CRIMINAL LAW AMENDMENT (UNCERTAIN DATES) BILL 2019

Second Reading

Resumed from 20 June.

MR S.A. MILLMAN (Mount Lawley) [5.03 pm]: I thank and acknowledge the member for Hillarys. I will make a brief contribution in support of this bill. I rise once again to stand in support of legislation that has been brought before the chamber by the Attorney General. This legislation is entirely consistent with the approach that has been adopted by this Attorney General of making sure that our criminal justice system prioritises the interests of victims. The Criminal Law Amendment (Uncertain Dates) Bill 2019 provides justice for some of the most vulnerable victims in our criminal justice system—that is, children, and particularly children who have been the victim of child sex abuse. This bill will make a number of amendments that deserve the commendation and support of this chamber.

Let me put it like this: in cases of child sex abuse, the age of the child at the time of the offence is highly relevant to determining the nature of the offence that has been committed, because different provisions apply for children under the age of 13, children aged between 13 and 16, and people over the age of 16. As we have seen from all the inquiries, royal commissions and work that have been undertaken in this area, offences are sometimes committed over an extended period, offences sometimes result in significant trauma for the victims and it is sometimes difficult for victims to recall the precise circumstances of the offence such as when it was committed. Once again, this Attorney General has struck a very fine balance between the rights of the accused and the rights of victims. One of the ways in which that is achieved in this legislation is by the operation of conviction for the lower offence in the event that certainty around the dates cannot be established. I would call this a fail-safe mechanism to ensure that effect is given to the balancing act required by our criminal justice system.

In addition, the bill acknowledges the difficulties that victims of child sexual abuse may face in recalling with specificity the exact dates and times of offending. In achieving this balance of justice, one must have regard to the particular bravery of victims of child sex abuse who come forward with their complaints to police, participate in the criminal justice process and give evidence in proceedings. We can imagine the extraordinary trauma and grief that that would impose on these victims. When we have regard to the extraordinary bravery of these victims and the extraordinary trauma that they have been through, the very last thing we want to see happen is for an otherwise lawful conviction to fall on a technicality. At the moment, a number of technicalities could operate as a barrier to conviction, but these could be removed by the passage of this legislation. I will go through each of the provisions in the bill that deal with each of the uncertainties that may be a barrier to conviction.

Firstly, proposed section 10L will apply when an indictable offence is alleged to have occurred in a period during which the relevant law was amended. If the uncertainty about when the offence occurred is unable to be resolved and which provision would apply cannot be established, proposed section 10L will come into operation to assist in securing a conviction.

The second uncertainty is around sexual offences that are alleged to have occurred in a period during which the victim had a significant birthday. For argument's sake, the commission of the offence could have commenced before the victim's thirteenth birthday and could have continued after their thirteenth birthday. If the uncertainty is unable to be resolved and it cannot be established which age-dependent sexual offence provision would apply—as I said earlier, there are different provisions for victims under the age of 13, for those aged between 13 and 16, and for those aged over 16—that will be addressed by proposed section 10M.

The third uncertainty relates to the exact date of birth or age of the victim. This provision is particularly pertinent to Indigenous communities or refugee communities where there may be uncertainty over the precise date of birth of the victim and therefore a subsequent uncertainty as to the age of the victim at the time the alleged offence occurred. Again, it may be difficult to establish which sexual offences apply. That issue is dealt with in proposed section 10N. Finally, part 3 of the bill deals with whether an accused was a child at the time of the commission of the alleged offence.

In summary, by virtue of the operation of the cases and the reports that were provided during the Royal Commission into Institutional Responses to Child Sexual Abuse, we have seen circumstances in which sexual offences against children are going unpunished because convictions cannot be secured due to these technical difficulties that prosecutors are facing. If we as a Parliament are mindful of trying to provide justice to those most vulnerable members of our community, then we should do what is necessary, whilst respecting the rights of the accused, to make sure that the prosecutors who bring these convictions are not thwarted in their endeavours by technicalities.

Having made those points in support of the Criminal Law Amendment (Uncertain Dates) Bill, we are in the midst of a discussion about how our criminal justice system protects the most vulnerable members of our community. There have been some interesting developments on that over the last couple of days. I refer to an anniversary that is coming up in about four weeks' time. On 20 November 1989, Australia became a signatory to the United Nations Convention on the Rights of the Child. Next month, we will be celebrating the thirtieth anniversary of that

convention. I have a paper prepared by Amnesty International titled, "The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility". It states —

> **Across Australia children as young as 10 are arrested, held in police cells, hauled before the courts and locked up behind bars.**
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> Between 2016 and 2017, Australian Governments pushed almost 9,000 children aged 10, 11, 12 and 13 years through the criminal justice system, and locked up 566 of these children. This is despite overwhelming evidence of the harm prison does to children—from health experts, social workers, Indigenous leaders, legal experts and human rights organisations.
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> Applying criminal penalties to young children increases the likelihood they will get into trouble later in life, with children arrested before the age of 14 three times more likely than children arrested after 14 years to re-offend as adults.

Those children are three times more likely to re-offend. The report continues —

> Between 2016 and 2017 Indigenous children made up 69 per cent of 10–13 year olds in prison. Raising the age of criminal responsibility is an important step to reducing the over-representation of Indigenous children in the Australian prison system.

The Amnesty International report makes three recommendations —

> All Australian Governments must:
>
> 1. Immediately raise the age of criminal responsibility to at least 14 years …
> 2. Provide funding for psychologists to train and undertake neurocognitive testing for children who display risk factors for future reoffending when in contact with police, doctors or schools …
> 3. Increase the allocation of funding … to support culturally appropriate, place-based, Indigenous designed and led preventative programs to address the needs of children under 14 years at risk of entering the justice system.

The report refers to Australia's international human rights obligations, and states that when the UNCRC Special Rapporteur on the Rights of Indigenous Peoples visited Australia in 2017, she said that the routine detention of children aged as young as 10 and 11 years old was the most distressing aspect of her visit. That is taken from the United Nations Human Rights Council's "Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Australia".

I return to the issue of Indigenous incarceration. In Australia, Indigenous children make up 69 per cent of the total number of imprisoned children aged 10 to 13 years. In Western Australia, that number grows to 74.5 per cent of children in prison. Looking at the total number of children under the age of 14 years in prison in Australia in 2016 and 2017, Queensland, which has a significantly higher population than Western Australia, had just under 150 children in prison; New South Wales, which has a much higher population than Western Australia, had just over 120 children in prison; and Western Australia had close to 140 children under the age of 14 years in prison.

That is the human rights aspect. The next issue is the brain development, neurocognitive development, mental capacity and mental health of these children. There are plenty of mothers and fathers in this chamber. They would understand that children do not yet understand the consequences of their actions. During adolescence, brain development focuses on the neurological pathways that are used most often. The report states —

> During this period of brain development 'adolescents will often make decisions using the amygdala—the part of the brain connected to impulses, emotions and aggression'. This is why they might act on impulse or emotion and are unable to appreciate the likely consequences or impact.

A fundamental principle of criminal law is mens rea, or the ability to know the consequences of one's actions. One can see the tension and the paradox that arises here when we are holding children to this level of accountability. They are unlikely to appreciate the consequences or impact.

The report continues —

> The four developmental factors that most often affect children in contact with the justice system are memory, communication skills, social orientation and suggestibility.

At this critical moment of their personal psychological development, these children are exposed to the compounding effect of prison. The report states —

> 'Toxic stress' or trauma … can have a negative impact on brain development. Examples of toxic stress include: exposure to violence or abuse; neglect, lack of affection, parental mental illness, poverty, removal from family, and placement in a prison environment.
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> …

> **The Australian Early Development Census advises that 'ongoing stress factors that are not buffered by caring and positive relationships disrupt brain architecture leading to a lower threshold of activation of the stress management system …**

The report states that when these factors are not addressed early in life, they compound and interlock to create complex support needs in the criminal justice system. To put it bluntly, the report continues —

> Prison is not an environment where children can flourish and grow up strong and healthy.

The third issue in the report is the legal doctrine of doli incapax, which is a Latin term meaning "incapable of doing wrong" —

> *Doli incapax* describes the ability of children under the minimum age of criminal responsibility to form criminal intent.

This is the mens rea that I mentioned earlier —

> In 2018, the minimum age was just 10 years in all Australian jurisdictions.

The report goes on to refer to doli incapax as a rebuttable proposition —

> Research has been conducted in Victoria which has found that the threshold of rebutting *doli incapax* has been lowered.

The onus has been reversed so that it now becomes the defence's requirement to establish this proposition, which puts a great onus upon them. These people, particularly within Indigenous communities, are often accessing legal aid, and they have to go out and get complicated psychological or expert reports that deal with foetal alcohol spectrum disorder and many other considerations, which makes it incredibly hard for the defence to overturn this presumption.

The report continues —

> The UNCRC has noted that 'the system of two minimum ages —

That is, the criminal age of responsibility of 10, and the age of 14 below which doli incapax can operate —

> is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices'. This statement is particularly concerning when Indigenous children across Australia are 24 times more likely to be in prison than non-Indigenous children.

The Queensland Family and Child Commission has found that there is overwhelming evidence proving a direct correlation between criminality and entrenched social and economic disadvantage.

There is not one person in this chamber who does not want to see our youngest thrive and survive. We need to set our children up to make the most of their opportunities and their lives. We need to set children up to thrive and prevent reoffending. The level of ongoing contact with the juvenile justice system varies according to a range of factors, with younger children having higher levels of re-contact with the justice system than older children. Children aged between 10 and 13 are regularly in contact with the criminal justice system. I again quote "The sky is the limit" —

> … prison does not deter re-offending. Locking up 10 to 14 year-olds makes them less likely to finish school, tertiary education and training and secure a job.

[Member's time extended.]

Mr S.A. MILLMAN: Anecdotes are the enemy of data, but this is an interesting anecdote from the same source —

> A child in prison revealed that detention 'taught me to be a better criminal. I went in stealing cars and came out knowing how to cook meth …

This is a tragic cycle of interaction with the criminal justice system. The McGowan Labor government should be commended for what emerges from the following quote from "The sky is the limit", which states that this constant interaction with the criminal justice system —

> … has been recognised in New Zealand and Western Australia, where governments have invested significant funding in prevention programs specifically to support the families of children who offend at the highest rates.

We are hopeful that that investment will yield a return. That is part of what I would term a multifaceted approach to dealing with this issue. Commitment to social justice resonates in the efforts of the McGowan government. If we move beyond the human rights, health and social cohesion aspects, we still have the persuasive economic argument. The paper continues —

> In 2017 PiC, the Indigenous consulting branch of professional services firm PwC, and Change the Record coalition undertook a study focused on the costs of Indigenous incarceration in Australia, using the current rates of re-offending to forecast the number of Indigenous people likely to return to prison and

> the associated cost. In 2016 it cost $7.9 billion per annum to imprison Indigenous people with costs projected to grow to $9.7 billion by 2020 and $19.8 billion per annum by 2040. Closing the gap on Indigenous incarceration could save $18.9 billion in 2040.
>
> A range of studies indicate that a reduction in crime rates among children and young people translates to a reduction in adult crime. A meta-analysis of initiatives targeting young people who had offended found that recidivism can be significantly reduced by up to 91 per cent.

Amnesty International's "The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility" paper was taken up in a briefing paper that was prepared by the Law Society of Western Australia in July 2019, titled "Deaths in Custody and Incarceration of Aboriginal and Torres Strait Islander Peoples". I commend the Law Society and its current president, eminent barrister Greg McIntyre, and his predecessor Hayley Cormann, another eminent barrister, for the excellent work they have done in the custodianship of that organisation. They are two fantastic legal practitioners. I also commend the work of the Law Society under Ms Cormann's stewardship, as that was the time during which this briefing paper was put together. The paper refers to the Royal Commission into Aboriginal Deaths in Custody, which had its twenty-fifth anniversary in April 2016 and in a couple of years will have its thirtieth anniversary. It states —

> On 30 March 1991, the 339 Recommendations (Recommendations) and the following brief report were submitted to meet the requirements of the Letters Patent (as they then existed):
>
> > *"At an early stage in the Commission's inquiries, research strongly indicted that the disproportionately high number of Aboriginal people who die in custody appears to be directly related to the disproportionately high number of Aboriginal people who are arrested and imprisoned, with the rate of death of Aboriginal and non-Aboriginal people amongst incarcerated people being broadly the same.*
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> …
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> In May 2015, a report entitled "Review of the Implementation of the Recommendations of the RCIADIC" (Review) commissioned by Amnesty International Australia and drafted by Clayton Utz, was released.
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> …
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> Following a Coronial inquest into the death of Ms Dhu, an Aboriginal woman who died in custody in 2014, and based on a recommendation from the Royal Commission Report, the Commonwealth Government offered partial funding to the states and territories for a Custody Notification Service (CNS).

As members know, that has already been implemented in Western Australia. The state government announced in November 2018 that we would be accepting that recommendation and implementing the scheme. The paper continues —

> … the Western Australian Department of Corrective Services calculated that the cost per day for juvenile detention was $624 per person, and for juvenile community custody $77 per person, and with the cost of detaining a young person being $227,760 per annum in 2013, there is also a clear financial cost of these high imprisonment rates which would be better spent supporting healthy and productive communities.

The briefing paper continues —

> … it is important to note that Indigenous women and children in particular are experiencing increasing amounts of —

Injustice.

The Change the Record campaign put forward a number of key principles, and this is a very important point: these key principles were fundamentally endorsed by the Law Society. There is a list of 10 key principles. Given that I do not have too much time, I do not propose to go through all of them. The tenth key principle is that young people do not belong in prison. It states —

> *Punitive 'tough on crime' approaches to youth offending and misbehaviour fall to recognise that young people are still developing —*

As per the mental health evidence I provided earlier in this proposition —

> *and that far more appropriate opportunities for support and positive reinforcement exist than putting children behind bars. Exposure to youth detention also substantially increases the likelihood of involvement in crime as an adult.*

That is another recurring theme. The evidence is incontrovertible: if you put children behind bars, you are going to end up putting them into a cycle of contact with the criminal justice system, which just is not producing the sorts of results that we want and does not protect the most vulnerable members of our society. It does not protect

the children in our society—the people whose wonderful potential we should seek to fulfil. We need to give them opportunities so that they can really become contributing members of the community.

The Law Society paper and Amnesty International's "The sky is the limit" paper have also been picked up in federal legislation. I speak to this today because of what happened yesterday in the federal Parliament. Two crossbenchers—Rebekha Sharkie, the Central Alliance Party member for Mayo and Zali Steggall, the Independent member for Warringah—moved and seconded a bill to increase the age of criminal responsibility for commonwealth offences from the age of 10 to the age of 14. Mr Acting Speaker, I have regard to standing order 1 that enjoins quoting *Hansard*. I checked with the Clerk to ensure that that pertains to Western Australian Legislative Assembly *Hansard*. I am referring to notes from the commonwealth *Hansard* from yesterday, and if there are any errors in that, I take responsibility for them, but I think we are good to go with that caveat. The member for Mayo stated, in summarising the Amnesty International report —

> The report notes that children who are arrested before the age of 14 are three times more likely to reoffend as adults … children under the age of 14 are making decisions using the part of the brain that is connected to emotions and aggression, and are unlikely to comprehend the consequences of their actions. That is why we do not let 10-year-old children drive cars, drink alcohol, have a Facebook account or vote. We imposed these limits because we as a society decided that young children are not capable of making rational decisions. We accept the medical evidence that says the brain development of young children limits their capacity. And yet, as the law currently stands, we can hold a 10-year-old child criminally responsible for their actions.
>
> …

In addition to the usual limitations placed on the developmental progress of young children, —

If they are put in jail —

> both trauma and prolonged stress will also have a negative impact on brain development.

Ms Sharkie then makes similar points to those that I have raised. She says —

> Aboriginal and Torres Strait Islander children are also more likely to suffer from fetal alcohol syndrome disorder, which results in abnormalities in cognitive, behavioural and social functioning, thus increasing the risk of coming into contact with the justice system.
>
> Over a third of all children in WA detention were diagnosed with FASD, while in the Northern Territory the recent royal commission sought to address the issue by recommending that all children be screened for the disorder upon entering out-of-home care and that police receive specialist training on the effects of FASD.

Children should be in classrooms; they should not be in custody.

Mr I.C. Blayney: On FASD, does the report say in some way what we can do with kids who have FASD?

Mr S.A. MILLMAN: Yes, it does. Can I recommend to the member for Geraldton "The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility". The second chapter is almost entirely on brain development, mental capacity and FASD and contains a case study of a 12-year-old boy with FASD. It is a really important issue, which I just do not have time to get through now, but I recommend to the member the report and its commentary on that.

Once the federal members for Mayo and Warringah brought in the bill in the House of Representatives yesterday, the Law Council of Australia issued a press release, which stated —

> The Law Council of Australia has welcomed today's introduction of legislation to Federal Parliament, which seeks to increase the minimum age of criminal responsibility for Commonwealth offences to 14 years.
>
> Law Council President, Arthur Moses SC, said increasing the minimum age of criminal responsibility, if followed by all Australian jurisdictions, would help improve justice outcomes for some of Australia's most vulnerable children …

I return to the point I started with; that is, our criminal justice system should protect the vulnerable. Arthur Moses, SC, then stated —

> The bill's introduction comes ahead of the release of a report by the Council of Attorneys-General, examining whether the minimum age of criminal responsibility should be increased across Australian jurisdictions.

I look forward to that report. The Attorney General, I am sure, will comment on this aspect of my contribution in his summing up. It continues —

> In June, Law Council Directors unanimously voted in favour of a new policy regarding the minimum age of criminal responsibility.

Unanimously voted—these are representatives from across Australia. It continues —

> The Law Council supports an increase from 10 to 14.

I finish on this point, and I quote Mr Moses, SC —

> "Children belong in their communities, not in detention. Imprisonment should be a last resort when it comes to children, not a first step."

With those comments, I commend the Attorney General, and I commend the bill to the house.

MR P.A. KATSAMBANIS (Hillarys) [5.32 pm]: I rise as the lead speaker for the Liberal Party on this bill and indicate that we will be supporting the bill. I thank the member for Mount Lawley for not only his contribution and some of the comments he made about matters more broadly, but also stepping up to speak before me so that I could deliver my speech when the Attorney General was able to be in the chamber

Mr S.A. Millman: The only problem is that I didn't have an opportunity to thank you for lunch yesterday.

Mr P.A. KATSAMBANIS: That is okay; we will deal with that later. To clarify for the chamber, given that interjection, I hosted newly ensconced Archbishop Makarios, Primate of the Greek Orthodox Archdiocese in Australia, at lunch yesterday. The honourable member for Mount Lawley was there representing the Premier and in his capacity as a friend of the Greek community, so we had a very convivial time. But I return to the matter at hand. I wanted the Attorney General to be here when I made my contribution because it will probably speed up things and alleviate the need for the consideration in detail stage.

As I said, the Liberal Party supports this bill. It deals with a series of issues that have arisen due to uncertainty about dates within our criminal justice system. It works on the principle that when it can be proven that somebody has committed a serious indictable offence, they should not be able to get away without being punished for that offence because of uncertainty about the date on which the crime was committed, the age of the victim or, in some cases, the age of the perpetrator of the crime. Over time, as the Criminal Code in this state has been amended, grey areas have arisen. The bill produced to the house today is an attempt to close any gaps that have appeared so that perpetrators of vile and horrific crimes, including sex offenders, do not get away without punishment solely because there is uncertainty about dates. I think that is important because, firstly, we want perpetrators of criminal activity to face justice—certainly to punish them for their offences—and, just as importantly, the victims of their offences to get a sense that justice has been delivered. In many cases about which we have spoken before, particularly sexual offences, as well as other indictable offences, victims can never be compensated—they can never be returned to the state they were in prior to the crimes being committed, but part of the healing process is that sense that the perpetrator has been brought to justice.

Uncertainty about dates can occur for a number of reasons in various circumstances. The member for Mount Lawley highlighted some of those, but it is worthwhile covering off on some of them as we go through the provisions of this bill. This bill deals with a certain set of factors when an indictable offence was committed in a period in which the written law was being amended; when sexual offences were committed in a period in which a victim had a birth date that was significant in relation to what charge should be laid; and also charges of sexual offences when the victim's age is uncertain for one reason or another, which we will get to as well. It also deals with the circumstance of whether, at the time an offence was committed, the perpetrator was under or over the age of 18. We can see when those circumstances would arise.

In relation to the indictable offences more generally, proposed section 10L inserts into the Criminal Code a new provision to deal with an indictable offence, which obviously includes the range of sexual offences covered in other parts of this bill, committed in a period in which the written law was being amended, and there are several periods. In those circumstances, when it is alleged that an indictable offence has been committed and it is quite clear that there is enough evidence to charge an individual with that offence and to bring them before a court to seek conviction, they should be brought to court and charged irrespective of whether that offence was committed under the old law or the new law. We are dealing with matters that have had a significant effluxion of time. We might be dealing with young or otherwise vulnerable victims, who may not be able to specify with exact specificity the date on which the offence was committee, but either by a pattern, a behaviour or other evidence, it can be proved that the offence was committed around a certain period of time. In those circumstances, prosecutors would face the dilemma of working out whether to charge with the old crime, prior to an amendment of the law, or the new crime after the amendment of a law. If they could not determine the actual date, they may be in the invidious position of not being able to continue with a prosecution. I note in the second reading speech that the Attorney General indicated there were circumstances in Western Australia in which perpetrators had evaded conviction as it could not conclusively be established when the offending took place, and he did point out that that is a serious miscarriage of justice. I agree with the sentiment that it is a serious miscarriage of justice and the

Liberal Party agrees, which is why we support these provisions. What we seek from the Attorney General, if he has the information, is to indicate to us how many of those cases are known to have occurred? How many times has this happened over a period of time in Western Australia? Then we can at least establish what has gone on in the past as a starting point for bringing this legislation in. We are not questioning the need for the legislation whatsoever; we just want to know how many slipped through the cracks, for want of a better term. Therefore, I think, clearly, proposed section 10L is an important new provision.

Proposed section 10M deals with a charge of a sexual offence that is committed in a period when the victim has a birthday. Firstly, "sexual offence" for the purpose of this bill and these provisions is defined in the new provision included in clause 4—all of these matters that I am dealing with at the moment are in clause 4 of the bill. A new provision, proposed section 10K of the Criminal Code, defines the sexual offences that apply in this regime around uncertainty of dates to mean those offences of a sexual nature under chapters 22, 25, 30, 31, 31A or 32 of the Criminal Code, or an offence of attempting, inciting or conspiring to commit an offence referred to in those chapters that I have just referenced, or an offence of becoming an accessory after the fact to an offence referred to in those chapters that I have just referenced. It is defined as those sexual offences, rather than sexual offences more broadly, and it deals, as I said, with a situation in which the offence is committed in a period when the victim has a birthday. Why is this significant? As the member for Mount Lawley—perhaps a future minister—pointed out, a lot of our law's sexual offences are based on the age of the victim. We have a different offence for an offence committed against a child under the age of 13. We have separate offences with separate penalties for children over 13 but under the age of 16, and we have other offences that apply to older children over the age of 16, and adults. Therefore, the relevance of a victim's birthday could apply if, again, an allegation of horrific sexual offending is made but the victim cannot conclusively prove whether they were 12 years and 355 days old or 13 years and 10 days old at the time, or 15 and a half years old as opposed to 16 and a half years old. It may be a pattern of behaviour that is difficult to establish exactly, on a pinpoint date, when it happened.

Prosecutors then have the dilemma of charging with one offence—perhaps they charge with the offence of indecently dealing with a child under the age of 13 and the defence leads that the offence occurred after the child had turned 13. At the moment, if the prosecution cannot establish whether the child was 13 or 16, it is stuck with that dilemma. What we want to know from the Attorney General, if he has the information, is how many of these cases have there been—perhaps over the last five or six years? Have there been one or two or 50? What we do know, of course, and have learnt through both the Royal Commission into Institutional Responses to Child Sexual Abuse and more generally in getting a better understanding of the patterns of child sexual abuse, is that we often expect people to remember and recall with great specificity what occurred to them many, many years ago in some instances. Therefore, we should not be expecting them to pinpoint the exact date, and we should, at the very least, bring the offender before the court so the evidence can be tested about the allegation of sexual offending, rather than exactly when it occurred. I will get to how this will work when I deal with proposed section 10N. As I said, proposed section 10M deals with the uncertainty around whether the victim might have been under 13 or under 16, or over 13 or over 16.

The other area around the uncertainty of the age of the victim is contained in proposed section 10N, which is a charge of a sexual offence when the victim's age is uncertain. The member for Mount Lawley rightly pointed out that there are circumstances in which even if we pinpointed the actual date the offence occurred, we may not be able to prove with any certainty the age of the victim. Perhaps they do not have a birth certificate, and we know it is still an issue, primarily in regional or remote areas. But I would posit, based on my own experience, that I do not think it is solely restricted to regional and remote areas; I would imagine that there would be some people here in the metropolitan area who may have slipped through the cracks and do not have a birth certificate, or they may have been refugees. They may not necessarily be refugees; they may just be migrants who come from a place where it is not customary to record the date of birth, or they might be refugees and their documentation was destroyed and recreated later. They may have lost their parents and a family member or distant relative has to take a best guess as to when they were born. There can be uncertainty. There are real-life examples. My father is no longer a child—he will turn 90 early next year—but when he was born in a village in Greece, they did not bother recording the date of birth. The month was recorded, but it was not recorded on the day of the birth; the month was recorded on the day of the registration of the birth. If the person lived some way from the registration point, which might have been in another village or a large town in some proximity—this is pre-car, as my father was born in 1930—it might have taken months to get there. Even the year of birth might not have been accurate. If a child was born in December, especially given winter in the Northern Hemisphere, the birth may not have been registered until February or March in the following year. That was a long time ago, but we know that that happens today in some parts of the world.

Again, if an offence of a sexual nature has been committed, we want the perpetrator to face justice. We do not want the uncertainty about the victim's age to hinder the criminal justice system and the prosecution of the offender. In each of the cases of uncertainty that are covered by proposed sections 10L, 10M and 10N, the bill proposes that the person who is accused of the offence will be charged with the offence that attracts the lower statutory maximum

penalty. If one offence attracts a 14-year penalty and the other offence attracts a 20-year penalty and we cannot be certain of the date, the offender will be charged with the offence that attracts the 14-year maximum penalty rather than the 20-year maximum penalty. If the offences are equivalent, the offender can be charged with either, and we get over that issue of an uncertain date and we get to the real facts of the matter—the facts that should matter in cases of indictable offences that will be dealt with under proposed section 10L or sexual offences that will be dealt with under proposed sections 10M and 10N. The real facts that matter in those cases are the evidence of whether the offence was committed. When it is proved that the offence was committed, irrespective of when it was committed, irrespective of the age of the victim and irrespective of whether the victim had turned 13, the perpetrator will not get away with their offending. They will get punished for their offence and the victim will at least get a starting point for their healing process and an understanding that the person who violated them and offended against them will not get away with it. That is why we support this legislation. We welcome the fact that the government has brought in this bill.

As I pointed out at the outset, the other changes made by this bill are to the Children's Court of Western Australia Act 1988 to deal with those circumstances in which there is uncertainty about the age of the person who has been charged with an offence for various reasons: were they over 18 or under 18? A prosecutor has to run the gauntlet of working out whether the charges get proffered in the Children's Court or whether they go to the Supreme Court or the District Court as the case may be if they cannot determine whether the offender was 18. If they go to the Children's Court and the defence proves that they were over 18, the case will evaporate. If the offender is charged as an adult and they go to the Supreme Court or the District Court and the defence alludes that the person was under 18, again the case will dissipate. That causes harm and additional trauma to the victim. To deal with that dilemma, the bill provides a framework that I think is probably as good as we can get it. New section 19(2AA) of the Children's Court of Western Australia Act states —

> Despite any uncertainty as to the age of the person charged at the time the offence is alleged to have been committed, the Court has jurisdiction for the purposes of subsection (1) if the charge alleges that the offence was committed by a person who might have been a child.

Again, there is uncertainty: were they under 18 or were they over 18? If there is uncertainty, it will go to the Children's Court, where, as we know from some of the principles that the member for Mount Lawley alluded to in his broader description of children and their interaction with the criminal justice system, children are treated differently from adults. The presumption is that when there is uncertainty, the person will be dealt with in the Children's Court. But the bill goes further by suggesting in new subsection (2AB) that the court retains the jurisdiction that has been conferred upon it if the person might have been a child. It retains that jurisdiction despite any evidence produced in the proceedings commenced under the charge that the person had reached 18 years of age at the time the offence is alleged to have been committed. If there is uncertainty and it goes to the Children's Court and the defence gets up and says, "You're in the wrong place because this guy was an adult", and they did not give that evidence beforehand to prove that the person was an adult, the case will continue in the Children's Court. We do not want to stop the proceedings. If there is uncertainty, they should not get away with it and the victim should not be re-traumatised. Some people may argue that that probably would lead to a lesser sentence if the person were charged as a child in the Children's Court as opposed to being charged in the District Court or the Supreme Court, but I imagine that, in those circumstances, the Children's Court magistrate hearing the evidence in the case that the person was an adult would take that into account in sentencing.

I seek from the Attorney General, perhaps in summing up the second reading debate, an idea of how many cases there have been in perhaps the last five or 10 years in which there was uncertainty about whether the offender was under 18 or over 18. The same issues about the uncertainty of the age of victims that I spoke about apply to the uncertainty of the age of offenders. They may not have a birth certificate. It may have been registered sometime after birth as a best guess. They may have been displaced people or refugees whose documentation was destroyed and reconstructed later as a best-guess initiative rather than specifying the actual date that they were born.

Admittedly, the subject matters that this bill deals with are rare. If this was occurring on a daily, weekly, monthly or even annual basis, I am pretty sure that the community would know about it. Even one matter in 10 years, five years, three years or one year that is not dealt with properly is one matter too many if the alleged offender gets away without having the matter presented to a court because of uncertainty around dates. It reduces confidence in our justice system and, importantly, adds to the hurt and trauma experienced by victims of indictable offences and, in particular, victims of sexual offences—young victims and victims of all ages. Law-abiding citizens and victims in our society expect the criminal justice system to work for them. They expect us to close any gaps that develop in the system around uncertainty of dates.

With those words, the Liberal Party and I welcome this legislation. We support it. If the Attorney General could just give us a bit of clarity and detail about how many of these matters there have been in the last little while, because he said in his second reading speech that this has happened occasionally, we would welcome it.

Sitting suspended from 6.00 to 7.00 pm

MR R.R. WHITBY (Baldivis — Parliamentary Secretary) [7.01 pm]: I rise to add my support for and comments on the Criminal Law Amendment (Uncertain Dates) Bill 2019.

[Quorum formed.]

Mr R.R. WHITBY: I welcome the contribution of the previous speakers, both of whom had training in the law. My training was in other areas, not the law, so I will not be —

A member interjected.

Mr R.R. WHITBY: I had a lot of training, member.

Although I am married to a lawyer, and I spent quite a bit of time in the courts—I hasten to add at the reporters bench—I am still not as learned as the previous speakers in this area, so I will not go into the legal detail that they did. But I want to make some comments about this legislation, because it is very anticipated by the community and strikes a strong chord in fairness and what is appropriate. This legislation addresses loopholes that impede the prosecution and conviction of child sex offenders. Of course, no-one in this chamber would disagree that these are amongst the most detested crimes imaginable and the very worst acts imaginable against the most vulnerable people in our community, our children. The legislation amends the Criminal Code of Western Australia and the Children's Court of Western Australia Act 1988, addressing issues that arise from ascertaining the correct time that an offence is said to have occurred—basically, uncertainty around timing when prosecutions proceed through the courts. It is always difficult dealing in law with cases involving children or even dating back to a period when victims were children, if it was an earlier time. There are good reasons for this, including the fact that victims of child sexual abuse may face difficulty in recalling the exact dates of offending because of the basic passage of time, and that children have difficulties in trying to specify a time period and relate it to other events in their life or the world around them, which is perhaps not the same challenge that adults would face in trying to narrow down a time frame. There is also, of course, the trauma of the event itself, which is often blocked out by children and recalled sometime later, sometimes many years later. That is another impairment to work out the exact timing of an offence. It is the inability of younger children to recall specific circumstances that also aid in pinpointing a time and a date for an event to occur. Those are some of the reasons, and it is not beyond the thinking of people here to understand why that would be difficult for a victim of a child sex crime.

It is also very tough on victims to have to go through this process. Victims require enormous bravery in the first place to come forward and speak out, and children are often very afraid to mention offences. They sometimes wrongly see themselves as being complicit or partly to blame for offences, or they believe the threats made to them about what might happen to their parents or other loved ones if they raise issues that were perpetrated against them. They are also very difficult and unpleasant memories to have to trawl through. It is disheartening that because of those circumstances, the opportunity to achieve justice and have that case heard in court is denied. That is particularly painful. We have seen cases in this state when perpetrators have been able to walk free, even with overwhelming evidence, because of technicalities and loopholes. What often happens in cases of this nature is that charges are based on a time period rather than an exact date. The alleged offences would have occurred between a certain month in one year and often go over many months or years from that date. A time period is set in court or as part of the charge that relates to the time period that those offences were alleged to have occurred, which, in itself, brings about difficulties and issues when the case goes to court. I will detail some of them. Several issues are: Which is the relevant law that might have been amended during that period? What law applies to the charges as presented in court? Was it the law that was relevant at the beginning of that period and was then amended during that period, or was it the law that stood after that period? It is sometimes very difficult to ascertain what law and what provisions of the law applied at a particular time, particularly over a time span, and this is one issue that can often prevent a case proceeding and an offender being dealt with in the courts.

Another case is when a victim has a significant birthday in that time period. Obviously, if the offences occurred over a number of years, there might have been more than one birthday, but even just one birthday and one change in age of the victim can affect, of course, the nature or the severity of the offence, given that person's age. Again, in that age-dependent sexual offence provision, there can be an enormous loophole if it cannot be ascertained whether the victim was still a child at the date or time of the offence. If that person is deemed to have not been a child at the time, the relevant law does not apply, and the perpetrator would be freed. Another situation relates to the exact date of birth and age of the victim of an alleged sexual offence not being able to be ascertained. Also, if it is uncertain whether the perpetrator was a child at the time, it cannot be determined which court has jurisdiction in the matter; it cannot be determined whether the offender should be tried in a children's or an adult's court. Confusion comes about under law when a time span is applied.

There have been cases in Western Australia in which prosecutions have failed because of these issues. Indeed, it has not just been the scenario of prosecutions failing, but also cases where the police have not been prepared to

lay charges when they know there is a high likelihood of the prosecution failing when it cannot be narrowed down to a particular date, when the date is crucial to the circumstances of that offence. There can be a reluctance on the part of the police or the state to proceed with charges because of the uncertainty of conviction or the likelihood that conviction would not be successful. In these situations, justice is denied and perpetrators of the most appalling crimes imaginable could have, and perhaps have, walked free and escaped the punishment that this community believes should always be applied in the case of child sex offences.

This legislation comes up with solutions for these situations, and I want to go through a couple of them now. Under proposed section 10L, when an indictable offence is alleged to have occurred in a period during which the relevant law was amended, the accused person may be charged with an offence with the lesser statutory penalty. In other words, if there is a doubt about what the relevant law is, the law with the lower penalty would apply. Similarly, under proposed section 10M, when a sexual offence is alleged to have occurred during a period in which the victim had a significant birthday, the accused person may be charged with the relevant offence with the lesser statutory penalty. One example would be when an alleged sexual offence has occurred after a child's thirteenth birthday. If a charge is otherwise proven, the person may be convicted and sentenced according to a lesser penalty offence. Another example is proposed section 10N, under which the age of a victim at the time of a sexual offence is uncertain, and the accused person may be charged with the relevant offence with a lesser statutory penalty. An example is a sexual offence committed as though the victim was 13, rather than 12 years of age. If the charge is otherwise proven, the person may be convicted and sentenced according to that lesser penalty.

Some people may be concerned that the lesser penalty would apply, but there is always an issue when we cannot firmly establish which law applies. The way forward, to balance the scales of justice, is that at least we are still achieving a conviction and giving the benefit of the doubt, because there is doubt over which offence would apply. Nevertheless, the offender would still face justice and would still face the lesser penalty, but that is a far better outcome than simply allowing an offender to walk away without facing any penalty at all. The penalties for offences such as the sexual abuse of children are still serious and very weighty; they are not to be considered light in any way. The difference between the less severe penalty and the community attitude would be that it is still a relevant and appropriate penalty for an offender to face, even if there were a difference in severity.

In drafting this legislation, we have looked at examples in other jurisdictions. Similar provisions apply in New South Wales, where a person can be prosecuted under a lesser offence with a lesser maximum penalty regardless of when, during the relevant period, the offence occurred. This applies to situations where there is a change in law or in the age of the victim during the period of the offence. That concisely states what these amendments are about—not letting a loophole continue where there is doubt, so that cases do not proceed or are derailed, or police authorities decide not to lay charges because of the danger of the prosecution failing. It is applying the penalty to the offender, but allowing the prosecutor to apply the lesser charge if there is doubt about the age of the victim, the date of the offence or the particular law that applied at that time. There is the ability to proceed with those charges, and the lesser penalty would apply. An offence would still be found to have been committed, the offender is guilty and a penalty would apply, and time would be served for some of the most appalling crimes imaginable in our state.

With that, I commend the bill. As I said, we have had input this evening from other members with experience in the law, who know more of the detail of these scenarios than I do, but as someone who has for many years reported in courts and heard about appalling crimes, often involving children, I think the worst outcome would be to see evil people escape the consequences of their criminal actions. This bill is designed to close those loopholes and ensure that anyone who offends against a child is not given the opportunity to walk away from those offences simply because a clear date and time cannot be established. It is something that I think will be welcomed by all Western Australians, and I am sure that it has the support of this chamber.

MR C.J. TALLENTIRE (Thornlie — Parliamentary Secretary) [7.18 pm]: I rise to address the Criminal Law Amendment (Uncertain Dates) Bill 2019. When I contemplate what this legislation is driving towards, I realise that the circumstances that bring about the need for this legislation are of great trauma and horror. Any normal person feels a sense of disgust at what might be the cause of the need for this legislation. It is about cases in which a sexual offence has occurred, when the victim is unclear about when it might have occurred. It is totally understandable that a young person who has been the victim of some sort of sexual offence is unable to pinpoint when the offence occurred. This legislation makes it impossible for some sharp-minded advocate to try to cross-examine and call into question the validity of a claim because the victim cannot precisely say when the offence took place.

The legislation deals also with the issue of determining the actual age of the victim at the time. Certain events can take place—it is terrible to contemplate—and it is possible that someone might have been a victim on the night of their thirteenth birthday and it is unclear whether the event took place before or after midnight, and that has all sorts of legislative implications. This legislation deals with some terrible things—things that I, personally, would rather not have to talk about at all. However, in giving this speech, I want to pay tribute to one of my constituents who has been very frank about the sexual offences that she was a victim of. I speak of Sandy Ingham, who suffered for 25 years at the hands of her stepfather. Sandy is a woman now and has a mental and physical disability. Sandy

has said that she is happy for what she went through to be spoken of. She recently gave an interview to the Gosnells *Examiner* about this. She is happy for this to be spoken of because for so long it has been an issue that no-one dared speak of, and she wants people to learn from her experience. Sandy has therefore been very open about what she went through and gave an interview to the *Examiner* newspaper. Geraldine Alphonse at the *Examiner* wrote a very good article that was sensitive, but nevertheless difficult to read. It does not shy away from the facts. Sandy was able to become a mother to Hope Ingham, her daughter. The story of Sandy and Hope is interesting, and demonstrates one of the great benefits of community organisations. The community organisation I speak of is the Thornlie branch of the Country Women's Association. The president, Carlene Wakefield, heard about Sandy's situation and reached out to her and has helped her come through all the challenges she has had to face.

The real point is that in her day-to-day life now, Sandy gets great strength and sense of purpose by being a member of the Thornlie branch of the Country Women's Association. She gets great support out of that. Talking to the other ladies there, she is very open about what she went through. I think it is a real testament to a community group that can help people who have been irreparably damaged in some way to get back on their feet and find a great purpose in their lives. The CWA president of the Thornlie branch, Carlene Wakefield, played an exemplary role in this. Carlene has experience working with people with disabilities and that no doubt enabled her to be such a power of strength in helping Sandy deal with her trauma.

It is terrible to contemplate that prosecutions take place and, in this case, the stepfather, one Michael Ingham, was imprisoned for two and a half years. I do not know the facts but I am not sure how two and a half years stacks up after sexually abusing someone for 25 years. Interestingly, I have it on good advice that a few days before Michael Ingham's release from prison, other inmates set about breaking all his 10 fingers. Perhaps it was honour among thieves but they saw that that would be a way of reminding him not to offend again in the way he had offended before.

In a much happier situation, Sandy and Hope share a house. They have only one concern, and that is that every two years—Carlene helps them with this—Sandy has to go to court to get the exclusion order extended so that the stepfather cannot come within 100 metres of Sandy. This is the sort of case we are dealing with. Imagine how traumatic it must be when people go before the courts and have to recall details and relive the most horrid of experiences. It is something awful to ponder. To its credit, the CWA Thornlie branch did not shy away from any of those things. Indeed, it was widely discussed at the fiftieth anniversary of the Thornlie CWA. I commend that organisation for its great work and compassion in reaching out to people who have had terrible experiences, and helping them have happy day-to-day lives, leaving behind that trauma. That is exactly what Sandy does. She is a happy, positive person now and enjoys each day as it comes.

Other members have spoken very well about the details of the legislation and touched on all sorts of aspects. How the actual technical workings of the legislation can apply in different circumstances has been well examined. However, when cases of historical child sexual abuse are before the courts, we do not want to see protracted examinations and confusion about dates and times. We need to know just that the offence took place. I think that is where this legislation can save people from having to relive those traumatic events. I think, sadly, all too many people will benefit in the future from being able to take a matter to court but not be caught up in cross-examinations. Having had an education at Christian Brothers Trinity College, I know that all too many people would have gone through a Christian Brothers establishment and suffered in a similar way. Many of those people are dying and their lives are shortened because of the responses they have needed to deal with from the traumas they faced. I hope that whenever possible, those people can take their issues to seek justice and a hearing and make sure that the evil people who have been in various establishments are known and suffer the consequences of their actions.

With this issue, there is always the matter of suppressed memories. People say that sometimes it takes many years before someone will even begin to recall what happened. I think that to shut something out of one's mind and pretend it never happened is a natural response to shocking events. It is only later in time that people realise they should make sure the offender is brought to book, but that shutting out is understandable. With that comes the notion that suppressed memories are unreliable. We need to provide the very best psychological analysis in this area so that people can be examined to determine whether they are reliable witnesses and their suffering is of an absolutely genuine nature. It is essential that we fully test the reliability of statements.

I find this sort of issue particularly difficult to approach. However, I recognise that one of our duties as members of Parliament is to deal with topics that are unpleasant and that we may not want to discuss, because these are the realities that exist from time to time in our community. We need to ensure that our legislation deals with these matters in the fairest and most correct way. This legislation will make the justice system much fairer for victims who have suffered in the most horrible way. I commend the bill to the house.

MR J.R. QUIGLEY (Butler — Attorney General) [7.30 pm] — in reply: I rise to respond on the government's behalf to the Criminal Law Amendment (Uncertain Dates) Bill 2019. I want to touch on some of the speeches that have been made this evening. I commend the member for Mount Lawley for his good overview of the legislation. That is not surprising, the member being the highly trained and spectacularly qualified lawyer that he is. The

member pointed out that it is always an act of bravery for victims to come forward, and that the technical impediments to prosecuting a victim's complaint are a further disincentive to victims to come forward.

The member for Hillarys' contribution posed the question: how many of these cases have fallen through the cracks or have not been prosecuted? We cannot answer that; we have no idea. As the member for Mount Lawley pointed out, if at the time of the investigation the police themselves are uncertain about the date of the offence, they will not charge. In the past, the police have not charged under those circumstances. Therefore, we do not know how many times police investigators have run into this problem. We are well aware of the problem. The police often charge the offender with an alternate offence that does not require proof of a specific date in relation to either the offender or the victim, such as indecent dealing or something like that. Therefore, the number is unknown. We have contacted the Office of the Director of Public Prosecutions to try to provide that information to the member for Hillarys. However, once again, no data is kept in that office. That is because the Director of Public Prosecutions will advise the police at the time the indictment is presented, and may review the file before the matter goes to trial to see whether this impediment exists, and may try to find an alternate basis upon which to present the indictment. Therefore, I am sorry, member for Hillarys, but we are unable to provide the specific number of cases.

I will give some particular examples. One case that prompted this bill was SI v The State of Western Australia [No 2]. In that case, the offender was initially found guilty of penetrating a child under the age of 13 and was sentenced to three years' imprisonment. However, the conviction was overturned on appeal when it was found that the relevant provision of the Criminal Code had been repealed and replaced during the period within which the offence was alleged to have occurred. Although the conduct constituted an offence under both the old and new provisions, it could not be conclusively established when the offence had occurred, and, therefore, which provision of the Criminal Code applied. That throws into stark relief how an injustice may occur to a victim because there has been a change in the law and the prosecuting authorities do not know under which law to charge the offender, so the offender walks.

In Western Australia, there are separate offences for conduct against children under the age of 13, or against children aged between 13 and 16, as well as some other age brackets. In the case of Kailis v The Queen [1999], which was heard in the Western Australian Supreme Court of Appeal, the distinction between sexual offences against children under the age of 13 and children of or over the age of 13 was an issue. There are multiple cases in which the state has been unable to prove that the victim was over the age of 13 at the time of the alleged offending. In a historical case, there may be no alternate offence with which to charge the offender. Therefore, as I have said, there may be many matters of which the Office of the Director of Public Prosecutions will not be aware, because the investigators themselves have had to make the call.

That leads me to proposed section 10L, "Charge of indictable offence committed in period when written law amended". Proposed section 10L will apply in cases in which an alleged act or omission occurred in a period during which the written law which made the act or omission an indictable offence was amended. Proposed section 10L(1)(c) provides that this section applies in relation to an alleged act or omission if —

> the alleged act or omission, if proved, constituted —
>
> (i) an indicatable offence before the relevant law was amended;
>
> (ii) a separate and different indictable offence after the relevant law was amended.

Proposed section 10L(3) provides that —

> … the accused person may be charged with, and convicted and sentenced in respect of, the offence that has the lesser statutory penalty regardless of when in the relevant period the alleged act or omission occurred.

Proposed section 10L(2) provides that either of the offences in proposed section 10L(1)(c) may apply when the statutory penalties are the same.

I will give the chamber three hypothetical examples of how this law will apply. The first is that it is uncertain whether the sexual offence of indecent dealing occurred under the current sections 320(4) or 321(4) of the Criminal Code. The conduct constituting the offence occurred sometime in the period spanning both before and after the victim's thirteenth birthday. The child was allegedly sexually assaulted sometime between 1989, having turned 13 later that year, and the assault involved sexual penetration. If the conduct had occurred before the victim's birthday, the relevant offence may have been "defilement of girls under 13". That is an offence under section 185, which was introduced on 23 March 1990, and is punishable by 20 years' imprisonment. If the conduct had occurred after the child's thirteenth birthday, the relevant offence would have been "defilement of girls under 16", which, before 23 March, was punishable by the lesser penalty of five years' imprisonment.

The second example is a 13-year-old girl who is found to be pregnant to a 25-year-old man. The child is in a relationship with the man but does not want to give evidence against him. The conception date was on or about the complainant's thirteenth birthday, but it cannot be stated definitively as being either before or after that date,

because the victim is in love with the perpetrator and will not nominate the date. However, we know by reason of the victim's pregnancy that there was sexual penetration.

The third example is that a complainant alleges significant historical sexual offending against their step-parent in circumstances in which the appropriate charge is one of sexual penetration of a de facto child, which is contrary to section 329 of the Criminal Code. It is uncertain whether the conduct occurred before or after midnight on the child's sixteenth birthday. Section 329 of the code provides different penalties. If the conduct occurred before her sixteenth birthday, the penalty is 20 years' imprisonment, and if it occurred after she turned 16, it is 10 years' imprisonment. It is very, very important that this area of the law be clarified by the Criminal Law Amendment (Uncertain Dates) Bill 2019. As the member for Hillarys said, we hope that there is not a truckload of these cases, but we do not know how many, for the reason that I have already outlined to the member for Hillarys, that the police might have been exercising discretion earlier to use an alternative offence by which they are not trapped by an uncertain date provision. That would no longer apply because we now have this bill—this chamber at least; hopefully the other place will see the utility in this bill.

I will just make one closing remark, and it goes to bills generally—animal trespass and all those bills—that this matter was brought to my attention some good while ago as needing attention by the Director of Public Prosecutions. As I have explained to the chamber on previous occasions, we have a heavy reform agenda, and we are pushing out a lot of bills—north of 35, somewhere up around the 40 mark have been introduced. We want to introduce all of these bills expeditiously. This one has taken 18 months to get to this stage, and it is not because we wanted to delay bringing it forward. As members know, I have been very, very busy at the ministers' table with all manner of legislation. This one here is important. Is it more important than the next one or the next one? They are all important. The public looks to this Parliament for answers to its societal problems and expects this Parliament to deal with them in an efficient but careful manner. I thank the members. The speeches given this afternoon and tonight evidenced one fact: the members who spoke had carefully read the bill and were carefully scrutinising it. I commend the bill to the chamber and I thank members for their contributions.

There are consequential amendments on the notice paper unfortunately, so we cannot go to the third reading forthwith. Two acts were missed in the drafting. They are short provisions—one is in the Children's Court of Western Australia Act 1988 and one is in the Evidence Act 1906.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 7 put and passed.

New Parts 4 and 5 —

Mr J.R. QUIGLEY: I move —

Page 8, after line 4 — To insert —

Part 4 — *Evidence Act 1906* amended

8. Act amended

This Part amends the *Evidence Act 1906*.

9. Section 106A amended

In section 106A in the definition of ***child*** delete paragraph (c) and insert:

(c) in any proceeding in the Children's Court, a person dealt with under the *Children's Court of Western Australia Act 1988* section 19(2), (2AA) or (2AB);

Part 5 — *Magistrates Court Act 2004* amended

10. Act amended

This Part amends the *Magistrates Court Act 2004*.

11. Section 11 amended

In section 11(3)(c) delete "Part 3 where the accused, at the time of the alleged offence, was under 18 years of age;" and insert:

Part 3;

Mr P.A. KATSAMBANIS: Just for completeness and the record, really, I seek an explanation from the Attorney General about the need to insert these new parts 4 and 5 that include clauses 8, 9, 10 and 11 so it is on the record and carries through into the other place.

Mr J.R. QUIGLEY: I am advised by Parliamentary Counsel's Office that the new parts now before the chamber were inadvertently not included at the time of introduction. They provide alignment of relevant terms in other legislation with the new provisions of section 19(2), (2AA) and (2AB) of the Children's Court of Western Australia Act. Therefore, this amendment is required to be moved.

Mr P.A. KATSAMBANIS: I accept that these are consequential amendments. The Liberal Party supports the bill and its intent. Obviously, between the time the bill was introduced and now the wise counsel has determined that we need to make the amendments to the Evidence Act and the Magistrates Court Act that are being contemplated here. They are simply consequential amendments, so we support their passage.

New parts put and passed.

Title —

Mr J.R. QUIGLEY: I move —

> Page 1 — To delete "**uncertain.**" and substitute —
>
> > **uncertain and to make consequential amendments to the *Evidence Act 1906* and the *Magistrates Court Act 2004*.**

That is an amendment to the title and it is on the notice paper.

Mr P.A. KATSAMBANIS: The proposed amendment is obviously consequential; it will amend the long title. The long title simply says this is a bill for —

> **An Act to amend *The Criminal Code* and the *Children's Court of Western Australia Act 1988* to make provision for the treatment of charges where the date of offence, or the age of the victim or accused person, is uncertain.**

All that is good. We are simply adding the words —

> **and to make consequential amendments to the *Evidence Act 1906* and the *Magistrates Court Act 2004*.**

A few moments ago, we passed the amendments to those two acts. This amendment is supported and there is no need to add anything further.

Amendment put and passed.

Title, as amended, put and passed.