terms:

The University Academic *Staff* Association of New South Wales has been approached by a group organized within our Union who are involved with the issue of homosexual rights. Our Executive was asked to propose the following motion to Labor Council.

"Recognizing that:

- (i) homosexual people do not enjoy equality before the law in New South Wales;
- (ii) enforcement and interpretation of the law discriminate against homosexual people in this state;
- (iii) there is a need for positive government action to promote and ensure equality for homosexual people;
- (iv) in particular, lesbian and male homosexual teachers suffer widespread discrimination and continual fear in *their* employment;

the Labor Council of New South Wales urges the **Government** and Parliament of New South Wales to:

- (1) repeal those sections of the law which discriminate against homosexual behaviour;
- (2) extend the protection of the Anti-Discrimination Act to homosexuality."

The Executive proposes this motion in the belief that this issue is of considerable importance not only to University *staff* but to unionists in general.

We understand that members of our Association have already had discussions with you on this proposal.

Thanking you for your co-operation.

That matter came before the Labor Council of New South Wales, which carried the following resolution:

That the correspondence be received and that the request be complied with.

Accordingly, on 17th October last I wrote to the Premier and Treasurer in these terms:

The Labor Council of New South Wales at its meeting on Thursday, the 16th October, received correspondence from the University Academic **Staff** Association, copy of which is attached.

In dealing with the correspondence Labor Council resolved:

"That the correspondence be received and the request complied with."

The Hon. B. J. Unsworth]

I am therefore writing to you to inform you of the Labor Council's decision and request your support in respect to paragraphs 1 and 2 of the resolution.

I received a reply, which was not from the Premier and Treasurer but from the secretary of the Premier's Department, Mr G. Gleeson. On 20th November Mr Gleeson wrote:

Dear Mr Unsworth,

The Premier has asked me to reply to your letter of 17th October conveying the support of the Labor Council of New South Wales for resolutions adopted by the University Academic Staff Association of N.S.W. concerning reform of the laws governing homosexual behaviour.

As you know, the Anti-Discrimination Board has been conducting as one of its functions under the Anti-Discrimination Act a research project on discrimination in the area of homosexuality. The Board will be reporting to the Government on completion of its research.

The Council's representations have been brought to the notice of the Anti-Discrimination Board and Mr Wran wishes me to assure the Council that they will be kept in mind in the Government's consideration of the Board's report.

Having recited those facts I fail to understand how the Attorney-General and Minister of Justice or anyone else could suggest that I wrote to the Attorney-General demanding homosexual law reform. I merely reflected the views of the Labor Council of New South Wales, acting upon a request from an affiliated union. If one were to be sensitive, one might take issue at being grouped with Malcolm Fraser, Doug Anthony and Ian Sinclair. Of itself, that is offensive enough. Members of the Australian Labor Party in debate should not be coupling other members of the Australian Labor Party with those persons on any issue, let alone on homosexual law reform. The issue of homosexual law reform deserves more serious consideration than it received in the debate in the Parliament. I hope at some stage in the future it will receive the debate that it warrants. As an individual I have not made up my mind how I shall vote in accordance with my conscience on the issue. As I did when considering rape within marriage, I am still undergoing a process of examining the question.

It seems to me, from a casual association with representatives of the homosexual community who have made their representations to the Labor Council—and I have seen enough of them around the Parliament over the past couple of days—that they fall into a number of categories. Some appear to be born into the world of homosexuality, with distinct homosexual tendencies, which develop at an early age. I do not think any socio-economic strata separates them from heterosexuals. When trying to think of well-known homosexuals I thought of Guy Burgess of the Burgess and Maclean spy fiasco. I thought also of Oscar Wilde. One could continue indefinitely. As far back as I can determine, by reading literature and history, there have been homosexuals in the community.

We must ensure that homosexuality is not glamorized. I become concerned when I see commercial enterprises in Sydney seeking to glamorize homosexuality. Five hotels in Sydney cater exclusively for the homosexual trade. Tooth and Co. Limited got in ahead of Tooheys Limited and has been able to promote more homosexual hotels than has Tooheys Limited. Tooheys Limited is now doing its best to catch up. The fact that restaurants, clubs and other facilities are becoming available exclusively far

the homosexual community concerns me. I can see the possibility of the development of a cult which will have no relationship to the origin of homosexual activities, as determined by the medical profession.

I sought to examine, in clinical terms, some information related to homosexuality. I visited the Parliamentary Library and obtained a copy of *Human Sexual Response*—the book by Masters and Johnson which is an authoritative work on sexual activities. There was no reference in it to the authors having studied homosexual behaviour except that they said:

Homosexual material, although recorded in both behavioural and physiologic context for both sexes, has not been included in this text. The returns from this facet of human sexual response are too inadequate at present to warrant consideration. At the present pace investigative maturity will not be reached in this programme for at least another four to five years.

Clearly the authors were involved in examining this aspect of human behaviour. Honourable members should look to the results of their further work on this question before determining views on the question of homosexual activities between consenting adults. I have had discussions with representatives of the homosexual community. Mr Lex Watson is quite an articulate person and is one of its leading theoreticians. Last week Mr Craig Lee rang me to ascertain the state of the amendments proposed. I intimated to him that in my view they had Buckley's chance of being introduced successfully or passed by the Parliament, mainly because of the way they were brought before the Parliament. It is regrettable that some members of the Parliament have sought to grandstand on the issue and to lead members of the homosexual community up the garden path, so to speak, though they have not conducted a serious examination or evaluation of the question. I felt it imperative that I should invite the attention of the House to my views on the question as they have been misrepresented.

[The President left the chair at 6.45 p.m. The *House* resumed at 8.20 p.m.]

The Hon. D. P. LANDA (Minister for Education and Vice-President of the Executive Council [8.20], in reply: I thank honourable members for their contributions to this debate, especially for the civilized and sincere way in which they were made, with the exception of one. Though one may hold differing views about such traditions and conventions as are held within our community, one cannot defer to traditions or habit, for that would be a derogation of individual rights. The principal bill, despite what has been said about assault upon women, is fundamentally about rights of women in particular and also the rights of accused. Secondly it provides one of those few opportunities the community has to be able to demonstrate the level of its enlightenment, its compassion, its capacity to care and respond in a sensitive and enlightened way. The position of women *vis-à-vis* the sanctity of their bodies, *vis-à-vis* their rights to determine and shape their own destinies as they see fit according to their aspirations, wishes and desires, is nothing less than an issue of fundamental individual rights. Those who would subject those rights to the conventions, traditions, or the Judaic-Christian shape of western marriage, can be only ultimately lessening their own rights.

An attack upon the rights of any group or any individual within society is ultimately an attack upon the rights of every individual. The renowned John Donne said, "No man is an island . . ." It is with great pride that the Government has brought before the Parliament of this State, in the year 1981, this most historic reform of the law relating to sexual integrity of women and men, such reform as there has not been within the history of law in New South Wales. The legislation brings this State largely into line with every enlightened State in this country.

Indeed, it takes New South Wales slightly ahead and brings the State into line with enlightened countries throughout the western world. Ultimately the benefits of this legislation, it is hoped, will be shown in a better, more understanding, less chauvinistic and fundamentally less brutal approach to women and, of course, to men so far as their sexual rights are concerned.

The Hon. L. A. Solomons dealt with the principal bill in particular and with the way in which it would work in his view practically in the courts. I shall deal with each of his concerns in detail. Suffice it to say that it was a great disappointment to me that he took aboard this knee jerk reaction, or objection, to the crime of rape in marriage. I believe when he found himself in the company of the Hon. N. M. Orr in what must have been one of the most singularly primitive contributions to the question of rights made in this House——

The Hon. N. M. Orr: That is only a matter of opinion.

The Hon. D. P. LANDA: I am about to explain why I have made that statement. The Hon. N. M. Orr made his contribution sincerely and my remarks about his contribution are not meant offensively. The Hon. N. M. Orr said that women have all the rights they need. But the question is not of women receiving rights that someone else decides they need, it is a question of them having the rights to which they are entitled, the same rights as everyone else.

The Hon. N. M. Orr: Except that it cuts across the rights of others, and that is my concern.

The Hon. D. P. LANDA: The honourable member made it abundantly clear that his perception of the marriage contract, as he called it, involved the free access of each spouse to the body of the other spouse. First, to my mind, that sold the marriage contract short and second, it was not in accordance with the more gentle concern and compassionate view of marriage to which I referred in my second reading speech. As viewed by the Catholic church marriage involves also the sanctity and the right of the individual spouse to determine that access and not to represent some relinquishment of the rights of refusal at any time. Thus, it is fundamentally a question of rights. It would be a sorry day indeed when marriage vows, in some way, would derogate from those fundamental rights. I was disappointed that the Hon. Violet Lloyd should give lip-service to reservations about rape in marriage. To seek in some way to couple the atypical examples given to the House by the Hon. N. M. Orr and the Hon. Violet Lloyd as some minor marital tiff being the well-spring of such a major, indeed catastrophic, intervention in the marriage situation as a public allegation of rape is, in my view, to so stretch our credulity as to sell the intelligence of members of this House short when considering these bills.

As I put to the Hon. Violet Lloyd, it is indefensible that clear, unequivocal, proven rape should be allowed to occur in marriage and go unpunished. Take an example, where violent injury is an accompaniment to the other more humiliating assault that occurs with rape. Should the law turn a blind eye to the thousands of domestic situations in which people live together, unhappily, filled with tensions, through economic circumstances desiring some form of continuity for the children's sake, or for myriad personal reasons? In those cases should the community countenance such a heinous crime as rape?

The Hon. N. M. Orr: We did not suggest that women do not have those rights under the existing law.

The Hon. D. P. LANDA: The honourable member's remarks show a fundamental misreading of the present law. I shall not weary the House further on that. The fact is that the crime of rape in marriage will not exist until the Crimes (Sexual

Assault) Amendment Bill becomes law. It is fundamental that the person's rights should not be removed by marriage. One would hope that, if anything, they would be enhanced. The Hon. L. A. Solomons commenced his remarks by saying that the law on rape has been developed over the past 300 years. As I said at the beginning of my remarks, the law that has existed up to the present is, in essence, the same law that has operated for almost 100 years. A change giving full recognition to women's rights is long overdue. It is only fitting that New South Wales should take its place among the enlightened States and bring its law up to date.

The Government's aim is not to increase the number of convictions for rape. Its aim is to give wronged women protection and the right of redress by feeling unafraid to pursue their rights under the law. They should be unafraid, first, in relation to the conduct of the trial that will ensue if a complaint is made and a prima facie case made out. Second, they should be unafraid of not being protected from the public shame that may be visited on them by virtue of the nature of the trial. Statistics on rape show a remarkable variance to the trends in assaults generally. The rate of acquittals overall for robbery with major assault in 1979 was 6 per cent, yet for the crime of rape the rate of acquittals was 33 per cent during 1979.

The Hon. L. A. Solomons: Does the Minister know whether those statistics include acquittals at the committal stage?

The Hon. D. P. LANDA: The figures I have given are for all higher court appearances. In 1979 appearances for robbery with major assaults resulted in 6 per cent acquittals overall.

The Hon. E. P. Pickering: Is it logical to draw the conclusion the Minister is trying to draw from those figures?

The Hon. D. P. LANDA: Two conclusions are open. One is that rape is an area of the law in which there are an astonishing number of baseless complaints.

The Hon. E. P. Pickering: Which could be acceptable.

The Hon. D. P. LANDA: In fact, every informed research on this matter shows—and this has been conceded in all quarters of the community—that it is the exact opposite. The number of cases of rape that are brought to trial is but a small proportion of the number of rapes committed.

The Hon. E. P. Pickering: But——

The Hon. D. P. LANDA: Just a moment. I ask the honourable member to relax. He has no right to make a second reading speech at the moment, not having had the courage to rise at the appropriate time. It could be for that reason or because, a complaint having been made, the complaint cannot stand the rigours of the procedure. I put this premise to every honourable member, and particularly to those like the Hon. L. A. Solomons who have had experience of rape trials in this or any other State. In conducting rape trials it is the object of the defence to besmirch the reputation of the complainant. If the defence is successful in that endeavour, the prejudices that exist in the community will operate in favour of the accused. It is well known in the corridors of the law that if defence counsel can prove promiscuity on the part of the complainant with anyone at any time, anywhere, an acquittal can be obtained. That shows how an offence can be smothered by the prejudices that can be unleashed under the present trial system.

There is no basis in logic, in law or in equity for the proposition that a person's sexual behaviour—especially sexual behaviour with persons unconnected with the trial—has any bearing on the occurrence for which the accused is brought to trial. That is especially so when there are allegations of violent conduct apart from the act of intercourse. Should the defence be that there was no violence, that no threats of violence were made and that the girl consented fully and freely but that other events intervened later to change her attitude and lay the basis for a charge of rape, those matters are infinitely easier to prove than it is for a woman to rebut evidence of prior sexual experience that so tarnishes her reputation that she has relinquished all her rights to choose with whom and how she has sexual relations. It is infinitely easier to prove than for the woman to withstand the battering about her previous sexual conduct.

As the Hon. Marie Fisher said, the Government is committed to recognizing the reality of what is occurring in the community. It is by no means the subject of a deficiency of research to discover that virginity is now by no means the mainstream sexual state of either the male or female of our community. It is, indeed, the minor state. That being so, what woman cannot suffer at a trial of this nature if her previous sexual conduct is to be paraded before the public? The fact is that rape is an assault; assault is provable without the opportunity being available to the accused to make allegations of a character-breaking nature, as is open to persons who are charged with rape. I see no reason why in logic that opportunity to attack the credit of a witness outside the traditional laws of attacking the credibility of a witness should be allowed for this particular offence.

The Hon. L. A. Solomons raised important matters in relation to committal proceedings being held in *camera*. The Government has ensured that the discretion available to the magistrate is wide. The discretion is one that can be applied in accordance with the traditions of the rule of law in this country, and I am sure it will be applied with sensitivity, and always to the benefit of the victim. The retention of rape in the heading and the stigma that it attaches to the intitling of women as rape victims, and men as rape victims, is something away from which the Government should be courageously moving. To suggest, as the Hon. N. M. Orr did, that a sexual **assault** victim will automatically conjure up in the minds of people a rape victim, is proof only of the kind of prejudices that exist. These prejudices have to be diminished by legislation such as this, and shown to be anti-social by their very nature. The Parliament recognizes them as such and is willing to take a lead in that regard.

So far as rape in marriage is concerned, one must never forget some fundamental matters. In a criminal trial the onus is always upon the Crown. That is reiterated by the defence lawyer and is stated always by the prosecutor. It is certainly reinforced by the judge. The Crown must discharge that onus beyond all reasonable doubt. Under the proposed measures that matter will be reiterated by all parties in the trial. Failure to have corroboration, failure to complain, and failure to explain the delay in complaint will be stressed at the trial. There is no diminution of that role. It leaves with the judge a duty to inform the jurors that in reaching their decision they must bear in mind that failure to complain does not represent the complete breakdown of the credibility of the complainant's allegations. The jury will be informed that there may be valid reasons why a complaint was not made.

The Hon. L. A. Solomons expressed concern about the fact that no evidence is produced as to the reasons for not complaining. At first glance I can understand the concern of the honourable member. I refer the House to an instance: because of feelings of humiliation, fear of the trial, fear of a recurrence, fear of the social stigma, a complainant reflects on the matter for twenty-four hours, or two days, and then

complains. That person may not know what it was that made her delay in complaining. She may be in a state of shock. It may be for one of a hundred alternatives that she did not complain. The complainant may be in a state of fright or unable to articulate her reasons. The Hon. L. A. Solomons would know of these facts. When a complainant has been asked why she did not complain I have heard the answer given, "I do not know."

Under the present law delay in complaining would be presented to the jury without the two sides of the coin being put before them. It will now be the duty of the judge to place before the jury the complete facts; he will put to the jury what the sociologists know, what all women know and what all sensitive and aware and enlightened men should know, namely, that there are possibly many good reasons why a complaint was not made immediately afterwards or when it could be reasonably expected to be made, and that those reasons could not be articulated upon by the complainant. I place in a similar category the criticism of the president of the New South Wales Bar Association about evidence of prior sexual history. One of the most serious concerns is this question, which has been debated for eighteen months. It is a matter of regret that the president of the New South Wales Bar Association has gone into print at the eleventh hour expressing concern about this matter. However well motivated it may be in the interests of the accused, the fact of the matter is that the accused will have ample opportunity to prove under the very heavy onus that the Crown has the factors he may wish to prove without the necessity to delve into a complainant's sexual history.

The Hon. L. A. Solomons raised the important matter of statements from the dock. I know the history of that matter in this House, and I respect it. I spoke at length in the historic debate when statements from the dock were preserved in New South Wales. When an attempt was made to deprive accused persons of the right to make a statement from the dock, the proposed amendment to the legislation was defeated with the assistance of some of the enlightened members of the former Liberal Party-Country Party Government. I said at the time that it was an historic night when, if one was never again to take part in debate of an important piece of legislation in this House, one would have fulfilled a worthwhile function by ensuring that unsworn statements from the dock were preserved as a fundamental right in the State's criminal courts.

The proposed legislation will have to be carefully monitored by law officers to see how it works in practice. To be consistent, the preservation of the right of an accused to make a statement from the dock is limited to the extent that an accused will not be able to vilify a complainant by raising her sexual history that is precluded from a trial. I am sure from time to time the Attorney-General and Minister of Justice will take advice on that matter. Needless to say, there will be judicial expressions about it, if it proves to be in derogation of the right of an accused to that ancient and important liberty of the unsworn statement from the dock.

The other matters raised in debate were essentially of detail, and I am sure the Hon. L. A. Solomons will speak to them in Committee. Suffice it to say that this is a proud moment for Government supporters. I thank especially the Hon. Dorothy Isaksen, the Hon. Marie Fisher, the Hon. Delcia Kite, the Hon. R. D. Dyer and the Hon. B. J. Unsworth for their contributions to the debate on this historic measure. People are given too few opportunities in their lives to stand up and be counted on fundamental questions of liberty. It is with humility that I congratulate the Attorney-General and Minister of Justice and the Premier and Treasurer on being able to steer through a difficult period of exhaustive community consultation. All Government supporters are indebted to the women's groups, the civil liberties organizations and

individuals who have put aside their personal prejudices and preconceptions about rape to allow this State finally to take its place as an enlightened society in the twentieth century.

Motion agreed to.

Bills read a second time.

In Committee

The CHAIRMAN The Committee will deal first with the Crimes (Sexual Assault) Amendment Bill.

Schedule 1

Page 5

- 10 (3) Subsection (2) *shall* not be construed so as to affect the operation of any law relating to the age *at* which a child can be convicted of an offence.
- (4) The fact that a person is married to a person—
- 15 (a) upon whom an offence under section 61B, 61C or 61D is alleged to have been committed shall be no bar to the firstmentioned person being convicted of the offence; or

The Hon. L. A. SOLOMONS [8.55]: I move:

That at page 5, line 12, the word "The" be omitted **and** there be inserted in lieu thereof the words "Unless there is an order of the court that the parties to a marriage be separated or the parties are in fact separated, the".

The effect of the amendment is to give rise to equality with the present common *law* situation in the State while retaining the common law situation with respect to actual *coverture*. I adverted at *length* at the second reading stage to the reasons for the amendment and I shall not weary the Committee by going into further details.

The Hon. D. P. LANDA (Minister for Education and Vice-President of the Executive Council) [8.56]: I referred at the second reading stage to the amendment proposed by the Hon L. A. Solomons. The Government regards the provision as fundamental to the bill. The amendment is opposed.

Question—That the word stand—put.

The Committee divided.

Ayes, 16

Mrs Anderson
Mr Baldwin
Mr Burton
Mr Dyer
Mrs Fisher
Mr French

Mrs Grusovin
Mr Kaldis
Mr King
Mr Landa
Mr McPherson
Mr Thompson

Mr Turner
Mr Unsworth
Tellers,
Mrs Isaksen
Mrs Kite

Noes, 15

Dr de Bryon-Faes
Mrs Chadwick
Mr Doohan
Mr Freeman
Mr Holt
Mr Kennedy

Mr Lange
Mr MacDiarmid
Mr Orr
Mr Philips
Mr Pickering
Mr Sandwith

Mr Solomons

Tellers,
Mr Calabro
Mrs Lloyd

Question so resolved in the affirmative.

Amendment negatived.

Page 5

61B (1) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with the other person shall be liable to penal servitude for 20 years.

25 (2) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with a third person who is present or nearby shall be liable to penal servitude for 20 years.

The Hon. L. A. SOLOMONS [9.5]: I notified the Minister for Education and Vice-President of the Executive Council of my intention to move two amendments, consequential upon the passing of the one just rejected by the Committee. I shall not now move them. I come to my next proposed amendment. I move:

That at page 5, all words on lines 21 to 27 be omitted and there be inserted in lieu thereof the words

61B. (1) Any person who has sexual intercourse with another person without the consent of the other person and at the time of or immediately before or after such sexual intercourse inflicts grievous bodily harm upon that other person shall be liable to penal servitude for life.

(2) Any person who has sexual intercourse with another person without the consent of the other person and at the time of or immediately before or after such sexual intercourse inflicts grievous bodily harm upon a third person who is present or nearby shall be liable to penal servitude for life.

The amendment seeks to do two things. First, it seeks to add the concept of the assault taking place immediately before, as well as at the time of the sexual intercourse the subject of the complaint. It is designed to prevent an accused person from splitting the Crown case, as it were, and seeking to escape the possibility of a conviction for the major crime and limiting the possibility of being convicted for the lesser crime. I spoke at length on this aspect in my second reading speech, and I do not propose to speak further on it now.

The second aim and object of the proposed amendment flows from the fact that at least three members from the Government side have said that one of the functions of the gradation of offences will be that it will, among other things, act as a deterrent against the commission of offences of this nature. Having regard to the seriousness of the offences in proposed new section 61B, it is the view of the Opposition that the term penal servitude for life will act as a greater deterrent in the minds of persons who may be minded to commit these offences than the term imprisonment, or penal servitude, for twenty years. There is no practical difference though there may be a different connotation in the minds of some of the persons who may be affected by the Government's proposal.

The Hon. D. P. LANDA (Minister for Education and Vice-President of the Executive Council) [9.7]: The Government opposes the amendment on what it regards as important grounds of principle applying to the criminal law. In considering the amendment the Hon. L. A. Solomons may have overlooked one aspect. The amendment attempts to combine two separate offences and to place a **combined** penalty on them. That is contrary to the tradition of the law which must ensure that a person is tried for each offence, or each count, separately. I should not be surprised, if an information were laid on the basis proposed by the Hon. L. A. Solomons that it would not be bad for duplicity, unless a statutory right to do so existed. The amendment, if agreed to, would provide that statutory right.

It is the view of the Government that, on the facts put by the Hon. L. A. Solomons, the proper course would be for two separate counts to be charged against the accused. The combined penalties could range to **14** years, or even higher, for cumulative sentences. The right of the victim could be well protected and the accused could be allowed to defend himself on charges that may be separate in nature. The accused may be found guilty on one count and not guilty on the other. He would, therefore, have been properly dealt with and his crime would have been tried separately, which has been a tradition of the law from time immemorial.

Question—That the words stand—put.

The Committee divided.

Ayes, 16

Mrs Anderson
Mr Baldwin
Mr Burton
Mrs Fisher
Mr French
Mrs Grusovin

Mrs Isaksen
Mr King
Mrs Kite
Mr Landa
Mr McPherson
Mr Thompson

Mr Turner
Mr Unsworth
Tellers,
Mr Dyer
Mr Kaldis

Noes, 15

Dr de Bryon-Faes
Mr Calabro
Mr Doohan
Mr Holt
Mr Kennedy
Mr Lange

Mrs Lloyd
Mr MacDiarmid
Mr Orr
Mr Phillips
Mr Pickering
Mr Sandwith

Mr Solomons
Tellers,
Mrs Chadwick
Mr Freeman

Question so resolved in the affirmative.

Amendment negatived.

The Hon. J. W. KENNEDY [9.16]: I should like to ask a question of ~~the~~ Minister for Education and Vice-President of the Executive Council concerning proposed section 61D (2) which states:

For the purposes of subsection (1), a person who has sexual intercourse with another person without the consent of the other person and who is reckless as to whether the other person consents to the sexual intercourse shall be deemed to know that the other person does not consent to the sexual intercourse.

Will the Minister explain to the House exactly what consent is needed. Will it have to be in writing and where does the element of recklessness come in?

The Hon. D. P. LANDA (Minister for Education and Vice-President of the Executive Council) [9.17]: Perhaps the House can be spared any more of the tedious frivolity that has resolved round the debate on this legislation. Subsection (2) of proposed section 61D is nothing less than an attempt to establish by statute what is in fact the common law position. The common law provides that the prosecution must prove that a person who has sexual intercourse with another person without the consent of that other person, and is reckless in not seeking to learn whether or not the other person consents, shall be deemed to know that the other person does not consent. That has been established in a judicial decision. I draw the attention of the Hon. J. W. Kennedy to the case of *Director of Public Prosecutions v. Morgan* reported in 1976 Appeal Cases at page 182. However, under the legislation, a defence of honest or mistaken belief may still be raised. An accused person may seek to show that he believed that a woman consented to sexual intercourse. If the Hon. J. W. Kennedy wishes to have more information I refer him to *Criminal Law in New South Wales* by Watson and Purnell, volume 1, at page 99.

The Hon. L. A. Solomons earlier raised a question concerning proposed section 61D. He suggested that in some way the Attorney-General and Minister of Justice had proceeded in this matter against the advice of his officers concerning probative difficulties that may be encountered in this legislation. I have a copy of advice received by the Attorney-General and Minister of Justice from the Solicitor-General, from Mr Porter, Q.C., and from the Deputy Senior Public Defender, Mr Blanch, Q.C., supporting the views of the Attorney-General as presented in the legislation.

Schedule agreed to.

The CHAIRMAN: The Committee will deal now with the Child Welfare (Amendment) Bill.

Schedule 1

Page 4

(2A) Where, in the circumstances referred to in subsection (2)
 (b), a court commits a child or young person to take his trial accord-
 5 ing to law, the court shall forthwith submit to the Attorney General
 and the Minister a statement of the reasons for its decision to do so.

The Hon. D. P. LANDA (Minister for Education and Vice-President of the Executive Council [9.20]: I move:

That at page 4, line 5, the words "submit to" be omitted and there be inserted in lieu thereof the words "furnish the child or young person,".

The purpose of the amendment is to provide the young person or child with the reasons for his committal in the same way as the Attorney-General is apprised of the reasons. This is only fair in the interests of the child.

The Hon. L. A. SOLOMONS [9.21]: The Opposition supports the amendment.

Amendment agreed to.

Amendment (by the Hon. D. P. Landa) agreed to:

That at page 4, line 6, after the word "Minister" there be inserted the word "with".

Schedule as amended agreed to.

Adoption of Report

Crimes (Sexual Assault) Amendment Bill reported from Committee without amendment and Child Welfare (Amendment) Bill reported from Committee with amendments, and report adopted, on motions by the Hon. D. P. Landa.

NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) BILL

SECURITIES INDUSTRY (APPLICATION OF LAWS) BILL

COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) BILL

COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (APPLICATION OF LAWS) BILL

CORPORATE AFFAIRS COMMISSION BILL

CRIMES (SECURITIES INDUSTRY) AMENDMENT BILL

Second Reading

The Hon. D. P. LANDA (Minister for Education and Vice-President of the Executive Council) [9.24]: I move:

That these bills be now read a second time.

The purpose of these bills is to implement in this State the first stage of the national scheme for companies and securities. The basic framework of the scheme is set out in the formal agreement dated 22nd December, 1978, between the Commonwealth and the States.

Debate adjourned on motion by the Hon. D. P. Landa.

Precedence of Business

Motion (by the Hon. D. P. Landa) agreed to:

That the order of the day for resumption of the adjourned debate of the question take precedence of all other business on the notice paper for next sitting day.

ADJOURNMENT

Port Stephens Shire Council

The Hon. D. P. LANDA (Minister for Education and Vice-President of the Executive Council) [9.26]: I move:

That this House do now adjourn.

The Hon. VIRGINIA CHADWICK [9.26]: I wish to raise a matter of immediate and urgent concern that can be corrected by action instigated by the Minister for Local Government and Minister for Roads. I refer to the conduct of Port Stephens shire council. Though these matters spread over at least five years, they are continuing and accelerating at such a pace that the activities of the council are daily a matter of public comment and community disquiet. Indeed, for a person to say he is involved in this council raises a presumption of self-seeking. I feel sure that many fine people serve on the council, and it is time to separate the wheat from the chaff.

In attempting to correct this matter, I believe the Minister for Local Government and Minister for Roads should take immediate action. First, he should act upon the police report he holds on allegations of fraud made of the previous shire president. If the report proves the allegations groundless, this too should be made public. Second, a complete investigation should be made of matters relating to pecuniary interests and the alleged failure to disclose those interests by several members of Port Stephens shire council. Finally, to avoid a repetition of current problems in this council, and I should imagine some other councils, the Minister should reappraise urgently the precise meaning of section 30A subsections (1) to (7) of the Local Government Act.

The first incident I wish to raise concerns Victory View Parade, Tanilba Bay. Mr and Mrs Gil Voysey bought lot 39, Victory View Parade, in 1967 and over a period of years made repeated applications for an access road and made inquiries when other services would be available. Finally frustrated, the Voyseys sold the land on 6th April, 1979, for \$6,000. The purchaser was Mrs B. McKenzie, wife of the shire president. On 15th January, 1980, Councillor B. McKenzie, president of the shire council, purchased lot 35, Victory View Parade. On 22nd July, 1980, at a meeting of Port Stephens shire council, with Councillor McKenzie in the chair, a report stated that "a request has been received concerning the construction of Victory View Parada, Tanilba Bay". Councillor McKenzie moved that the work be done. The motion was seconded by Councillor Boyd who happens to own a plant hire and gravel business in Port Stephens shire. The motion was carried.

Councillor McKenzie has stated publicly that he believes he was in order in chairing the meeting, moving the motion and voting on it. With many others, I disagree. Councillor McKenzie claims that the disclosure provisions are met by a notation in the disclosures book which states: "3.3.80, member on matters relating to B. and B. J. McKenzie." This cryptic notation should not be regarded as an acceptable statement of interest. I do not accept that a person who stands to make considerable gain should chair the relevant meeting, nor do I believe that such a person should be the mover of the motion the passing of which will bring him personal profit.

Checks with estate agents suggest that a block in Victory View Parade, now a tar-sealed road with kerbing and guttering, traversing underdeveloped land, is worth about \$25,000. It is of interest to note that Victory View Parade is one of only two roads constructed in recent times with a tar-sealed carriageway and made kerb and guttering. The other road is Peace Parade, Tanilba Bay. One of the waterfront reserve blocks was sought on 12th March, 1980, by Mr and Mrs M. McKenzie.

The Hon. D. P. Landa: This has all been reported in the media.

The Hon. VIRGINIA CHADWICK: At that time Peace Parade was a gravel road. The work to tar-seal the carriageway and **form** the kerbs and gutters, was authorized at a meeting of the Port Stephens shire council on 22nd January, 1980, with Councillor B. McKenzie in the chair. Such situations raise questions in even the most naive mind. The position relating to pecuniary interests must be clarified. Otherwise, I fear that inevitably the problem will recur. I say this because Councillor McKenzie and his wife own forty-two blocks in the Tanilba subdivision alone. I have no knowledge of any interests the councillor may have elsewhere in Port Stephens. These blocks have been acquired in the past twelve years. Councillor McKenzie has been a councillor since 1968.

Not only Councillor McKenzie is in this position. As I mentioned, one councillor has a plant hire and gravel business that has served the council. Another is an earthworks contractor, whose firm does work for council. Another, the previous shire president, is involved in land developing and real estate. Unless the meaning of declaration of interest is clarified, the current problems remain and the situation is

explosive. At best, the matter of non-disclosure has gone on for so long that it continues out of ignorance. At worst, some councillors are flouting the provisions of the Local Government Act, and using their positions to feather their own nests.

I turn to another incident involving a proposed caravan park in Main Road, **Fullerton** Cove. It may be of interest to the Minister for Education and Vice-President of the Executive Council that this matter was not reported in the media. On **23rd** December, 1975, Port **Stephens** shire council discussed an application to establish a 250-site caravan park at Main Road, Fullerton Cove. It was resolved to forward the application to the appropriate departments, such as the Department of Main Roads, for comment. On 10th August, 1976, the council approved the caravan park application. The application was made by **Reander** Industries. A copy of a company search from 1976 shows that **Reander** Industries was incorporated on 20th June, 1974, the company secretary was Val Freeman, one of the directors was **Val** Freeman, and one of the **two** management shareholders was Val Freeman of **Newline** Road, East **Seaham**. However, I ask honourable members to note that on 26th June, 1979, changes were registered and among those changes one finds that Robert William Freeman was included. Not surprisingly, his address is **Newline** Road, East **Seaham**.

A 1981 company search of **Reander** revealed one of the directors as Robert William Freeman and the other as R. J. **Newbury**. It showed also that Janette Freeman held ten A-class shares and **Andrew** Freeman ten B-class shares. The address of **Reander** was listed as 63 Port **Stephens** Street, Raymond Terrace. At that address a veterinary surgeon conducts a business, and has done so for at least the past two and a half years. At the time of the caravan park application, Councillor Robert Freeman was shire president. Council minutes show that he chaired the meeting at which approval of the **Reander** application was given. The minute book showed no disclosure of interest at the meeting of 10th August. The disclosures book also showed no disclosure relating to an interest in a caravan park or **Reander** Industries in 1975 or 1976.

In 1976 a reporter, Mr Tom Barrass, interviewed Councillor Freeman in the president's office, having received information about an alleged failure to disclose pecuniary interests in **Reander** Industries and the proposed caravan park. Councillor Freeman told Mr Barrass that he did not have to disclose his interest at the meeting as he had previously submitted notice of interest in writing. Mr Barrass asked if he could see the notice, whereupon he was asked to wait outside. Soon afterwards Councillor Freeman had a visitor, a man who was at the time a member of the New South Wales Legislative Council, Bob Scott. The visitor entered the president's office. Councillor Freeman left his office a number of times. After some three-quarters of an hour, he handed Mr Barrass a copy of the notice, which was dated 15th August, 1974, and addressed to the shire clerk. The notice read:

Dear Sir,

I wish to declare my interest under s. 30A (5) Local Government Act, as an interested person in a company to be known as **Reander** Industries and any other matter (other matter repeated) which Robert William Freeman is associated with.

Yours faithfully,
R. W. Freeman.

Some three weeks or so later, Mr Barrass was visited at the office of the **Newcastle Herald** by a detective sergeant who identified himself as a member of the company squad from Sydney. He was investigating an alleged attempt to insert the declaration

of interest to which I referred earlier. Apparently the council has a cross-indexing system which made insertions fairly easy to detect. I regret to say that other than rumour, no one knows what happened thereafter. However, I have reason to believe that the Minister for Local Government and Minister for Roads holds the police report. I urge the Minister to make the contents known. If he does not do so, the two persons whom many believe were responsible for the alleged insertion have their reputations under a cloud of suspicion. Also, it begs the questions; why the Minister will not release the report; who he is trying to protect; and why is he protecting them.

The next matter to which I refer concerns the development of Raymond Terrace industrial land. In 1974, application was made to the council by Reander Industries to subdivide industrial land, being lot 18, deposited plan 238160, Pacific Highway, Raymond Terrace. Acting under delegated powers held since 1962, the shire clerk, Mr R. Connell, wrote to the consulting surveyors, Pulver, Cooper and Blackley, and approved the application subject to eight conditions, one of which was:

S. 311A (2) of Local Government Act which provides that this land may not be subdivided until a certificate has been obtained from the Hunter District Water Board; that the applicant has complied with S. 34B of the Hunter Water, Sewerage and Drainage Act, 1938.

Complications arose, and the shire clerk referred the matter to Port Stephens shire council on 9th September, 1975. The minutes of a council meeting of 25th September, 1975, show that the shire clerk reported:

A subdivision dividing the above land into forty-six industrial allotments was approved by council on 9th December, 1974, one of the conditions being that sewerage facilities be provided.

The landowner's name was listed as Reander Industries, and the applicants to subdivide the industrial land as Pulver, Cooper and Blackley. The minutes show that the president, Councillor R. Freeman, chaired the meeting and signed the minutes. I shall not weary the House with fine detail. Suffice it to say that for both practical and financial reasons it had proven difficult to provide sewerage. At that time the council's code was that all residential and industrial subdivisions should be sewerred. Hence a problem arose. On 2nd September, 1975, the planning committee met and subsequently forwarded a recommendation to the council. Councillor Freeman attended the meeting. The council adopted the following recommendation of the planning committee:

That the condition of subdivision approval be amended to substitute the word "sewerage" with the words "that a covenant be entered into under section 88B of the Conveyancing Act, requiring sewerage, septic tanks or effluent disposal acceptable to Port Stephens Shire Council upon building application being approved".

Despite the code, the council gave approval. As I said, Councillor Freeman chaired that meeting and attended the planning committee meeting that forwarded the recommendation to the council. The minutes of the planning committee meeting and the council meeting of 25th September, 1975, show that no councillor gave notice of pecuniary interests and disclosure was not made on 2nd September or on 9th September. It is interesting to note also that one sign advertising the industrial land for sale carries the name of Newbury Real Estate and another is in the name of Nelson Bay Real Estate. Newbury Real Estate no longer is owned by Mr R. Newbury, but honourable members will recall that Mr Newbury is a director of Reander Industries. Nelson Bay

The Hon. Virginia Chadwick]

Real Estate is a business name only and not a registered company. Though it is **not** directly owned by Councillor Freeman, he is very much connected with that business.

I have no wish to deal in rumours. To the best of my knowledge the information I have presented is factual. However, in assembling the material I have been horrified at the fear held by many persons in the area, the stories of threats made and **the** intimidation of which people have told me. I have heard that members of the council browbeat landowners to give permission for a councillor to submit unit development applications on their behalf. In case the Minister proposes in reply to tell the House that all of this information is contained in newspaper reports, I should inform the House that the matter concerning the two roads is certainly contained in newspaper reports but that the other matters to which I referred have not been the subject of newspaper comment. I understand that allegations have been made that members **of** council are browbeating landowners to give permission for a councillor to submit unit development applications on their behalf and that they are working on commission of between 5 per cent and 10 per cent of the total development application. Allegations have been made also that on behalf of owners one councillor sells council approved applications to developers.

I believe some residents who objected to unit development in their area were told by councillors that if they continued with their objections the council would approve the building of a **carpark** in front of their residences. The rumours, **allegations** and real fear certainly permeate the area. If the council's activities were investigated, it could be established whether there was any substance in the allegations, which I personally have no way of proving. I am equally disturbed about troubles involving the Radburn Estate where council wanted to permit a \$50 million high rise unit development, and Magnus Street, where the council wanted to build a retirement village on land that many people believed was a swampland reserve. That land includes an area designated for open space recreation by interim development order No. 23 on a map published in March 1974. Apparently that was a mistake, and in October 1974 an amendment was published. Owners believed the land had been designated as a reserve until they found that development applications had been lodged by persons who were more in the know than they were.

The proposal to build high rise units at Tomaree Point is causing concern also. The Health Commission ban on septic tanks and pump out systems for Tomaree Point, which affects an Anna Bay subdivision, has worried many people in the district. Honourable members will recall that the industrial land subdivision was amended **so** that people could have septic tanks installed in the area. I am concerned also about the council's actions regarding the hospital, which I regard as deliberately contrary to the Local Government Act. Some honourable members may have noted the decision to close the small Nelson Bay hospital. I was surprised to learn that the Port **Stephens** shire council had decided to fund a new fifty bed hospital at an estimated cost **of** between \$2 million and **\$3** million. The Local Government Act empowers **local** government to cope only with infectious diseases or to establish a hospital for the aged.

Though they are disappointed about the closure of the original hospital, medical practitioners in the district doubt whether a fifty-bed hospital could be used fully, as the old hospital had fewer than a dozen beds, and seldom were they all occupied. Despite the practicality and legality of the situation, the council proceeded. On 24th March the council agreed to sell land at Salamander Bay for \$250,000. The new owner of the **land** also owns the adjoining block. Some estate agents in the area queried the price paid, for the land would subdivide into about forty blocks,

Adding \$10,000 for sewerage and other services to each block would bring the ~~price~~ to about \$13,000 a block. Serviced land in that area sells for about \$25,000 a block. The point that I seek to make is that the land was sold to provide money towards the cost of a fifty-bed hospital that I do not believe the council has the authority to construct. Though Councillor McKenzie recognizes that he does not have the power to construct the hospital, he has been reported ~~as~~ saying:

I shall sit on the steps of Parliament House in Macquarie Street with my billy and damper until the legislation is changed or the Government builds the thing itself.

Finally I shall refer to the Port Stephens shire clerk, Mr R. Connell, who is overseas. I have reason to believe that some members of council blame Mr **Connell** for the adverse publicity that the council has received. I can say categorically that I have never spoken to Mr Connell about these matters. At a meeting ~~of~~ the council on 17th March the council went into committee to discuss recent council publicity and other matters. It was decided that at the meeting of **24th** March the council would move to strip Mr Connell of his delegated authority. Though the meeting ~~was~~ held in camera, the move to curb the shire clerk's powers became public knowledge. I agree with the Minister for Education and Vice-President of the Executive Council that a report of that matter appeared in the *Newcastle Herald*. **Thank** heavens that it ~~did~~,

The Hon. D. P. Landa: I am not being critical of that.

The Hon. VIRGINIA CHADWICK: The newspaper published also the fact that it was planned to transfer the powers of the shire clerk ~~to~~ the shire president, Councillor McKenzie, of whom I have been so critical. If the Minister believes that there is something wrong in these matters being publicized by the *Newcastle Morning Herald*, I should say only that I am pleased that they were.

The Hon. D. P. Landa: I told the honourable member that I saw nothing wrong with that.

The Hon. VIRGINIA CHADWICK: That transfer of powers would have made Councillor McKenzie in effect the chief administrative officer. Though I personally have not had a deep involvement in local government matters, many other honourable members of this House have a vast experience in that field and would know that by the transfer of those delegated powers Councillor McKenzie would have been able to act as a council of the whole. Following the publicizing of the plan, at its meeting on 24th March the council moved to defer a decision on the transfer of the powers to Mr McKenzie. It is ~~amazing~~ that certain councillors should be ~~allowed~~ to pursue that sort of vendetta against the shire clerk. It is obvious to me that the council blamed Mr Connell for the fact that the *Newcastle Herald* and such people as me should have access to the information, council minutes and the disclosure book.

I am appalled at the prospect of such power being in the hands of a president and council which, as I have outlined already, flouts and alters its own building and zoning codes to suit itself and the interests of some councillors, disregards the Local Government Act in deciding to finance a hospital, which it has no authority to authorize, shows cynical disregard for provisions relating to disclosure of interests on numerous occasions and rides roughshod over public opinion in terms of residential and high rise development. It is because of situations such as this that those of us who form one of the tiers of government are seen with scepticism by the public in regard ~~to~~ our motives.

I ask that the Minister investigate the matters I have raised, make public the report which he holds and clearly enunciate what is expected of those who hold an interest in matters before council under section 30A of the Local Government Act. I act out of a belief that the community deserves honest government which works without fear or favour. Failure to act and to investigate these matters can only lower the regard in which honourable members, as elected representatives, are held by the community.

The Hon. D. P. LANDA (Minister for Education and Vice-President of the Executive-Council) [9.52], in reply: I assure the Hon. Virginia Chadwick and the House that the Minister for Local Government and Minister for Roads is fully appraised of the allegations she has put before the House, the majority of which have already appeared in the *Newcastle Herald* and upon them the Minister in the other place is acting. The Minister for Local Government and Minister for Roads is concerned that this non-Labor council should have levelled against it allegations as serious as these. I suggest to the Hon. Virginia Chadwick that if she is concerned about the matter she should do what she has failed to do so far, that is, make known to officers of the Department of Local Government any details she possesses so far as substantive allegations are concerned against the council.

I assure the Hon. Virginia Chadwick that the matter will receive the closest attention and scrutiny by the Minister in the other place. On his behalf I invite any person who has any matter which appears to require investigation by the Department of Local Government, or by the police, to inform the department or the authorities, preferably supporting the complaint with statutory declarations. I urge that course also upon the Hon. Virginia Chadwick, if she has any substantive matters she wishes to put before the Minister. I assure all honourable members that the Minister for Local Government and Minister for Roads is fully aware of the matter and is investigating it in the competent way for which he is now a legend in local government.

The Hon. Virginia Chadwick: Will he publish the police report?

The Hon. D. P. LANDA: The Hon. Virginia Chadwick again displays the infantile approach she has adopted in search of a few headlines. Such a document obviously would contain material which may, or may not, be capable of being proved in a court, or may be libellous. The report may prejudice any future investigation if it were disclosed now. To suggest that such material be made public now, prior to the possibility of prosecution being fully examined, shows that, in her eagerness to obtain cheap headlines, the Hon. Virginia Chadwick has proceeded in this manner, though, as a citizen, she should have been willing to go in the proper way to the authorities and make known her allegations. If she were dissatisfied with the response to the complaint she might then have raised the matter in the House.

I assure the Hon. Virginia Chadwick that the Minister for Local Government and Minister for Roads, whose reputation for integrity, honesty and ability to control his responsibility is second to none in the State, is keeping a watchful eye on the matter. The investigations are being handled in the professional manner they deserve. I shall refer the matter to the Minister in the other place.

Motion agreed to.

House adjourned at 9.55 p.m.
