Legislative Council,

Wednesday, 23rd October, 1918.

The PRESIDENT took the Chair at 4.30 p.m., and read prayers.

[For "Papers Presented" see "Minutes of Proceedings."]

BILL—CRIMINAL CODE ACT AMENDMENT.

Second Reading.

Debate resumed from the previous day.

Hon. J. NICHOLSON (Metropolitan) [4.33]: Some very important views have been expressed by hon. members in regard to questions of great importance raised by various provisions in the Bill. The Bill provides for the amendment of various sections in the existing Criminal Code Act. Chief amongst the amendments are those dealing with that very important phase of life which is recognised as the relation between the sexes. The first amendment of importance is that contained in Clause 5. That clause has been alluded to by previous speakers and commented on, in some cases favourably, while in other cases the view has been expressed that more moderation should be introduced in considering measures of this nature. The question of heredity was alluded to by Mr. Dodd. No doubt, in regard to the particular form of social evil which is sought to be guarded against here, heredity does play a very important part indeed. But in the consideration of such subjects as these we must not forget that there are always two sides to the question. We must not forget for example that the mothers of to-day are the mothers of children who may be affected by the legislation which is passed here. We hear sometimes of the case of the man who is affected by hereditary taints, who becomes the social or moral degenerate. In regard to that man the question arises whether the form of punishment which is suggested here is the proper remedy. It is very doubtful indeed whether we are going to make man or woman moral by Act of Parliament. It may act as a restraint. Sir Edward Wittenoom, whose views on this question, generally speaking, are shared by every hon. member, said he thought the Bill was intended as a means of regulating sexual intercourse. I think that is taking a wrong view of the position. I venture to say that in place of regulating, the object of the Bill is to restrain, offences which might arise on the part of any offender. It is a case of exercising restraint by introducing certain forms of punishment. It is not a matter of regulating, but of restraining. If we were to say that the Bill was designed for the purpose of regulating offences, we should be, by the Bill and by the Criminal Code, regulating crimes, whereas the intention of the Criminal Code is to restrain offences by providing punishment.

Hon. Sir E. H. Wittenoom: You are too introspective.

Hon. J. NICHOLSON: I do not think so. I think Sir Edward Wittenoom suggested that our marriage laws were framed for the purpose of regulating marriage.

Hon. Sir E. H. Wittenoom: No, I said regulating sexual intercourse.

Hon. J. NICHOLSON: Certain restraints are provided for, even in our Marriage Act. For example, a boy or girl under a certain age cannot lawfully be married without the consent of the parents. Likewise, there are certain restraints in the way of marriage between those occupying a certain position of kindredship one to another. There are regulations, no doubt, but in respect of the Criminal Code I venture to say our position is that we desire to effect here, not a regulation of offences, but a restraint on them. The question, therefore, is whether the social or moral degenerates, who are usually the persons responsible for the particular crimes indicated here, should not be treated by some method other than this form of imprisonment herein provided. Other methods, we have been told, are in force in America. Whether they have proved sufficiently satisfactory or not I have not heard; but at any rate, as Mr. Dodd stated, they are certainly worth inquiring into. Also it is a question whether education of the young would not be a means of restraining many of those offences which otherwise might arise. For example, if the young boy and the young girl were taught in their earlier years the dangers which surround them in life, the possibility is it would inspire in the boy a more gallant idea of womanhood, and would possibly prevent a rash youth from doing those things which might bring sorrow, not only to himself and to the girl, but also to the parents concerned. Education, I think, would stand very high in that particular phase of the subject, that is, in dealing with a lad who is in no way a social degenerate, but is a high-spirited youth who, through some ebullition of spirits, probably is carried away in a moment of ecstasy or of superabundance of spirits to the doing of something or other which might bring regret all round. I have alluded to Clause 5. What Mr. Duffell suggested as to increasing punishment for this crime, in regard to at least a certain type of offender, might be considered. At the same time the question of punishment all round is one which should be taken into serious consideration by the Government. Clause 7 is of great importance. It is the clause concerning which, I believe, there has been a good deal of comment and discussion amongst the women who are seeking to protect their sex from the dangers which assail them. It deals with what is generally termed the age of consent. Here the age is fixed at 16 years. I am told that both in New South Wales and in South Australia the age is fixed at 17 years. Records clearly show that the dangers to which these girls are exposed, and the time when the highest percentage of them are reported to have fallen victims, is between 15 and 18 years—probably the most susceptible period of a young girl's life. It is, therefore, a matter of consideration whether this age of 16 should not be raised—whether to 18 or 17

years is a question for hon. members to consider. I know that many hon. members look upon this subject, after full consideration, with that degree of importance which it warrants. I admit candidly that the earlier development of the young girl is this State—where she shows those marks of womanhood at a much earlier age than is the case in other climes—seems to afford some reason, and probably some force of argument, on the part of those who look upon these extraordinary cases of premature development of young girls as a mark of the whole of our girlhood. Whilst there is a certain force in the argument as to the earlier development of girls here, or of a certain proportion of them, this, being a period when girls are probably, taking the majority of them, innocent, is a time when the protecting hand of the law should guard them from other influences which assail them. None of us wish to see our daughters, or those related to us, fall victims as is possible under existing circumstances. Whatever protection we can afford to girls, I think it is the duty of Parliament to extend to them. When the Bill is in Committee I shall suggest that the age be raised to 17 years. Clause 8 of the Bill is one to which I think further consideration should be given. The clause provides that Section 189 of the Criminal Code shall be repealed and the following section inserted in lieu—

(1) Any person who unlawfully and indecently deals with a girl or woman—(i.) who is under the age of 16 years; or (ii) who is to the knowledge of the accused person an idiot or imbecile; or (iii) who is under the age of 17 years, and of whom the accused person is a guardian, teacher, or schoolmaster, is guilty of a crime, and is liable to imprisonment with hard labour for four years with or without whipping. (2) If the girl dealt with is under the age of 13 years he is guilty of a crime, and liable to imprisonment with hard labour for seven years with or without whipping. (3) If the accused person proves that the act committed was done with the consent of the woman or girl, that she was, in fact, of, or over the age of 13 years, and that he believed at the time on reasonable grounds that her age was greater than stated in the indictment, he shall be in the same position as if her age had in fact been such as he so believed it to be.

Thus Subclause 3 practically provides a defence in certain cases. I submit that the age provided here, namely 13 years, does not afford a sufficient protection; and I consider that wherever 13 years appears in the clause we ought to insert 16 years, so as to extend the period of protection. There are men who may possibly abuse confidence entrusted to them, and unless some restraining force is put upon them, and also no provision given to them to escape, as is provided by Subclause 3, and unless the most severe punishment is dealt out for the offence, it may become more frequent. The age of 13 years is not an age when a girl can be said to know or understand exactly the full effect of any offence in this direction. A girl of 13 is just a mere baby, practically; she has not that knowledge of the ways of the world which a girl of older years possesses; and by way of emphasising my suggested amendment to raise the age from 13 years to 16, I refer to Section 328 of the existing Criminal Code, which provides that—

Any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years. No girl under the age of 16 years is deemed capable of consenting to any indecent assault, and no girl or woman under the age of 17 years is deemed capable of consenting to any indecent assault committed by the guardian, teacher, or schoolmaster of such girl or woman.

Now, there is a section which is very closely related, and an offence which is indeed most closely related, to the section and offence, respectively, provided for in Clause 8 of this Bill; and the existing Criminal Code provides that a girl under the age of 16 years is not capable of giving that consent. Why, then, should the age be reduced to 13 years in this clause?

The Colonial Secretary: It is not. But a specially heavy penalty is provided for under 13.

Hon. J. NICHOLSON: I say that the penalty should exist right up to 16.

The Colonial Secretary: The penalty for under 16 is increased.

Hon. J. NICHOLSON: Yes, increased from what it was before. But my suggestion is that, in place of providing the heavier penalty only in the case of a girl under 13 years, it should apply to offenders against girls under 16 years as well. By way of adding force to that argument, I have quoted Section 328 of the existing Criminal Code to show that a girl under 16 years cannot be deemed to give consent. I again draw attention to the means of escape afforded by Subclause 3. It would bring the two sections, the existing section of the Criminal Code and the section proposed in this Bill, more into line if the amendment I suggest were made. One other provision which I apprehend will occasion some little difficulty in understanding is Subclause 4, which reads—

The term "deal with" includes any act which if done without consent would constitute an assault as hereinafter defined.

There are various sections which deal with assault. Section 222 is one. In it assault is referred to—

A person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent, or with his consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault.

And various other references are made to assault. Section 313 is headed "Assaults"—

The Colonial Secretary: It is not a definition of "assault."

Hon. J. NICHOLSON: No. If it were intended to define the term "assault" it would say "Assault shall mean so and so." There is no clear definition of what "assault" is. Section 311 provides—

> Any person who unlawfully assaults another is guilty of a misdemeanour, and is liable, if no greater punishment is provided, to imprisonment with hard labour for one year.

Also, Section 325 refers to assault on females—

> Any person who has carnal knowledge of a woman or girl, not his wife, without her consent, or with her consent, if the consent is obtained by force, or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false and fraudulent representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of a crime which is called rape.

The point is that there is no clear definition of what "deal with" means, and there is not that clear definition of "assault" which would enable us to understand exactly what the meaning of "deal with" is. In my opinion, the clause ought to be seriously reconsidered. As regards Clause 13, I note with pleasure that the Colonial Secretary intends to move its deletion. I offer my support to the measure generally, but if those views which I have expressed result in better consideration being given to the treatment to be extended to offenders generally, I shall be glad.

The COLONIAL SECRETARY (Hon. H. P. Colebatch—East—in reply) [5.0]: The spirit in which this Bill has been received by hon. members is such that my task in replying is a very slight one indeed. Most of the matters raised will probably come forward for detailed discussion in Committee, but I desire briefly to refer to them to assist members when the Committee stage of the Bill is reached. Some members seem to think, and it does look like it on the face of it, that there are inconsistencies in increasing the penalties for a number of offences, and at the same time providing a means by which a prisoner may be released long before his sentence has expired. I think that inconsistency is apparent rather than real. It is not to be contemplated that a judge would sentence any person convicted of sexual offences such as we have been discussing, merely to an indeterminate sentence. It is highly improbable and not to be contemplated. He might if imposing a sentence for a fixed period of years, add an indeterminate sentence on top of it. The fact that we have a board to make recommendations would protect the community against cases of that kind. The Bill does not take away the Royal prerogative of mercy. It is still competent, if the Bill is passed, for the old practice to be adopted; for the Attorney General if he thought fit after receiving a report from the gaol authorities and the sentencing judge to make a recommendation to Cabinet for the release of a prisoner, but in practice I do not think that would happen if the Bill is passed. I do not think the Attorney General would take the responsibility. If it were pointed out to the Attorney General that any prisoner was entitled to consideration, whose sentence ought to be reduced rather than order him to be released, he might say, "We have an Indeterminate Sentences Board; apply to them." That board having given exhaustive inquiry might through the Comptroller General of Prisons, make a recommendation to the Governor-in-Council, not for the unconditional release of the prisoner, but that the prisoner may be transferred to a reformatory prison. Then on consent being given by the Governor-in-Council he may be released on probation.

Hon. Sir E. H. Wittenoom: That is in the next Bill.

The COLONIAL SECRETARY: It applies to this Bill as well. The next Bill sets up the machinery. After a prisoner is transferred to a reformatory prison he may subsequently be let out on license on certain conditions. So I think it will be found in practice that those prisoners who in the past have been entirely released on the recommendation of the Attorney General, would instead be dealt with by the recommendation of the board and transferred to a reformatory prison, and where it is thought fit released on license or on condition. Although that does not take away the power of the Crown to release a prisoner, it would in practice be found that the custom would fall into disuse, and this other method would be almost entirely substituted.

Hon. Sir E. H. Wittenoom: Would it take the power away from the Attorney General to release prisoners?

The COLONIAL SECRETARY: No, I do not see how it could do that. The power is not with the Attorney General, but with the Crown, and we cannot take that power away, but in practice I do not think any Attorney General would recommend the release of a prisoner when we have these conditions. In the past there has been no other course and the responsibility has been on the Attorney General. When this Bill is passed then the Attorney General will very properly say it is not the right course to follow. There is a course that if the board on inquiry thinks it desirable that this sentence in any way should be abated, then the prisoner may be transferred to a reformatory prison, so that he may be let out afterwards, and the effect of the Bill will be to prevent the release of prisoners merely on the recommendation of the Attorney General. It is suggested that Clause 10 which makes it an offence for anyone to have in a brothel a girl under the age of 21 years, has the effect of legalising brothels, and legalises the presence therein of women over the age of 21 years. It has no such effect. It still remains an offence to keep a brothel, but it is an additional offence to have in a brothel a

girl under the age of 21 years. It adds the further offence, so that in the case of a girl under 21 being found in a brothel, the keeper can be prosecuted for allowing the girl under 21 to be there, and also for keeping a brothel. The intention no doubt is that that provision regarding the presence of a girl under 21 years in a brothel should be rigidly enforced, whereas it is known the provision generally as to keeping brothels has not been rigidly enforced.

Hon. J. E. Dodd: Is the punishment the same if a girl is found in a brothel, as if she were forcibly detained there.

The COLONIAL SECRETARY: I do not know, but it has always been an offence for a girl to be unlawfully detained there, and now it is an offence for her to be allowed there at all. Exactly the same remarks apply to the case of boys. In the past it has been an offence for boys under 16 to be in brothels. It is now an offence for permitting boys under 18 to be there. This it is said has the effect of legalising brothels. It is nothing of the kind. Section 195 of the Code makes it a misdemeanour and punishable by hard labour for two years for any person who, being the owner or occupier of any premises or having or aiding or assisting in the management or control thereof, induces or knowingly suffers any boy under the age of 16 years to be in or upon such premises for the purpose of unlawfully and carnally knowing any girl or woman. The only alteration made is that the age is raised from 16 to 18 years. The present section of the Code dealing with the keeping of brothels is not in any way altered. That is Section 209, which provides that any person who keeps a house, set of rooms, or place of any kind for purposes of prostitution, is guilty of a misdemeanour and liable to imprisonment with hard labour for three years. The question has been asked in regard to the reason for changing the responsibility for carrying out the death sentences from the Sheriff to the Comptroller of Prisons. It was suggested, I think by Mr. Duffell, that it was unwise to make this change because the Sheriff knows all about the control of these prisoners. But he does not. The opposite is the case. The Comptroller is in close touch with all prisoners, whereas the Sheriff has nothing to do with prisoners. There was a time when the Sheriff and the Comptroller was one and the same person, but when the offices were divided, the duty of seeing that executions were carried out was placed under the hands of the Sheriff, which is customary in other parts of the world.

Hon. Sir E. H. Wittenoom: Who is the Sheriff?

The COLONIAL SECRETARY: The Master of the Supreme Court is Sheriff in this State. There is not the slightest doubt that the officer in such close touch as the Comptroller General is the right person to see that this work is done.

Hon. J. Duffell: Has the Comptroller General a seat alongside the judge on the bench when a prisoner is being tried? The Sheriff has by virtue of his office; why the change?

The COLONIAL SECRETARY: Reference was made to Clauses 7 and 8 of the Bill. Mr. Dodd suggested that in this particular there was an apparent inconsistency. I do not think there is any real inconsistency because Clause 7 does not relate at all to girls under the age of 13 years. The difference between Clauses 7 and 8 is that Clause 7 relates to any person who has or attempts to have unlawful carnal knowledge, whereas Clause 8 deals with unlawful or indecent dealing with girls under 16 years of age or under 13 years of age, but Clause 7 does not refer to any person attempting to have unlawful indecent dealing with girls under the age of 13. That is dealt with in another clause. In both cases, whether having or attempting to have unlawful indecent knowledge or unlawful indecent dealing with girls under the age of 13, it is no defence in either instance for the accused person to set up his belief that the girl was over the age of 13 whether for attempting to have unlawful carnal knowledge or unlawful indecent dealing. In the case of a girl under 16 it is a defence under the Criminal Code for a person to set up a belief that she was over 16 years of age. I might at this stage touch on the point raised by Mr. Nicholson. He desires that the word "thirteen" shall be struck out and "sixteen" substituted. Section 189 of the Code relating to any person who unlawfully indecently deals with a girl provides a penalty of imprisonment for two years. That is the present provision of the Code. Under the Bill any person who unlawfully or indecently deals with a girl under 16, instead of being guilty of a misdemeanour and punishable by two years imprisonment with hard labour, is punishable under the clause to imprisonment for four years with or without a whipping. What this Bill does in regard to offences against girls under 16 is to increase the punishment from two years to four years imprisonment, with or without a whipping. That is a considerable increase. Now the hon. member suggests that it should be further increased to seven years' imprisonment. In the Code as it stands an offence against girls of 16 is punishable by two years imprisonment, and an offence against girls under 13 is punishable by three years' imprisonment. In the first case the punishment is increased from two to four years with or without a whipping, and in the case of younger girls under 13, instead of three years and a whipping, the punishment is increased to seven years and a whipping.

Hon. Sir E. H. Wittenoom: It is five years in the first case.

The COLONIAL SECRETARY: It is to be four years. Section 8, bearing on indecently dealing effects that. The intention of Mr. Nicholson apparently is to make the offence the same whether the girl is under 13 or under 16 years of age. I think that would be a mistake. It seems to me that the offence in regard to a girl under 13 is more serious than is an offence against a girl under 16 We propose to double the penalty in the case of a girl under 16, and to make the offence a more serious one in the case of a girl under 13. If the hon. member suggests that the penalties are not sufficient, it would be well to preserve the principle that it is a worse offence, and subject to a still heavier penalty

in the case of a girl under 13 than it is in the case of a girl under 16.

Hon. J. Nicholson: I admit that the offence is a worse one.

The COLONIAL SECRETARY: The only point is whether we have gone far enough in increasing the punishment from two to four years imprisonment even with a whipping, for the offence of unlawful indecent dealing with a girl under 16.

Hon. J. Nicholson: You might go further. Subsection 3, in regard to consent, practically provides a defence for the accused person.

The COLONIAL SECRETARY: If the offender can prove that the act was done with the girl's consent, and that he had reason to believe that she was over 16, it is a defence, but that is all that is provided.

Hon. J. Nicholson: If the accused person can prove that the act was done with the consent of the woman or girl, and she was in fact over 13, then I say that the age of 13 is too low.

The COLONIAL SECRETARY: That is carrying out the Code as it exists in that particular. Section 188 of the Code says—

> It is a defence to a charge of either of the offences firstly defined in this section to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of sixteen years.

But the Code has always provided that if the girl is actually under 13 years it is futile for the defendant to put up any defence at all as to the age, for no such defence would succeed. If the girl is over 13 it is open to him to put up the defence that he had reason to believe that she was over 16.

Hon. Sir E. H. Wittenoom: The hon. member can amend that in Committee.

The COLONIAL SECRETARY: Quite so. Reference has been made to Subclause 1 as to the definition of "deal with." It is quite clear that all that is required is that the term "deal with" shall include "the doing of any act which if done without consent would constitute an assault as hereinfater defined." Mr. Nicholson has referred to other sections of the Code relating to assaults, and the punishment for assaults. There is only one section of the code which defines what an assault is, and that is Section 222. There the definition is purposely made as wide as possible. Unless the definition of "assault" is made very wide, it might be difficult to secure a conviction, even in a case which ought to be followed by conviction. In the definition of assault as given in Section 222 of the Criminal Code, there are many things which could not be regarded as indecent assaults. The term "deal with" includes doing any of these acts. Whether any of these acts, if they are proved to have been done, are indecent or not, depends on the ordinary meaning of the word "indecent." There is no definition in the Code of the word "indecent." I do not think any is needed. It is better that it should be left to the ordinary acceptation of the meaning of the word. Therefore, any person who commits any of these acts, which under Section 222 of the of indecently dealing if that act was of an indecent nature. I think the clause in that respect is all that is really required. It is suggested that there is some need for a differentiation between young offenders, that is, boys of 16 to 21 years of age. I think some hon. member mentioned that.

Hon. Sir E. H. Wittenoom: That is Clause 7.

The COLONIAL SECRETARY: It is suggested that whilst the penalties imposed under this Bill are quite justifiable in the case of grown men, they would be too severe in the case of boys from 16 to 21 years.

Hon. J. Nicholson: There are boys who are renegades and degenerates.

The COLONIAL SECRETARY: That is a matter which is entirely in the discretion of the judge. It could not be contemplated that a judge would impose so extreme a penalty in the case of boys, such as have been referred to. I do not think it is customary to do so. I know of no case in which our law lays it down that certain offenders shall be punishable according to their age. I think the matter is safely left to the discrimination of the judge.

Hon. Sir E. H. Wittenoom: I think you are wrong.

The COLONIAL SECRETARY: There is a section of the Code which distinctly limits the discretion of the judge. That is Section 206. Even in that section the discrimination remains with the judge in regard to persons under the age of 16.

Hon. Sir E. H. Wittenoom: The Bill is almost dictatory. It says that any person who has or attempts to have unlawful carnal knowledge of a girl under 16 is guilty of a crime and is liable to imprisonment with hard labour for a term of five years, with or without a whipping. There is not very much discrimination left for a judge in that.

The COLONIAL SECRETARY: The Interpretation Act provides that wherever penalties are imposed they are the maximum penalties. In some of our Acts provision is made for fines and the maximum is stated, and there is some provision that the minimum punishment shall not be less than a certain percentage of the maximum. Under Section 206 of the Criminal Code, if a person is convicted a second time for a certain offence the judge is bound to impose the penalty of whipping. Even there boys under 16 are included and are subject to the control and discretion of the judge. So far as Clause 7 of the Bill is concerned, the discretion of the judge is absolute, and should quite sufficiently protect boys of 16 or 17 from too severe punishment, such as would undoubtedly be required in the case of older offenders.

Hon. Sir E. H. Wittenoom: I do not agree with you.

The COLONIAL SECRETARY: I think it was Mr. Dodd who asked why in Clause 7, Subclause 3, we should increase the time for taking action from three to six months.

Hon. Sir E. H. Wittenoom: I endorsed

The COLONIAL SECRETARY: A prosecution under this section for the offence of having unlawful carnal knowledge must be begun within six months, and for the attempt it must be begun within three months. In the case of the actual committal of the offence, the contention is that a young girl may hide the fact until circumstances make it impossible for her to do so any longer. These circumstances would not arise within a period of three months.

Hon. J. E. Dodd: They might do so. I know of a case in which an attempt was made to hide the fact for a certain purpose.

The COLONIAL SECRETARY: That may be so. I am quite open to hear any argument as to the wisdom of this clause. It is thought that this extension of time is a reasonable one. With regard to the suggestion that the indeterminate sentences board should comprise at least one woman, that is a matter for consideration under the amendment to the Prisons Act, which deals with the constitution of the board. As it stands, there is nothing to prevent a woman being appointed on the board, but if it was desired to make it mandatory that a woman should be appointed on the board it would be necessary to amend the Act. I am glad to hear the remarks of hon. members who have touched on the question of legalising bookmakers, and I trust we shall be able to secure the deletion of the clause in question.

Hon. Sir E. H. Wittenoom: Unlegalising them.

The COLONIAL SECRETARY: I think I have touched upon all the matters referred to by hon. members. I am sure Mr. Dodd will recognise the fact that there is nothing of a party character in this Bill. The only anxiety of the Government is, with the assistance of members, to make this as perfect a measure as possible.

Question put and passed.

Bill read a second time.

In Committee.

Hon. W. Kingsmill in the Chair; the Colonial Secretary in charge of the Bill.

Clause 1—agreed to.

[The President resumed the Chair.]

Progress reported.

BILL—PRISONS ACT AMENDMENT.

Second Reading.

Debate resumed from the 22nd October.

Hon. J. DUFFELL (Metropolitan-Suburban) [5.30]: In supporting the second reading of the Bill, I would remark that it is very closely allied to the amendment to the Criminal Code with which we have just been dealing. I should like to query Clause 3, which says—

> The following new part is hereby inserted in the principal Act between Parts 6 and 7.

Why insert this between Parts 6 and 7, when in the existing Act Part 2 deals with the establishment of prisons? To my mind Part 2 would be the place where the clause relating to reformatory prisons could most fittingly be inserted. I do not know what the reasons are for putting it in between Clauses 6 and 8. It seems to be out of place and not in keeping with that part of the Bill dealing with the reformatory prison. As I said at the outset, I intend to support the second reading of the Bill, because I realise there are instances when we should have the power to deal with prisoners of a particular type, as has been pointed out in the consideration of the Criminal Code Amendment Bill. There are existing in our prisons persons who have been convicted of various offences, committed in many instances at periods when they have had very little or no control over their own actions, offences also brought about by environment. At the present time there is no place where these prisoners can be properly housed, where they can be taken special care of and properly watched. I am sure that if these facilities were granted, the result would be to prevent a recurrence of the offences for which in many cases they have had to pay the penalty by way of imprisonment. The proposal is a step in the right direction. At the same time, I realise there is just a possibility that we are verging close on to committing ourselves to new Acts which may have the effect of being too lenient. We glory to-day in the fact that an Englishman's home is a place of safety, where his wife and children may live without fear of being molested. What has brought about that state of affairs? It is the strict punishment which was provided by the British authorities so far back as a century ago. But it is just possible that we are depending too much in this twentieth century on the progress which is following in the wake of Christianity. But as I stated yesterday, what progress really has been made when we contemplate what has taken place during the past four years in a civilised country. It is sufficient in itself to make us stop and ask where are we going and what are we doing? In the Bill which we have just dealt with we have provided for increased punishment for various offences. In this piece of machinery which we now have under consideration, I notice that a board of control is to be brought into existence with very large powers indeed. I am not quite sure at this stage whether I favour the appointment of such a board of control. I have yet to get more information which will convince me that a board of control will be the correct body to deal with certain prisoners who may in the future be undergoing sentence for crimes committed. I cannot help but think of cases in the past where mistaken leniency has been shown, and in fact, where it has been stated that for such a consideration certain people have interested themselves in the cases of certain prisoners, with the result that freedom has been purchased. We cannot close our eyes to the fact that such rumours have been current, and they have not been current without some

foundation for them. It is instances of that kind which make one feel reluctant to extend powers to anyone who has not had an opportunity of going into the facts which have been the means of placing an individual in gaol as punishment for a crime committed. It is necessary that the facts and the circumstances of the case should be known before people can be put in the position of knowing whether the person in question is worthy of being given another chance by being permitted to go out amongst his fellows. We have had instances where leniency has been extended and where even worse crimes have afterwards been committed than the one originally perpetrated. These things to my way of thinking require some consideration before permission is granted for the establishment of a board such as is proposed in the Bill. If eventually a board of control is appointed, I hope that the suggestion made by Mr. Dodd will be given effect to. If a board of control is appointed, one of the three to constitute that board should be a woman who is capable of using sound judgment, a woman who has from time to time interested herself in matters pertaining to the general welfare of the community. We have such women in our midst. We have come into contact with these women when they have been called before select committees to give evidence on matters of vital importance, and they have shown that they are capable of giving sound judgment. If one such woman were appointed to the board, sound common judgment would be displayed before a person undergoing a term of imprisonment would have his liberty restored. Of course I am open to conviction, and I reserve any further remarks I may have on that point until the Bill is in Committee, before which time I shall have had the opportunity of hearing the opinions of other hon. members. The Bill dealing with reformatory prisons is launching out on a new track altogether, new but necessary. At the present time it is somewhat difficult to know where you could point to any particular prison in existence and say that it would be suitable for reformatory purposes. It has been suggested that a portion of the present Fremantle gaol might be set apart as a reformatory prison. I do not agree with such a suggestion. If such prisons are to be established, they should be prisons with a good area of ground where cultivation can be carried on, where the surroundings are pleasant and where everything will be conducive to a better training of the mind and to an enlargement of the highest qualities of the mind than would be possible in a dungeon or places surrounded by high walls with wardens on sentry duty. With regard to indeterminate sentences, it is just possible that some error has crept into the minds of hon. members. An indeterminate sentence does not mean that a prisoner condemned to undergo such a sentence has received a life sentence. It may be that the surroundings of a particular case may warrant the judge or the magistrate passing an indeterminate sentence, realising that the accused was at that particular time suffering from mental strain, from an overbalanced mind or from exceptional conditions which induced him to commit the crime. There are other instances in the same category whereby a judge or a magistrate in finding a prisoner guilty would realise that the imposition of a sentence of six or 12 months or more would not exactly meet the case, and that in a few weeks' time or perhaps a few months' time the accused under proper treatment might become a different person altogether. That being so, the indeterminate sentence passed on the prisoner would be far preferable than an ordinary sentence of three or four or five years. Probably in the space of six or 12 months, it would be proved to the satisfaction of the authorities of the gaol and the powers that be that the prisoner had so recovered from the abnormal conditions under which he committed the offence that he would then be a fit and proper person to be set at liberty and given another chance. I realise the Bill will have a good effect in bringing about the release of prisoners justly entitled to it. Speaking generally of the Bill, I recognise the necessity for it and I will certainly support the second reading.

Hon. J. E. DODD (South) [5.46]: The Bill is certainly a pretty fair advance on our present day methods. The Government are to be commended for introducing such a measure. But with this Bill, as with the other one, there are certain points which I can scarcely understand. For instance, I notice it is provided that any person transferred shall not be detained in a reformatory for any period longer than the residue of the sentence unexpired. Yet in the Criminal Code Bill it is provided that the judge can direct that, after the expiration of his sentence, a prisoner shall be sent on to the indeterminate sentences board. I can scarcely reconcile the two provisions. In the Prisons Bill it is provided that in the case of a prisoner who, allowed out on probation and failing to behave himself, is sent back, the period which he spent out of the prison shall not be calculated as part of his sentence. That seems to me unjust. We are there giving the indeterminate sentences board the right to increase a man's sentence. I think the time during which a prisoner is out on probation, whether he behaves himself or not, should be regarded as part of his sentence. Again, in regard to the site for a reformatory prison, Rottnest Island has been suggested. I am not altogether sure about the suitability of Rottnest for this purpose. If Rottnest were not a holiday resort it would probably be one of the best places in which to make this experiment, but, seeing that it is annually becoming more popular as a holiday resort, I think the Government will be taking a grave risk in making the experiment on the island. When in New Zealand a couple of years ago, I was very much struck by the method adopted in dealing with short-sentence prisoners. I was scarcely in a fit state of health to make many inquiries, but from what I could gather a large number of well behaved prisoners were employed in tree planting. There are there several plantations of softwoods, the result of this system. And, at the expiration of a prisoner's sentence, he is allowed a fortnight or three weeks on full rate of pay in order that, when released, he may have a few pounds in his pocket. I think the Government here might try a similar

experiment. We are very short of softwoods, and if there is one place on earth where a well behaved prisoner can be given a chance, it is in the open country, where he would be engaged planting trees. I notice that a number of softwood trees have been planted in King's Park, and when a member of the board I was informed that they are likely to become very profitable. We might make such an experiment on the prisoners, and the experiment might prove to be of some use to the State as well as to the prisoners themselves. In regard to the appointment of a woman on the council, I believe the Government will see their way clear to agreeing to such appointment, or, if not to the appointment of a woman for general purposes, that they will agree to the appointment of a woman to the council when the council is dealing with women prisoners. There is another point upon which I would like to be clear, namely, the provision in 64L, which says that this part of the Act shall apply to persons undergoing preventive detention. I would like to be certain whether or not that can be construed into meaning that persons who may be under detention because they are suffering from venereal diseases—

The Colonial Secretary: No.

Hon. J. E. DODD: I am glad to have that assurance. I do not know that there is much else in the Bill to be dealt with, except in Committee. I trust that some good will result from the passing of the Bill.

Hon. J. W. KIRWAN (South) [5.52]: The Government are to be congratulated upon the Bill. It is an attempt to achieve what has been the ideal of prison reformers, namely, that a prison should be not so much a place of punishment as a place of improvement for the individual imprisoned.

Hon. Sir E. H. Wittenoom: You mean a pleasure resort?

Hon. J. W. KIRWAN: No, I mean a place from which a man emerges a better man than when he was interned, a place of reformation, in which a man will learn to become a better citizen. I think that is the object the Government have in view in introducing the Bill, and it is unquestionably a very worthy object. There are, of course, many details in connection with the Bill which might be discussed on the second reading. As with most other Bills it is entirely a question of administration. Mr. Duffell seemed to find fault with the formation of a board. To my mind the success of the proposed board will entirely depend upon its personnel. There is one aspect of the present system which I think is worthy of attention—it has been referred to by Mr. Dodd—namely setting the prisoners at some useful work. According to the report of the Prisons Department for 1917, the total amount expended on the upkeep of prisoners was £19,854. Against that expenditure may be set off the value of the remunerative work performed by the prisoners, namely, £4,023. That means that the average value of remunerative work performed by each prisoner was £15 5s. But the cost of maintaining each prisoner is £75 12s. 2d. It seems to me that some work could be provided for the prisoners which would result in a higher average value of remunerative work than £15 5s. Of course some prisoners are in for only a short time, while others are in for a long time; but no matter how the figures for 1917 may be examined, even when the figures for individual prisons be taken into account, prisons at Fremantle, Rottnest, Roebourne, Broome, and other centres, still the average value of the remunerative work done by each prisoner is very low indeed and forms but a very small percentage of the cost of maintenance. It would not be too much to ask that the prison system should be so altered that at any rate each prisoner would be able to maintain himself, and perhaps earn a little over and above, so that when he leaves the prison he should have something with which to make a fresh start in life.

Hon. Sir E. H. Wittenoom: That is the reformatory business.

Hon. J. W. KIRWAN: I do hope that under the Bill prisoners will be put to useful work to a much larger extent than is evidently now being done. Mr. Dodd has made a suggestion regarding tree planting. I am sure it must occur to all hon. members that there is a number of other directions in which prisoners might be employed without interference with the work of persons engaged in industries outside of prisons. This would not only help to reduce the cost of prisons—I consider that the prisons ought to be made self-supporting—but it would be beneficial to the prisoners themselves. There is nothing so beneficial as industry in the making of a useful citizen. I do not think it would call for any hard work, or any slave-driving, if we required a prisoner to earn at least £75 per annum, and a little over and above that, so that he might not leave the prison empty-handed.

On motion by Hon. Sir E. H. Wittenoom, debate adjourned.

House adjourned at 5.59 p.m.

Legislative Assembly,

Wednesday, 23rd October, 1918.

The SPEAKER took the Chair at 4.30 p.m., and read prayers.

[For "Questions on Notice" and "Papers Presented" see "Votes and Proceedings."]

BILL—FORESTS.

In Committee.

Resumed from the 10th October; Mr. Stubbs in the Chair, the Attorney General in charge of the Bill.

Clause 10—Suspension and removal of Conservator: