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## BAIL LAW REFORM

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**Mr PETER DRAPER** (Tamworth) [12.31 p.m.]: Last night the Parliament passed amendments to the Bail Act restricting bail to anyone charged under Commonwealth terrorist offences. Over the past week a series of decisions to give bail to terror suspects made national headlines, sparked public outrage and led to the fast-tracking of these amendments. Our society at large is becoming increasingly concerned about our judicial system's attitude toward bail, and it is no different for communities in my electorate. The Bail Act, which the Attorney General himself has described as "a confusing patchwork of amendments", is currently undergoing its first thorough rewrite since its introduction in 1978. That is long overdue but I welcome this window of opportunity as I strongly believe there is room, by way of amending section 25A of the Act, to increase police powers in appealing bail decisions.

In the electorate of Tamworth, a series of local court bail decisions has resulted in people accused of violent crime being released back into the community and subsequently making headlines. One example this week in the *Northern Daily Leader* was "Arrest warrant issued for bashing accused". The story detailed how police issued an arrest warrant for a 28-year-old man who failed to appear in court after allegedly attacking two neighbours. The man had been released on bail on charges of aggravated break and enter with intent, aggravated break and enter while armed, entering enclosed lands, assault occasioning actual bodily harm, and escaping police custody. It is alleged the man bashed his female neighbour before attacking her male partner with a steel bar and embarking on a three week run from police. Despite this history, he was given conditional bail but failed to appear on his set court date.

Another case involved a man who was also released on bail after being arrested and charged with assault over a particularly violent public attack on a male victim. Police strongly opposed this suspect's bail as they had a compelling cache of evidence

that included the incident being caught on video. The man was a registered sex offender and with his history was likely to receive a custodial sentence. His bail conditions stated he was not to enter Tamworth but within a short period of time he allegedly returned to the city and was caught bashing on somebody else's door. The local court in Tamworth is an extremely busy place, processing hundreds of defendants each month, and in the majority of cases the right decisions are being made in relation to keeping violent offenders behind bars. But I am greatly concerned that in cases where the police prosecutor strongly believes the decision has been inappropriate, his powers under section 25A of the Bail Act are limited.

Police reflect community expectations of the judicial system and I share their concerns that habitual or violent offenders are being released on bail contrary to police recommendations. According to NSW Police bail statistics, in the 12-month period between 1 January 2002 and 31 December 2002 police refused bail in 105,773 matters while the courts released more than 65 per cent of those suspects on bail. As the Act stands today, if a suspect is free on bail police can ask for a bail review particularly if they have fresh evidence that strongly indicates the accused could pose a threat to society. The review of a bail decision is pursued through a higher court but it is not popular with police. It is not only a time consuming, lengthy process requiring reams of paperwork, it comes too late because the suspect has already been released.

To circumvent this process an amendment was recently introduced through the Bail Amendment Act 2003, which inserted section 25A into the Bail Act. This amendment permits police prosecutors to stay certain bail decisions made by magistrates or justices at the accused person's first appearance in the Local Court. Once lodged, the stay of proceedings will keep the suspect in custody, and the bail application is heard in the Supreme Court. The offences that are subject to the stay include murder, any offence that carries life imprisonment and certain sexual offences committed on children under 16 years of age. I share the belief, as do police, that section 25A does not go far enough in its application. I believe the section should apply to offences where there is no presumption in favour of bail such as serious personal violence offences.

When dealing with serious criminal offences against victims in the Australian Capital Territory the Act stipulates that if there is any potential threat to the victim or likelihood of violence then the rights of that victim outweigh the rights of the defendant to bail. In South Australia section 25A legislation applies to all offences. I concede there could be some fears of the system becoming clogged due to stays being lodged left, right and

centre, but South Australian police report that as a rule, allowing a stay of proceedings allows the prosecution case to stand on its merits and only where appropriate do they lodge a stay.

The New South Wales Attorney General has gone on record stating there is room for improvement in the Bail Act. Despite amendments to the Bail Act being enacted as recently as December, I submit there is a strong case for section 25A to be reviewed again, particularly in regard to expanding police powers. I have had victims, beside themselves with fear, come into my office looking for help because the person responsible for inflicting their injuries has been released back into the community. This has shown me the system must be tightened and as far as I can see the police should be given every possible assistance to do their job properly in protecting community members from those who seek to do them harm.

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