Bail Amendment (Repeat Offenders) Bill.

Second Reading

Mr TINK (Epping) [10.00 a.m.]: I move:

That this bill be now read a second time.

I wish to dedicate the Bail Amendment (Repeat Offenders) Bill to Patricia van Koeverden, who was brutally murdered this week by a repeat violent offender. I also wish to dedicate the bill to Nichole Collins and Lauren Barry, the Bega schoolgirls who were brutally murdered some years ago by a repeat violent offender. If ever there were a need for a bill to be passed by this House to cover a matter of urgent and pressing public importance, it is this bill.

The object of the bill is to amend the Bail Act to provide for a presumption against bail for certain offences where the offender committed the relevant offence while on bail for another offence, while on parole for another offence, while subject to a sentence, but not in custody, or to a good behaviour bond or an intervention program order relating to another offence or while in custody; to provide for a presumption against bail where the offender has previously been convicted of the offence of failing to appear before a court in accordance with a bail undertaking; to provide for a presumption against bail in respect of indictable offences where the offender has previously been convicted of one or more indictable offences; to require a court or authorised officer, when determining whether to grant bail to an offender referred to in the bill, and when considering the interests of the person, to take into account the nature of the criminal history of the person, having regard to the nature, seriousness and number of those offences and the periods between them; and to make other consequential amendments and provisions of a savings and transitional nature.

In recent times the bail debate has centred around repeat property offenders. The infamous Adam Speyer is one example of a repeat property offender. Indeed, he himself ran a commentary in the *Daily Telegraph* on the inadequacies of the Government's bail laws for repeat offenders. But this week we have had the most appalling reminder of the inadequacy of the Government's bail laws in respect of violent offenders of the most serious kind known to the criminal law. This week a young woman, Patricia van Koeverden, lost her life to a man who was already under the notice of the authorities for violent offences against her for which he was awaiting sentence by the court, and who had a long and violent history of repeat violent offences dating back to 1974. That woman lost her life in the most violent and appalling circumstances imaginable because the bail laws of this State failed to protect her.

As long ago as 1997 Lauren Barry and Nichole Collins, two Bega schoolgirls, lost their lives to a repeat violent offender who was out on bail under bail laws for repeat violent offenders that were no better than those laws are today. Although the present Government has attempted to change the law, the unmitigated and complete failure of its attempts is, unfortunately, recognised in what happened this week as a consequence of a bail decision taken by the Supreme Court on 15 April. That is an important date because it was well after the recent State election.

In the lead-up to and during the State election the Premier and others perpetrated one of the most disgracefully false and misleading representative campaigns I can recall. Just about every letterbox in New South Wales received a number of brochures, under the Premier's signature and showing the Premier's photograph, stating "no bail for repeat offenders". The statement was also made in community newsletters funded by this Parliament, in community letters funded by the electorate mail-out allowance, of which I have here just one example, and also in ALP campaign literature and the infamous brochure of the honourable member for Georges River, which contains false and misleading photographs of police faking an arrest and also—not surprisingly and very disappointingly—claims in bold letters, "Gaol, not bail, for repeat offenders".

During the recent election campaign the Coalition did its best to argue that this was a malicious, deceitful and deliberate distortion of the law, as the Premier at least well knew. If there were ever any doubt about that, the bail decision of 15 April, one of the direct consequences of which is the murder of this poor woman, is the final proof of the falsity and dishonesty of those Labor Party campaign and community brochures.

The Parliament now has the opportunity to make amends for this state of affairs. Why can we not begin the Fifty-third Parliament with a bipartisan approach to amending a law that plainly, over a series of murders and a series of other offences, has been repeatedly shown to have failed? Why can we not all get together and support this bill, begin this Parliament on a bipartisan basis, and do something constructive to further protect the people of

New South Wales from violent and repeat offenders and other offenders who are such a problem for the police and other people in relation to a range of property offences? Let us get this bill through the Parliament in a bipartisan approach to fixing a problem that at the moment, regrettably, is continuing to take the lives of innocent people.

In recent times the bail laws in this State have had a sorry and inadequate history, through a number of Attorneys General and Police Ministers who have served under the current Premier. As long ago as 14 October 1998 the then Minister for Police, Paul Whelan, said, "The presumption in favour of bail for certain offences is to be removed." On 24 February 1999 the *Daily Telegraph* reported:

Police yesterday urged magistrates to seriously consider not granting bail to convicted thieves after a man responsible for eight break and enters … failed to appear for sentence.

I pay my respect to the police, including both the former and current police commissioners of New South Wales, who have been absolutely relentless and tireless in their support of meaningful changes to the bail laws. It is the police of this State more than any other group who know how grievously the current bail laws are failing them and the public. Time and time again the police are forced to go after repeat offenders who are given bail. In Newcastle, police were forced to listen in court to a woman plead her case against the accused being granted bail. The police went to court with her and did their best under existing bail laws to argue her case. She has now been murdered.

However, the courts make the decisions, and they do so according to the rules of this Government. It is those rules that must be changed. On 6 November 1999 former Commissioner Ryan—and it is a matter of record that he and I had much to disagree about—called for tougher bail laws. A long time later, on 20 March 2002, the Premier was quoted in the *Illawarra Mercury* as claiming that the Government was cracking down on bail for repeat offenders. On 30 May 2002 Dr Don Weatherburn of the New South Wales Bureau of Crime Statistics and Research released a report relating to repeat offenders. It stated:

Nearly 15 per cent of those charged by police and granted bail by the NSW Local Courts are absconding while on bail …

Seventeen per cent of those with prior convictions who were granted bail by the NSW Local Courts in 2000 absconded while on bail, compared with just 4 per cent of those who had no prior convictions.

Commenting on the findings of the report, Dr Weatherburn further said:

… they showed that absconding on bail by Local Court defendants was a serious problem, particularly amongst repeat offenders.

In my view the *Daily Telegraph* has run an admirable campaign in an endeavour to have the bail laws changed. On 6 January 2003, referring to the New South Wales Commissioner of Police, the *Daily Telegraph* stated:

Police Commissioner Ken Moroney has ordered the tracking of magistrates' bail decisions, declaring he is "fed up" with courts letting down the community and the police.

According to the article of 6 January, some of those decisions were reported as follows:

The situation was highlighted last week when a magistrate decided to granted bail to three youths who are accused of murdering [a person in Emu Plains] …

A male from the Newcastle area with an extensive criminal record of break and enters, drug matters, assault and resisting arrest, refused bail by police but given conditional bail for break and enter, drug matters and assault …

An older male from the Eastern Suburbs with a long criminal history of assault and stealing, who is known to have assaulted police, was granted bail by the court after allegedly assaulting and resisting police.

Police talk to the victims of crime and then have to stand by and watch offenders get bail, and then rearrest the offenders—particularly property offenders—time and time again. Police also know that offenders who assault police are granted bail. Often offenders who assault police will reoffend. The notorious Mr Adam Speyer became infamous because he committed offences whilst on bail on so many occasions that it has become hard to keep track of them. He was accused of breaking the law 34 times in three years, but he still got bail. If the Premier had any shame about this man being the greatest recipient of largesse under the Bail Act, he would have been embarrassed by the ultimate humiliation of Mr Speyer running a critique in the *Daily Telegraph* about the inadequacy of the Government's bail laws. On 27 January the *Daily Telegraph* stated:

Even Speyer, who police described as an habitual offender with no respect for the law, has labelled the bail system a joke.

Speyer is one of the greatest beneficiaries of continuing bail for repeat offenders in New South Wales criminal history. During the recent election campaign the Premier had the hide to continue to lie to the public of New South Wales when he said there would be no bail for repeat offenders, but Mr Speyer, a professional crook, knows better than the Premier. The article reported Mr Speyer as saying:

> They're not doing their bloody job properly. I'm not going to challenge it though. If I can get out of being locked up then I will.

To be fair to the man, he is putting the Government on notice that its bail laws are a pathetic disgrace. Even Speyer is calling on the Government to do something about the laws. He said further:

> I want people to see what's going on. There are a lot of people worse than me out there on bail.

How true! The appalling murder in Newcastle this week demonstrated just how true Speyer's words are. However, there is still a revolving door, a complete inability by the Government to come to grips with bail laws. Last year in a great flurry of media speculation and activity the Premier finally got around to changing the bail laws. But all he did was remove the presumption in favour of bail for certain repeat offenders; he put no presumption either way. In other words the message, the direction, the rule for the courts is: We will leave it up to you guys. Despite Mr Speyer's critique about inadequate laws—and he is a practitioner in the field of criminal activity—the Government does not believe there ought to be a presumption against bail. The Government has decided to settle for no presumption either way, but that policy was sold to the electorate as "no bail for repeat offenders". Since the election the police have tried to do something about bail laws and, again, are pushing to have the bail laws tightened. On 7 April an article in the *Daily Telegraph,* quoting the internal police working party sources, stated:

> Bail laws in NSW should be rewritten to make hardened criminals prove that they are no threat to public safety … the Attorney General's Department—

a separate working party—

> are concerned the changes may affect basic rights of justice and are attempting to block the plan.

After all the Premier's promises during the election campaign, after all the false and misleading representations, the Premier, in presenting a new Government, said, "Fresh faces, a fresh approach". But all we end up with is NSW Police and the Attorney General's Department at loggerheads over the most fundamental criminal reform needed in this State. The Premier has to show some leadership. He should speak to the Minister for Police and the Attorney General and tell them to support this bill. Last night, at the eleventh hour, when the Government's spin doctors realised what would be appearing in today's *Daily Telegraph*, someone scrambled to make the late deadline with some weak comments.

By the way, no Minister has been prepared to put his name to those comments. I hope that today a Minister, or even the Premier, might be sufficiently shamed by what was said during the election campaign and about the current state of the law to make an announcement. But last night and today no-one has put their hand up to claim those comments. An airy-fairy suggestion was put out by government sources that the Australian Capital Territory [ACT] legislation would be the precedent.

There are two fundamental problems with the Australian Capital Territory legislation. First, it is plain from section 9A that the provisions against bail for repeat offenders apply only to serious offences punishable by imprisonment for five years or more. The problem is that Mr Speyer and all his professional criminal colleagues are dealt with summarily in magistrates courts, where the maximum penalty for property offences is 12 months imprisonment. Strike one against the Government's idea of adopting the Australian Capital Territory legislation. Similar provisions would not have any impact on Mr Speyer and his mates.

Secondly, the legislation has effect only when a person is before a court for a serious offence and another serious offence is pending or outstanding. At the time of the bail hearing of the man who murdered the poor woman in Newcastle this week, as I understand it, he had no other serious criminal matter pending. Yes, he had a long criminal record for violent crimes but he had no earlier serious criminal matter pending. One can imagine how that may happen: somebody commits a violent crime or a series of crimes, nothing happens for a few years, and the offender comes to notice for a serious violent crime. Unless he then commits another serious violent crime while out on bail, the ACT provisions would not apply. They only operate when he is before the court for a serious crime that is pending or outstanding.

As I understand the facts of the terrible Newcastle tragedy—I will not put the man's name on the record—the murderer of the poor victim of that crime would not have been subject to the ACT bail laws for repeat offenders. The bill, on the other hand, makes it very plain that there is a presumption against bail in respect of indictable offences where the offender has been convicted previously of one or more indictable offences. If the bill could have been applied to the Newcastle tragedy, there would have been a presumption against bail for the murderer. When he appeared on 15 April these provisions would have kicked in and he would not have been let out of gaol. He would have been in custody and he would not have had an opportunity to commit the murder.

The bill does apply to the Speyers of this world, to people who are at liberty, on bail, on parole, serving a sentence but not in custody, subject to a good behaviour bond or an intervention program, or any of those categories, including being convicted of a previous indictable offence, whether on indictment or summarily. In Mr Speyers'

case, larceny—which seemed to be his specialty—is an indictable offence under section 117 of the Crimes Act. Even though he was finally found by the authorities and compelled to attend the magistrates court to be dealt with summarily, he was nevertheless covered by the bill.

The ball has been in the Government's court for eight years but nothing has happened. This House should do something about a law that has failed the ordinary men and women who are victims of crime. We are all prone to have our houses burgled, we are all prone to property offences. As the police will tell anyone who asks, property offences are committed very significantly by repeat offenders, and that impacts on crime rates. Targeting repeat offenders and dealing with them effectively whilst they are on remand for offences they have already committed makes a vital contribution of driving down and preventing crime. A repeat offender who is in custody is prevented from committing other crimes. To my mind that is a simple proposition. It is also a fairly simple proposition to the police commissioner, the Police Association and just about every frontline police officer I have ever spoken to, but it still seems to elude the collective wisdom of the New South Wales Cabinet.

The ball is in our court to change the rules. People will criticise the judiciary and rulings made in individual cases. Not all rulings will be right. With great respect to the judge hearing the bail application in Newcastle, I believe that the result was a terrible mistake. But at the end of the day if we know that the rules are not right, if we are told by repeat offenders that the rules are not right, it is our responsibility to take note and do something. Could any honourable member go to a meeting in their electorate and argue with Mr Speyer, if he was there, that the current rules are right? Could any of us go to a meeting in any of our electorates and argue with local police who might be attending that they should not be getting better support from us when it comes to changing the bail laws?

This bill raises a presumption against bail and we ought to support it. I assume that debate on the bill will be adjourned today. With three sitting days next week, there is ample time for the Government to consider the bill and even deal with it as Government business. For all I care, the Government could introduce an identical bill, take it over, plagiarise it, steal it. I do not care. Just do something. Bob Carr has the numbers, and he should do something constructive with them to make amends for the disgraceful lie and misrepresentation that he made during the election campaign. Fix it up!

Mr Sartor: Point of order: Twice now the honourable member for Epping has accused the Premier of lies or whatever. I am not as familiar with the standing orders as you would be, Mr Speaker, but I would have thought he has crossed the line on that issue.

Mr SPEAKER: Order! The point of order taken by the Minister has been the subject of substantial debate in this Chamber. Although the Chair extends a degree of latitude to members who question the veracity of statements made by other members, a claim that a member has told a straight-out lie is out of order unless the claim can be verified. On this occasion I do not believe that is the case. I uphold the point of order.

Mr TINK: I trust nobody else will die at the hands of a repeat violent offender in this State before the Premier changes the law. It is obvious to me that in this State there is a high risk of people suffering that fate. If the Premier did not get the message after what happened to the Bega schoolgirls, let us hope that he got the message after the Newcastle tragedy. There is time this week and next week to make amends to fix this problem and to support the bill on a bipartisan basis. I commend the bill to the House and trust that next week it will receive bipartisan support. Out of deference to the Minister's sensitivities, unless the Government is playing fast and loose with the facts, I trust that the Government is well advanced in looking at the Australian Capital Territory legislation. I trust that the Government will understand, when it looks at the legislation, that it is not enough. Here is the bill to fix it, so let us get it done next week.