Legislative Council

Wednesday, 16 October 1985

THE PRESIDENT (Hon. Clive Griffiths) took the Chair at 2.30 p.m., and read prayers.

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Report: Contraceptives Amendment Bill

HON. JOHN WILLIAMS (Metropolitan) [2.32 p.m.]: I am directed to present the Standing Committee on Government Agencies' report on the Contraceptives Amendment Bill. I move—

That the report do lie upon the Table of the House and be printed.

Question put and passed.

(*See paper No. 215.*)

Statement by Hon. John Williams

HON. JOHN WILLIAMS (Metropolitan) [2.33 p.m.]—by leave: I wish to make a brief statement as follows—

(1) On 8 October 1985, during debate on the Contraceptives Amendment Bill, the House resolved in favour of the following motion moved by Hon. V. J. Ferry—

> To delete all words after the word "That" and substitute the following words—
>
> the Bill be referred to the Standing Committee on Government Agencies.

(2) On 15 October 1985, prior to the committee meeting to consider the Contraceptives Amendment Bill, Hons. J. M. Brown, Kay Hallahan and Robert Hetherington resigned from the committee and were replaced by Hons. G. C. MacKinnon, Tom McNeil and W. N. Stretch.

(3) The appointment of three new members to the committee, who are inexperienced in the workings of the committee, presented the committee with difficulties when considering the Bill at its meeting of 16 October 1985.

(4) The committee's examination of the Bill was hampered by the fact that it was unable to secure an interview with the Minister for Health, although the Minister did provide written answers to certain written questions which the committee had put to him. Because these answers could not be discussed with the Minister they were of limited assistance to the committee.

(5) The committee's examination of the Bill dealt only with the establishment of the proposed Contraceptives Advisory Committee.

(6) The committee is of the opinion that the proposed Contraceptives Advisory Committee's structure is consistent with the parameters of accountability delineated by the committee in its Sixth Report: A Framework of Accountability for Government Agencies: June 1985. However, the committee wishes to refer the House and the Minister to the following extracts from its Sixth Report—

> It is the Committee's view that decisions to set up new agencies have been taken too lightly, and that often the case for a separate body, rather than an extension of the existing facilities, has not always been well made.
>
> (Sixth Report: para 8.8)

Hon. Peter Dowding: Rubbish!

Hon. G. E. Masters: You are a rude man.

The PRESIDENT: Order!

Hon. Tom Stephens: You can hardly talk.

Hon. JOHN WILLIAMS: To continue—

> The Committee recommends that Parliament should be provided with sufficient information to enable it to consider whether the purported advantages of using a new and separate agency can be justified in terms of the cost and disruption involved.
>
> (Sixth Report: para 9.7)

Several members interjected.

The PRESIDENT: Order!

Hon. Tom Stephens interjected.

The PRESIDENT: Order! I called, "Order" and Hon. Tom Stephens defiantly continued to interject. I will not warn him again. The same goes for the Leader of the Opposition if he continues to interject.

Hon. JOHN WILLIAMS: To continue:—

(7) The committee makes no recommendation on whether the proposed Contraceptives Advisory Committee should or should not be established. In the committee's opinion this is a matter for the House to decide.

CONTRACEPTIVES AMENDMENT BILL

Resumption of Proceedings

On motion without notice by Hon. D. K. Dans (Leader of the House), resolved—

That the proceedings on the Contraceptives Amendment Bill be resumed at the stage they had reached immediately prior to the Bill's referral to the Standing Committee on Government Agencies.

The PRESIDENT: Order! For the information of honourable members I point out that the whole of this procedure should have been done in the appropriate place; that is, motions without notice.

Hon. D. K. Dans: I thought so, Mr President.

The PRESIDENT: I am letting members know that this sort of haphazard presentation of documents is unacceptable.

CASINO CONTROL AMENDMENT BILL

Introduction and First Reading

Bill introduced, on motion by Hon. D. K. Dans (Minister for Racing and Gaming), and read a first time.

ACTS AMENDMENT (SEXUAL ASSAULTS) BILL

Second Reading

Debate resumed from 26 September.

HON. I. G. MEDCALF (Metropolitan) [2.40 p.m.]: The Bill which is presently before the House is said to be in response to representations that have been made by various women's groups that there should be tougher laws against rape and sexual assault. Indeed, this Bill purports to be a tougher law against rape, sexual assault, and other forms of violence against women. That is referred to in the contents of the Bill and in the second reading speech.

The Bill amends the Criminal Code, the Evidence Act, and the Child Welfare Act, as well as making a technical amendment to the District Court of Western Australia Act. It is not the first of this type of Bill in recent years.

In 1976 the Court Government enacted certain changes in the Evidence Act to restrict evidence in courts. This is referred to in the explanatory memorandum which accompanied the second reading speech. It is a fact that in 1976 certain amendments were introduced by me and accepted by the Parliament, which had the effect of greatly restricting the kind of embarrassing, and often humiliating, questions asked of women who were the victims of sexual violence.

For example, a woman could be asked questions about her previous reputation without any inhibition. There were no holds barred. The defence counsel could suggest that the woman was a prostitute and she was placed in a most invidious position, particularly as in many cases, not being a party, she was unable at the time to present evidence to refute the proposition. She was entirely in the hands of the Crown which was prosecuting the case. Nor was she represented at the court trial and, therefore, she could not defend her previous reputation. She could be asked questions regarding her previous disposition in sexual matters in an unrestricted way. Suggestions could be made that she was a woman of easy virtue or loose morals who was inclined to lend herself to this type of activity and thereby encourage people to commit sexual crimes upon her person.

This situation was changed very substantially in the 1976 legislation and these types of questions were placed in a restricted category so that leave of the court had to be given for these matters to be raised. Indeed, if my memory serves me right, they could not be referred to at all in the committal stage of the proceedings but merely at the trial. This was a tremendous boon to female victims in rape cases because previously defendants had attempted to have the committal proceedings exonerate them in the sense that the magistrate would find that there was no case to answer because of the success of the violent attack made on the woman's previous reputation and disposition in sexual matters.

Other restrictions were also passed at the time, including restrictions on reporting names or identifying details of women who were the victims of sexual violence. This was greatly appreciated by the women's movement and, indeed, some of these changes were attacked only last year by some lawyers who considered that they had inhibited the defence. At the time I publicly rejected that and, indeed, I believe

that the defence has not been inhibited in any way by the action then taken, simply because leave can be obtained in appropriate cases.

The next attempt to change these arrangements was when a Bill was introduced by the present Minister for Education, Mr Pearce, in 1982. Mr Pearce and Mr Hetherington were both spokesmen on women's interests for the then Labor Opposition. Mr Hetherington had taken a keen interest in this matter because he had attended a conference in Hobart in 1980, at which I had also arranged for the Crown Prosecutor, Mr Murray, to be present.

Mr Hetherington returned with the intention of putting forward a Bill, which was taken over by Mr Pearce. In fact, three Bills were produced and introduced into the Legislative Assembly by Mr Pearce. They were based on the New South Wales provisions and were quite irrelevant to the situation in Western Australia, largely because they were based on the common law provisions which applied in that State, which does not have a Criminal Code as do we in Western Australia.

Hon. Robert Hetherington: We have learnt a great deal since, you will be happy to know.

Hon. I. G. MEDCALF: I ask the member to please let me finish. Following the introduction of those Bills the Labor Party arranged a seminar to which it invited criminal lawyers, including Peter Michelides, and a number of others. Following that seminar the Government decided that the Bills needed a great deal of modification, so they were withheld to allow amendments to be made. It was suggested by Mr Michelides that instead of having four categories of sexual violence there should be two, and also that the Bill was unnecessarily complicated.

I made a statement at the time in which I pointed out some of the problems. Had that Bill proceeded in this House and had this House rejected it, I believe we would have been accused of wielding the big stick and rejecting worthwhile legislation.

I am pleased that Mr Hetherington and others did learn from that experience and decided that perhaps they were not right, no matter how idealistically they may have tackled this problem; that their attempt was not a good one; and, in fact, it would have resulted in a very confused state of the law. Of course, much of that New South Wales law was inapplicable in Western Australia; that Bill even included a provision that dock statements should be abolished when, in fact, they had been abolished in Western Australia some years previously. This was ancient history.

The present Bill before the House again puts sexual violence into four categories. By sexual violence I mean certain types of sexual violence because other types are not dealt with in the Bill. Generally speaking the Bill puts certain aspects into four categories in a rather different way from that which applies in New South Wales. It deals with largely similar matters to the Pearce Bills, but I am pleased to say in a much more appropriate fashion than previously.

This Bill contains some sensible provisions: For example, the grading of offences has much to recommend it; that is, the grading into the four categories in which the various offences are now dealt with. I am not one who would simply stick to the term "rape" as if it is a term that must always remain. There are those in our community, including some women's groups, who believe the term "rape" should remain.

I do not think that should matter a great deal myself. I would not raise any objection to that. I think it is described adequately in other ways, but the grading of the offences which appears in the Bill now categorises these various offences into four types. First, indecent assault which is dealt with in section 324B of clause 8 of the Bill; aggravated indecent assault; sexual assault, and aggravated sexual assault, which are dealt with in successive sections in clause 8. The Bill contains a very useful way of defining what consent in sexual violence cases might comprise. There have often been arguments in past cases that a woman has consented because she has not resisted. There may have been some threat or intimidation applied to her and she submitted under threat. This fact was consequently used against her as if she had in fact consented.

I think that the definition in the Bill is a good one and that it is now all-embracing. It includes the provision that a woman cannot be held to have consented if she is subjected to force or threat or to fraud or deception. This concept of fraud and deception is a very interesting one, and it is one which I believe should be included in this definition, or at least there should be some provision for it in the legislation. I am not sufficiently expert to know whether it is exactly in the right place but I am quite prepared to accept that it is adequate where it is. A woman can be very easily deceived by some

promise and indeed there are a number of well-known cases in the law which illustrate the kind of deceit which may occur. For example, one typical well-known case is one which concerns a pseudo-medical practitioner who deceived his female patient by persuading her that she required sexual intercourse as part of her cure, which he then proceeded to have with her.

That is one example of deception or fraud but there are other cases into which I will not go, except to say that there was a recent case in which a person convinced a woman that she had gone through a form of marriage with him. After this alleged marriage—when the woman thought she was married to this person—he engaged in sexual intercourse with her. The woman then discovered she was not married and in fact had been completely deceived. It is very proper that no-one will be able to allege that she had consented in this circumstance. I think that this definition will clear up this type of situation.

The circumstances of sexual aggravation which are set out in the Bill are quite satisfactory and I think they are very well expressed—perhaps more clearly expressed in this legislation than they have ever been expressed anywhere else. Bodily harm is included, together with the the use of some offensive weapon in order to threaten a person. Performing a degrading or humiliating act on a victim is also included. In addition, being in company with others even though the others do not participate in the rape itself is an aggravating circumstance. Sometimes the situation occurs in which a person gets others to hold a victim down and so on. Further, where the victim is under the age of 16 or over the age of 60 it can be an aggravated assault. I believe these matters are well set out, and this incurs a more serious offence and a more serious penalty in the Bill. The presumption that a 14-year-old boy is incapable of sexual intercourse is an old one and I am sure it is one that for years people have been prepared to abandon on the appropriate occasion. No objection is raised to that presumption being taken out of the code, and one clause refers to that. In addition, under new section 324I, the spouse of an accused is a competent and compellable witness.

Also alternative charges can be brought for lesser offences. That has always been the case but for technical reasons these have fallen foul and the Bill now spells this out under clause 13. I think that is a sensible change.

The Bill does create some additional problems. While giving additional protection for victims, it does indeed mean that there will perhaps be some loss of protection for the accused. I would like to add that another feature of the Bill of which I approve is making evidence of sexual reputation or disposition inadmissible as evidence. I think that is quite a sound move and I cannot see what that evidence has to do with the particular prosecution. It is still possible to give evidence as to previous sexual experiences. I think that in important cases that can be obtained by leave.

There are situations in which it is necessary in the interests of justice to give evidence about previous sexual experiences with persons other than the accused. One example of that which comes to mind is the case of a bikie rape, which might otherwise be deemed to be a pack-rape, but is not when the victim has in fact been engaging in sexual experiences with members of the gang. It is perhaps appropriate that evidence of that should be available, provided the judge believes it is relevant to the case. There is that safeguard and I personally approve of that part of the Bill.

However there are some serious criticisms of the Bill that a responsible Opposition should voice. I have been at some pains to say that there are quite a number of features of which I approve, but I want to be quite clear: There are some serious criticisms of the legislation and I believe it is up to the Opposition to put those before Parliament. One reason I believe these criticisms should be voiced in detail is that in the other place inadequate time was allowed for discussion of this matter. Having read the debate and what occurred in the other place, I note that this item, which was No. 13 on the Notice Paper, was suddenly brought forward when there were only two hours left in the day for the debate. Although the principal speaker for the Opposition sought leave to defer his comments, it was refused and the House was forced to proceed with the debate on the basis of the rules which then applied. Opposition members were only to have a week to consider any particular Bill. They needed more than a week and in that case they did not believe they had sufficient time. I think that is a good enough reason for members in this place to spend more time on the Bill and to go into some of these details which perhaps should have been gone into in the other place.

I do not believe that there was adequate opportunity for appropriate discussion in the other place. I will say no more about it because

I may be transgressing against the Standing Orders. This does emphasise the opportunity which this House has, if it chooses to use it, of taking a more deliberative role, and it is an opportunity which it should take in spite of what anyone may say about the Legislative Council's constitution or makeup. It is absolutely essential that this House give consideration to the Bills before it deliberatively and with adequate time. That is happening and I am pleased it is.

I now want to mention some of those points of criticism to which I have referred. Firstly, it is said that the accused's legitimate rights are said to continue to be protected. That is said in the second reading speech by the Minister and at page 11 of the explanatory memorandum. There is no need for me to quote from that speech, but the accused's legitimate rights continue to be protected. I have already said that I am in favour generally of the additional protection which is given to women victims of rape, but I would like to know how the accused's legitimate rights can continue to be protected. Here we are entering into a very difficult area. It is not apparent to me that there is anything in this Bill which continues to protect these victims' legitimate rights.

Hon. J. M. Berinson: In what respect are they protected?

Hon. I. G. MEDCALF: We reach the difficult stage where we are making inroads and granting additional protection to the victim and to a certain extent making inroads into the previous rights of the accused, and this is happening in this Bill. The rights which the accused had in relation to certain restricted evidence are being changed. I have said that I think that is reasonable. I do not know why the Government does not face up to this and does not say, "Look, we are giving additional protection to women and it has affected the rights of the accused."

Hon. J. M. Berinson: But we have not suggested that the rights of the accused have not been affected. We are saying that the rights remaining are fully adequate.

Hon. I. G. MEDCALF: The Attorney said that his legitimate rights are not affected. I do not know whether everyone would agree with that view. I think the Attorney is fortunate that I am agreeing with him, but I wonder whether the Law Society agrees. I noted, on reading the comments in another place, that reference was made to a report from the Law Society which was said to be confidential and given to the Government. I do not know whether the Minister in another place has it, but I would assume the Attorney General would have a copy. I wonder whether the Attorney General might make that report available to the House. I would think it is relevant. I am not saying I would agree with it because I have not seen what it contains. I do believe it is relevant that a copy of a report made by an independent body such as the Law Society, presumably by one of its committees and endorsed by the society, should be made available to Parliament. To what extent it is confidential I do not know but if the Law Society makes a report confidentially to the Attorney General I would think that that report ought to be made confidentially to members of the Parliament who might be involved in the debate.

Hon. J. M. Berinson: My understanding is that the Law Society feels free to give its advice to both the Government and Opposition once a Bill has been tabled and that its confidentiality would only go to the point to which the Bill is presented to the Parliament.

Hon. I. G. MEDCALF: I do not know because I have not seen the report and I invite the Attorney General to make it available. I am aware that a few years ago the Law Society made a statement that in practice it would make all reports available to both sides; but this report has not been made available to the Opposition. I invite the Attorney General to make it so available. It would be very helpful for members of Parliament to have a copy because it might assure the House that the legitimate rights of the accused are protected, as the Attorney said in his second reading speech. If the report assures the House—that the legitimate rights are protected—then we have nothing further to worry about on that score. I will not continue to labour the point.

The explanatory memorandum on page 8 refers to the apparent human experience of false complaints. I wish to quote from the explanatory memorandum where it deals with a new provision as follows—

> It expressly addresses the present requirement of practice (approaching a rule of law) that the trial judge shall warn the jury of the danger of convicting upon the uncorroborated testimony of the victim. This is said to arise out of the apparent human experience that false complaints of non-consensual sexual offences are often made.

I find it extraordinary that anyone should have referred to "the apparent human experience". It is a real human experience and it is a well-known human experience that false complaints are often made. Indeed, one can find reference to it every month in the newspaper. Something is found to be a false accusation or fabrication which someone has made perhaps in the heat of the moment to avoid another consequence. It is well-known to the police and to the prosecutors. I find the use of the word "apparent" quite extraordinary.

I would not accuse any person of dishonesty in this connection, but I find that the use of that word is dishonest because it is quite well-known that frequently false complaints are made. If the Minister has any doubts I suggest he ask the prosecutors or police whether they have had the experience of people making false complaints. I think this is another point which ought to be placed on record because it is better not to gild the lily and we have to get down to tintacks in matters like this. I think it is better to face the fact that false complaints are made. That does not destroy the benefits I have referred to in the Bill.

The next point of criticism I have is referred to on page 9 of the Bill, new section 36BD, which says that when on the trial of a person a question is asked of a witness which tends to suggest an absence of complaint or suggests delay by the complainant in making the complaint, the judge shall—

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

(b) inform the jury that there may be good reasons why a victim of an offence such as that alleged may hesitate in making or may refrain from making a complaint of that offence.

I take serious issue with this although I can well understand that if a suggestion is made in evidence that a woman has delayed her complaint, it may well be appropriate for the judge to give a warning to the jury that the absence of complaining early does not necessarily mean that she made a false statement. In fact, I believe that could be appropriate and it may even also be appropriate for the judge to say to the jury that there may be good reasons why she delayed making her complaint.

I can accept that, but this provision does not give the judge any discretion whatever. It tells the judge that he must do this. Why is no time limit referred to? I am not aware of any time limitation in the legislation. In other words, it seems to me that a person could make a complaint about an offence at any time, no matter how long ago that offence might have occurred. If I am wrong in that belief I would be glad to be corrected. I may be wrong, but I could not find any limitation period in the law. I would be glad if the Attorney General would inform the House whether there is any limitation of time and whether a woman can make a complaint quite a long time, even two or three years or so, after the event has occurred.

Hon. J. M. Berinson: I see no time limitation in that clause.

Hon. I. G. MEDCALF: A time limitation is provided for some sexual offences, but it does not appear to affect this legislation, as far as I can see, so it does mean that someone can complain quite a long time after an event, and that is a real problem because it does rather imply that things may not have worked out the way they should in terms of the arrangements that the parties have made between themselves. That is the inference that one could draw from that clause and if the delay is quite considerable it does rather indicate that there may be some other good reason.

Of course, I am not suggesting that he should, but if the judge is going to be fair perhaps he should not only inform the jury that there may be good reasons that the woman did not complain until later, but also on the other hand there may be some other reason. It becomes ridiculous for the judge to descend into this area and start speculating as to the reasons or lack of reasons which people may have had.

The second part of that warning, I think in a mandatory form, can be quite objectionable and I wonder whether it is wise to require a judge to take affirmative action, to use a current phrase, of that type. I think it is going a bit far when a judge is involved in affirmative action on someone else's behalf.

Hon. J. M. Berinson: That, of course, is only activated by suggestions by the defendant's counsel to the contrary.

Hon. I. G. MEDCALF: That is quite true.

Hon. J. M. Berinson: It is not as though only one side of the question is given—

Hon. I. G. MEDCALF: That is true, but the judge has to give it. He really may feel that there is no good reason, but he is required to

make that statement to the jury, no matter what his own views are, having heard all the evidence; he has to say there may be good reasons for this, and the effect of the judge saying that to the jury must have some bearing on the result.

Hon. J. M. Berinson: I do not know whether it requires him to go so far as to say, "There may be good reasons."

Hon. I. G. MEDCALF: Yes, that is exactly what the clause says.

Hon. J. M. Berinson: Is not the terminology in terms of "not necessarily"?

Hon. I. G. MEDCALF: No. On page 9 of the Bill it says—

> The judge shall . . .

Note that. It continues—

> (a) give a warning to the jury . . .
>
> (b) inform the jury that there may be good reasons . . .

Hon. J. M. Berinson: But he is not asserting good reasons; he is pointing to the possibility. He is not asserting it.

Hon. I. G. MEDCALF: He says, "There may be good reasons" for this happening. He is being asked to descend into the arena, to roll up his shirt sleeves and to say something which may well be deemed to be evidentiary, and I think that is wrong.

I have no objection whatsoever to the judge having a discretion. We are accustomed to giving judges discretion or a permissive power to do certain things, but not to require them at all times once that question is asked; it could be asked in good faith and there may be some deception on the part of the victim if she defers making a complaint for five years, or there may not be any deception at all. For a judge to say that there may be good reasons for this is wrong because there may not be good reasons. To say that there may or may not be good reasons would be a useless statement, and to make the judge make any such statement is the objectionable part of this clause.

I am not necessarily saying that it is wrong for a woman to delay her complaint. There may well be circumstances in which she is forced to delay her complaint, but I find that requiring the judge to make this statement every time this question is asked or on each occasion when the question is asked is inappropriate. We are making the judge descend into the arena with comments which may be persuasive and which in some circumstances he might consider to be inadvisable to make. I would like the Attorney General to have another look at that matter because I believe that on reflection he might decide that the legislation has gone too far. This requirement could be made permissive rather than mandatory and if the word "may" was inserted into the legislation I would not raise an objection.

One of the features of this legislation is that on the ground largely of non-discrimination the Bill virtually equates sodomy and rape, or what we have commonly come to describe as sodomy and rape. The Criminal Code has always described the offences as sodomy and rape, and on the ground of non-discrimination we are equating the two and giving them similar penalties, because they are now together in the same section.

In some ways that is very curious when we consider the other provisions of the code which deal with sodomy entirely separately. There is now a rather strange difference between these sections and the other sections of the code. I refer to new section 324D of the Bill which provides—

> Any person who sexually penetrates another person without the consent of that person is guilty of a crime and is liable to imprisonment for 14 years.

"Sexual penetration" as defined a little further down in new section 324F means—

> to penetrate the vagina of any person or the anus of any person . . .

The remainder of the clause elaborates on that general penetration. In other words, the two are equated and the offence is only committed if it is committed without consent, and while that is entirely in line with the traditional situation with regard to rape, it is not in line with the other sections of the code which deal with sodomy.

The new section refers to sexual penetration specifically and sexual intercourse as it is generally understood; indeed, it includes unlawful carnal knowledge which is associated in another section with penetration through the anus. The legislation now applies to a male attacking a female or a female attacking a female—I am using the word "attacking" in a general sense—to a female attacking a male or a male attacking a male, so that it is completely interrelated. Section 314 of the code asserts that an attempt to commit sodomy is no longer an offence. It used to carry a sentence of 14 years' imprisonment and that section has been repealed. One can see the intention for that. However, section 181 remains. This section re-

fers to unnatural offences, which include sodomy, which carries a 14-year term of imprisonment, so the penalty remains. Section 182 refers to attempts to commit sodomy.

Hon. J. M. Berinson: But those offences are consensual.

Hon. I. G. MEDCALF: Indeed, that is the point I am making. The consent is not an issue in sections 181 and 182.

Hon. J. M. Berinson: But it is an issue in proposed new section 324D.

Hon. I. G. MEDCALF: Because that is dealing with sexual assaults generally.

Hon. J. M. Berinson: It is dealing with sodomy.

Hon. I. G. MEDCALF: Yes, as a sexual assault.

Hon. J. M. Berinson: So are the others.

Hon. I. G. MEDCALF: Not section 181.

The DEPUTY PRESIDENT (Hon. P. H. Lockyer): Order! Could I assist honourable members by suggesting that this more definitive type of argument could be carried out in Committee. That may benefit all concerned. I know members are gripped by the debate, but it is better debated in detail in Committee.

Hon. I. G. MEDCALF: That is your view, Mr Deputy President, and I respect it because you are in the Chair. However, it does rather prevent me from making the point I am making so that the Attorney can have the opportunity to look at it. However, I am easy. All I can say is that consent is irrelevant under those sections. However, it is relevant under proposed new section 324D. Permitting is not an offence and consent is a defence under the proposed new section 324D. I have to make this point because I want the Attorney to follow the argument I am making. I will deal no further with the detail of those proposed sections.

A person can give consent to what would otherwise be an offence under proposed section 324D, and that is a clear defence. It is clearly based on the theory that homosexual acts between consenting adults can be legitimised because they have consented. That is clearly so. Consent for the first time becomes a defence in relation to homosexuality.

Hon. J. M. Berinson: Only to an act of homosexuality, the result of assault. It is only in that instance that the defence is created under the new section. In circumstances of consensual homosexuality, section 181 still catches the act as an offence.

Hon. I. G. MEDCALF: Yes, but if one is assaulted the accused can say that one consented and that is a defence. The accused can say that the victim consented.

Hon. J. M. Berinson: Of course. That has always been a defence whether in rape, homosexuality, or sodomy.

Hon. I. G. MEDCALF: It has never been a defence to sodomy.

Hon. J. M. Berinson: No, but a defence to the sexual assault charge as opposed to the homosexual charge on its own.

Hon. I. G. MEDCALF: Perhaps out of deference to the Deputy President, we might defer this discussion to a later stage.

Hon. Robert Hetherington: You are getting confused.

Hon. I. G. MEDCALF: I think that Hon. Robert Hetherington made a reflection on the Chair when he said, "You are getting confused."

The DEPUTY PRESIDENT: I noted the member's comment. However, I took it that he made it in jest.

Hon. I. G. MEDCALF: I think I have said enough on that subject. Perhaps the real problem in this legislation is that the Government has claimed that it is making the law in regard to sexual offences tougher.

The four grades of sexual violence to which I have referred have penalties which vary from four years to 20 years. There is no minimum sentence, so that the matter is left entirely to the discretion of the courts as previously. There is no suggestion that the courts will be directed in any way by having a minimum sentence. Therefore, when we refer to sentences from four years to 20 years, we are referring to the maximum sentences. I think we must really, in that connection, examine the offences one by one.

The offence of indecent assault carries a maximum of four years. This takes the place of two sections in the code, section 328 and section 315. One refers to indecent assault on a female, which carries a four-year maximum penalty, and the other refers to an indecent assault on a male, which carries a maximum of three years. So there is virtually no change in the penalty for that offence. The penalty is four years, as it was previously, in connection with indecent assault on a female.

The next offence is aggravated indecent assault, which carries a maximum of six years. This does not involve sexual penetration, but it involves circumstances of aggravation. It is not possible to exactly compare this with any other section because at present there is not another section in the code dealing with aggravated indecent assault. However, some are relatively close, such as attempted rape in section 327 which carries a penalty of 14 years. There is also assault with attempt to commit sodomy—this is where penetration does not occur under section 314—which also carries 14 years.

The offence of aggravated indecent assault is a much worse offence than a simple aggravated assault. Hence, it should carry a relatively high penalty. I do not believe it does carry such a penalty.

Hon. J. M. Berinson: But it carries double the penalty that now exists in the case of males, and 1½ times the penalty available in the case of females.

Hon. I. G. MEDCALF: The Attorney is comparing aggravated assault with a simple indecent assault, if there is such a thing.

Hon. J. M. Berinson: I am comparing indecent assault without the circumstances of aggravation as defined in the Bill, with indecent assault where those conditions apply; for example, a child under 16 years of age. The act is indecent assault, but the mere fact that the victim is under 16 creates something which does not raise questions of attempted rape. It is a circumstance of aggravation which increases the maximum penalty by 1½.

The DEPUTY PRESIDENT: Order! I cannot allow this tête-à-tête to continue. I think the Chair has been most patient. I know members are keen to hear the debate. However, I hope the member can restrain himself to asking questions of the Attorney at the appropriate time. If matters need to be expanded, the Committee is the appropriate place.

Hon. I. G. MEDCALF: I am sorry, Mr Deputy President, that this line of argument gives you offence.

The DEPUTY PRESIDENT: Order! It does not give me offence. I think the appropriate place is the Committee stage. It is against Standing Orders for members to have a tête-à-tête against the Chair.

Hon. I. G. MEDCALF: I would like to continue my argument, if you will permit me, Mr Deputy President, but if you will not I will have to take other action at an appropriate time. By that, I mean that I will have to continue my argument perhaps in the Committee stage as you recommend. I do not propose to continue that line. You have, in effect, debarred me from making the points I was about to make.

Hon. J. M. Berinson: No, he has debarred me from responding.

The DEPUTY PRESIDENT: Order! Before this gets out of hand, I assure the honourable member that I am not debarring him from making any comments. I am debarring the Minister from making replies to his comments prior to his having the opportunity made available to him at the proper time. There is no reflection whatsoever on the honourable member on his feet.

Hon. I. G. MEDCALF: Thank you, Mr Deputy President. I apologise for having misunderstood your comments. In view of the somewhat dry argument that I am putting, I will proceed as quickly as I can.

Hon. Robert Hetherington: I am fascinated by it.

Hon. Fred McKenzie: No; it is dry.

Hon. I. G. MEDCALF: I now pass to the third type of sexual assault. It involves sexual penetration and is equivalent to rape or sodomy and carries a penalty of 14 years' imprisonment. If we compare that penalty with the existing penalties for rape or sodomy, we find that at present rape carries a life sentence and sodomy a sentence of 14 years. I ask, Sir—I suggest the Attorney does not reply—how a maximum sentence of 14 years is tougher than a sentence of life imprisonment?

The fourth type of offence is aggravated sexual assault which carries a maximum penalty of 20 years. If we compare that with the sentence for rape at present, we find that the maximum sentence for rape is life imprisonment. It is curious that a maximum term of 20 years' imprisonment is said to be tougher than life imprisonment, but so it is said. It has been said on a number of occasions in the Press and in other places, including in the second reading speech. I do not propose to quote those Press statements. It is well known that for some time the Government has said that it will bring in tougher sentences. I ask: What are the courts expected to do? Why should they take any different stance because the penalty is 14 years or 20 years as compared with life? I am speaking now of the two more serious offences of sexual violence.

The courts will analyse the new penalties and, I believe, they will find that they are not tougher. I believe they will go on doing exactly what they were doing before. In that respect, this is a confidence trick by the Government because, in fact, the penalties are not tougher. Indeed, there has been a downgrading of the penalty for rape from life to 14 years and, in the worst cases, 20 years. In any event, one may say that life is colloquially equivalent to 20 years, so how is this an increase in penalty? How is the penalty any tougher? It is only tougher becasue the Government refuses to change the philosophy and the reporting procedures of the Offenders Probation and Parole Act. It is only because of the curious reporting procedures of that Act that it is necessary for the Government to take this extraordinary step of providing a penalty in years as distinct from that of life imprisonment.

The present provisions of the Offenders Probation and Parole Act require life sentences to be reported on after five years. It is well known in prison circles that this creates an expectation that the prisoner will be released after five years, not only on the part of the prisoner, but also on the part of everybody else in the prison. Clearly the reporting period should be increased, but the Government will not concede this point, even though that course has been recommended in various reports.

If the Government conceded this point it probably would not need to make any change to the penalties. Indeed, there could be another effect of this change. Instead of the Governor-in-Executive-Council in future having to authorise the release of a person subject to life imprisonment, the Parole Board will have to so authorise where the judge now orders a minimum sentence to be served. Thus the effect of all this is to transfer it into the hands of the Parole Board. In a sense this may be academic because the number of life sentences awarded by the court is very small. The Minister said in his second reading speech that they were not awarded, but the courts do occasionally impose life sentences for rape. I know of one or two such instances in relatively recent times. A life sentence for rape was awarded just a few years ago to a person known as Paul Stephen Keating, a three-times rapist while an escapee from the Bunbury Regional Prison. There are probably other cases. It is certainly not unknown for persons to receive a life sentence for rape.

The problem lies with the Offenders Probation and Parole Act. The Government is not tackling that area. I know that it is proposing to tackle other aspects of that legislation, but it has turned its back on the proposition that we should increase the reporting period, that we should do something about the expectation of early release which is a basic element in the whole mix, something that must be tackled sooner or later. I am saying, in a nutshell, that I doubt that the changes in this legislation which are said to represent tougher penalties will cause the courts to change their practice and increase the penalties. The courts look to Parliament for a lead. Judges have frequently made comment to the effect that it is not their fault that they do what they do; that they only apply the law. The law is up to Parliament. Judges look to the intention of the Legislature through the words of the Acts which we pass.

What intention can the judges glean from the Government's present proposals? Whereas the old offence of indecent assault carried a term of imprisonment of four years, the new offence also carries a term of four years. Whereas aggravated indecent assault now carries a maximum of six years, the old equivalent might have carried anything up to 14 years. Whereas previously sexual assault—which is, one might say, the equivalent of rape—carried life, it will now carry a maximum of 14 years; and aggravated sexual assault which carried life and was equivalent to rape will now carry a maximum penalty of 20 years. The Government has not been tough enough in this exercise. The penalties should be genuinely increased. The courts, if they are to read the Legislature's intentions to have more severe sentences, will need a better guide than we are providing them with in this Bill. It is the Government's intention to have sentences increased by the courts. It has said so. It is said on page 6 of the second reading speech, and it has been said in other places by Government Ministers. They want the courts to award heavier sentences for sexual offences.

I invite the Government to have another look at the penalties provided in this Bill, particularly those for indecent assault and aggravated indecent assault. They are inadequate and the Government should consider increases. What they should be is I suppose a matter of very fine judgment; but increasing them, even in the lower ranges, would give a very firm indication to the courts that we expect penalties to be tougher in the future.

When all is said and done, indecent assault and aggravated assault are very nasty crimes, involving as they do humiliating and degrading acts in the latter case, and they are all crimes which should be visited with very high penalties.

I have indicated generally speaking that many of the provisions of the Bill are unexceptionable. I have also raised what I believe are serious points, and I trust that the Attorney General will give his attention to them.

HON. LYLA ELLIOTT (North-East Metropolitan) [3.41 p.m.]: I too support the Bill. For some years women's groups have been asking for action to reduce the incidence of rape and other forms of sexual assault. I believe this Bill will go a long way towards that.

Firstly, by removing the term "rape" and replacing it with "sexual assault" the Bill places the correct emphasis on the crime, and that is assault, thereby removing the stigma suffered by victims in the past.

Criminologists and sociologists can provide plenty of evidence to show that rape is a crime of violence rather than a crime of passion. Studies have shown that offenders are not primarily motivated by sexual desire but rather it is a sexual expression of power and anger. It is perpetrated by men against women of all ages and sometimes against other men. It is brutal, humiliating and terrifying for the victim, and therefore it should be treated as a crime of violence.

An important result of this should be to help change attitudes on the part of the community, the jury which reflects the community thinking, and the victims themselves. With the emphasis on violence the focus is removed from the victim and placed where it truly belongs; that is, on the offender. That, together with other provisions which amend the Criminal Code and the Evidence Act, must encourage more victims to report the crime.

It has been said many times that the number of offences reaching the courts represents only the tip of the iceberg. Reasons for this would be many and varied. One of the major ones would be fear on the part of the victim of the legal process and the knowledge that despite all the humiliation and the mental trauma of reliving the experience in court, the perpetrator may still go free. A recent case provides a good example of this.

By minimising the victim's ordeal in the legal process and introducing graded categories of sexual assault, thereby improving the conviction rate, we have every reason to believe that more of the victims will be prepared to come forward and report the offence.

Another important reform which will affect the reporting rate, and hopefully the offence itself, is the removal of the exemption which allowed married men to rape their wives. This is another example of the law reflecting changed community attitudes to women, particularly married women. The current inquiry into domestic violence has confirmed that many women are being subjected to cruel physical and sexual abuse in the home. Unfortunately too many people in the community still believe that what goes on between husband and wife should not concern anybody else, even where violence is involved. That was the attitude of some people in South Australia in 1976 when the crime of wife rape was written into the law there by the Dunstan Government.

I will quote two opinions given at the time to illustrate what I mean. One was an editorial in the Adelaide *Advertiser* of 9 August 1976 which said that the law would "put a dangerous weapon into the hands of a vindictive wife."

In the *National Times* of 29 September-2 October 1976 the South Australian Women's Council of the Liberal Party labelled it as "divisive, an attack on the family, and a ridiculous piece of legislation".

Sitting suspended from 3.45 to 4.00 p.m.

Hon. LYLA ELLIOTT: Prior to the afternoon tea suspension I gave the House two quotes that were published in South Australia at the time the Dunstan Government introduced legislation which made rape in marriage a crime. That was in 1976 and, as I indicated at that time, many reservations were expressed about whether the State should be interfering in such matters. I am very pleased that good sense prevailed in the Parliament and that the law went through with the support of the Liberals in the upper House.

Many people fail to appreciate that rape is not just sexual intercourse between two people, but that it can be painful, humiliating, and a brutal experience. I will quote a few cases that were contained in a report dealing with family violence prepared for the South Australian Women's Information Switchboard and the Adelaide Women's Community Women's Health Centre in 1981. These are case histories of women who had been subjected to domestic violence, including sexual abuse. There are

quite a few case histories here but I will quote only three to indicate how important that law was that was passed in 1976.

I will read the case histories as they appear in the report. The first states—

MARITAL STATUS: Married with three children.

SOURCE OF INCOME: Dependent on husband.

MEDICATION: "nerve tablets" (Valium?)

Married at sixteen,
husband started to beat her up one week after their marriage saying that all women needed beating,
husband broke a wooden chair over her back,
husband forced her to perform fellatio against her wishes (oral rape) then beat her,
husband broke eldest son's nose when son tried to stop his father from beating up his mother,
woman was constantly raped, particularly when she was menstruating,
husband had numerous affairs with other women, and contracted gonorrhoea which he passed on to his wife.

This woman is now divorced, her ex-husband is overseas.

The second case reads as follows—

MARITAL STATUS: Separated, living alone with two children.

SOURCE OF INCOME: Supporting Parents Benefit.

MEDICATION: Librium.

Arranged marriage,
husband burnt her with cigarettes,
husband poured boiling water over her left arm, then accused her of doing it,
she has tufts of her hair pulled out,
husband shoved a candle in her vagina,
husband burnt youngest child with cigarettes.

Woman is now overseas with children. Husband went interstate when woman began legal proceedings.

The final case I wish to quote reads—

MARITAL STATUS: Divorced, living alone with four children.

SOURCE OF INCOME: Widow's Pension.

MEDICATION: On numerous drugs.

Deeply religious woman,
husband raped her before marriage,
husband raped her during marriage,
she was raped anally,
husband forced her to fellate him,
husband passed on V.D. to her,
She was often slapped for answering back to her husband,
husband would beat eldest daughter.

This woman is now divorced. Her ex-husband continues to harass her.

These cases do not make pretty reading.

Hon. D. J. Wordsworth: They do not make pretty reading, but how about telling us about when the husband is accused of rape?

Hon. LYLA ELLIOTT: They are several of some rather nasty cases quoted in that report. The reason that I quoted them was to emphasise the fact that in 1976 some people opposed the Government's legislation to oulaw rape in marriage. At the same time that this sort of violence was happening within marriage, people in that State were saying the legislation was "an attack on the family and a ridiculous piece of legislation".

Hon. D. J. Wordsworth: I thought one of those examples said that the husband and wife were separated.

Hon. LYLA ELLIOTT: No, it actually happened within marriage and they were subsequently separated. I thought I should quote the cases to show how important are the changes to our legislation in respect of rape in marriage and the definition of sexual assault.

Press reports of trials here have also underlined the need to expand the definition of sexual penetration in order to enable the courts to impose appropriate punishments. That is the second important aspect: That this Parliament make clear to the courts the seriousness with which it regards sexual assault and the need to impose penalties to fit the crime. The greater prospect of detection, conviction and appropriate punishment must surely act as a more effective deterrent to the offenders.

Improvement in the legal processes alone will not be enough. I want to deal now with what I consider to be other essential elements in reducing the incidence of sexual assault.

Let us look at the offence, and some of the cases. According to Professor Bill Marshall, a psychologist from Queens University in Ontario, Canada, who was here earlier this

year, cross cultural studies have shown that societies with a high incidence of rape are those in which there is, firstly, an acceptance of a high level of interpersonal violence between males and dealt by males to females; secondly, a belief in male dominance, with punishment of women who question this; thirdly, a belief that women are inferior; and fourthly, a society where there are a lot of exclusive male groups.

Since 1969 Professor Marshall has been in charge of a programme for research and treatment of sex offenders in Canada.

Hon. P. G. Pendal: Doesn't he give one other very crucial element?

Hon. LYLA ELLIOTT: The first thing we must examine is the extent of acceptance of violence by the community generally. I believe we must stop glamourising and condoning it in all its forms—on film and television, in sport, between children, and between adults. Its level in society is very much a cultural thing, a learnt behaviour. Boys are encouraged to be aggressive and dominant, and girls to be passive, controlled and gentle. This social conditioning is reflected in the official figures for crimes of violence. I am on the mailing list for certain Australian Bureau of Statistics reports, and a recent one that came into my office contained some very interesting figures.

Although women make up about 50 per cent of the population, their participation in serious crime and crimes against the person is infinitesimal compared with that of males. This report from the Bureau of Statistics gives court statistics for the higher criminal courts in Western Australia for 1983-84. The figures relate to complaints finalised in the Supreme and District Courts of Western Australia from 1 July 1983 to 30 June 1984, so they are fairly recent figures.

Let us look at the figures for serious crimes. The total number of proven offences in all categories—including offences against the person, robbery, fraud, property, offences against good order, and drug offences—was 2 581. If we look at the numbers committed by males and females we find that 2 463, or roughly 95 per cent of the total number of serious crimes were committed by males, and only five per cent by females. The total number of offences against the person for the year came to 381. Of that number, 354 or 93 per cent, were committed by males, and only 27, or seven per cent, by females. If we look at the total number of sex offences we see that of the total of 148, 144 or 97 per cent, were committed by males, and only three per cent by females.

I have taken the percentages to the nearest percentage point. I emphasise that although women make up 50 per cent of the population they accounted for only five per cent of the total of serious offences in the two superior courts and seven per cent of offences against the person. They accounted for only three per cent of the total number of sex offences, and one finds they were minor offences if one looks at the categories.

The first thing we should do is to stop laying the foundation for violence by encouraging men to be aggressive and macho; we should stop encouraging men to believe it is okay to solve problems by violence and to get what they want by force; to vent their anger or frustration by belting their wife or girlfriend; we must discourage them from believing it is okay to exploit women as sex objects because they are inferior to men.

The film, publishing, and advertising industries have a lot to answer for in this respect. The porn merchants continue to make millions out of films and magazines portraying women in a degrading way and encouraging bizarre sexual fantasies involving violence. Women's bodies are exploited by hotels to sell beer and by manufacturers of all kinds to sell their products.

Many changes and improvements have occurred thanks to the pressure of the women's movement, but we have a long way to go before men and women are accepted on equal terms with equal opportunities and equal respect as members of the human race.

The second area that needs attention is the question of effective parent education. One of the most important, if not the most important, roles anybody undertakes in any society is to bring a child into the world and raise that child as a happy, well-adjusted human being. Yet education and training for parenthood are practically non-existent. We must have adequate, comprehensive human relationship courses in all schools, including education in human sexuality and parenthood. Young people must be taught the social, emotional, and other skills necessary to raise a child in a caring, loving way. Too many rapists and other violent criminals have come from appalling backgrounds of physical, sexual, and psychological abuse, deprived of love and proper care. We must provide adequate resources in both

human and financial terms to those agencies tackling the frightful problem of child abuse. Unless we do, those children who continue to be neglected or abused because nobody has intervened to save them will not only grow into unhappy social misfits themselves, but many of them will destroy other lives.

The third area which must be given attention is the prison system. It is insane to lock up a violent criminal in an institution which breeds violence, provide no effective treatment or re-education programmes, and then let that person loose on society. I was very pleased to learn that following Professor Bill Marshall's visit a working party was set up to look at establishing a sex offenders' treatment programme in the Western Australian prison system. It would appear that Professor Marshall's programme in Canada has been particularly successful in reducing the recidivism rate of sex offenders.

However, a report in the *Daily News* quoted Mr Brian Merritt, executive officer, as indicating that any participation by prisoners in a programme would be voluntary. He said, "Obviously prisoners could not be made to take part—with some it could be a case of you can lead a horse to water..." I do not agree with that. I believe a person who has committed a brutal, humiliating sexual crime, often more than once, should be compelled to participate in a programme aimed at re-educating or rehabilitating that person if he wants to be released into society. After all, he gave his victim or victims no option. He compelled them to submit to what often amounts to physical and mental torture.

The trouble is it appears offenders are very good at convincing people in the penal system they are really quite decent chaps who have learnt their lesson, and they only committed the offence because they were drunk at the time. I want to take members back to one shocking case to illustrate the point. On 27 April this year *The West Australian* ran an editorial and a special feature about crimes of violence against women. A Perth barrister and solicitor, Mr John Rando, responded in a letter to the newspaper which was published on 1 May. I want to quote part of his letter. He said in reference to the editorial—

> In the two cases you cited, I represented Williams and Otway, who were both eventually convicted. I came to know them as reasonable, normal, intelligent men who probably would not hurt a fly when sober.
>
> What is overlooked in the case of Williams is his genuine concern at what he had put his victim through in his drunken state. Otway, after he had sobered up and realised the horror of his attack, handed himself over to the police.

He goes on to talk of the need to do something about alcohol abuse and of preventative measures.

I want to quote from a report which appeared in the *Daily News* on 5 February 1985 dealing with what Otway did to his victim. Members must bear in mind Mr Rando's words, that he knew him as one of two "reasonable, normal, and intelligent men who probably would not hurt a fly when sober." I ask members to listen to the report from the *Daily News* on what Otway did to his victim. The story is headed, "Woman tells of night of terror." It reads as follows—

> A woman brutally attacked by a man in an eight-hour ordeal, lives in terror of his early release.
>
> She says she will flee the State when he is freed.
>
> Her attacker, sentenced to eight years' gaol, is liable to be released nearly five years sooner because of WA's super-lenient legal system.
>
> Gaoled last year he could be out by December 1987.

Further on it states—

> Ordeal
>
> She also told the Daily News of her ordeal and her growing apprehension. Of her attacker, John Alan Charles Otway (35), of Rivervale, she said: "When he's released, I won't be in WA."
>
> She is so terrified of seeing him again she can't bring herself to pursue criminal injuries compensation, because Otway could be in court.
>
> Said the frail 41-year-old: "I can never forget the look of sheer hatred and absence of remorse as he stared at me in the witness box."
>
> Her ordeal began last April when she was stalked after leaving a Rivervale hotel where she had been with friends. Otway slipped out after she left.
>
> Near her home, about 10pm in a dark section of lane, he pounced. The woman's memory is still hazy but she believes a rock

was smashed over her head. Her hair was torn out as she was seized and forced to Otway's flat, two blocks away.

She told of being punched, slapped, outraged and tortured there for hours with a variety of instruments, including multi-grip plier, a pen, jagged tin, a knife and cord.

First stripped in the lounge, she was dragged into the bedroom and outraged. She maintains she was raped—Otway was acquitted of this by a jury after 4½ hours' deliberation. She was also sodomised—the "indecent assault" of which Otway was found guilty.

About 6am, the attacks took on greater ferocity. Her right nostril was bitten off. Her left ear was shredded by a sharp instrument.

Otway seized her cheeks and throat with the multi-grip pliers. She still bears the scars, standing out as white blotches.

Temporarily blinded, cut to the bone near her left eye, she fought so hard for her life that she snapped the pliers in half as they gripped her throat.

As dawn broke, Otway, believing her dead, went to take a shower.

Birds

"I could hear birds," said the woman. "I could see a window. I sneaked to it—I remember slipping all over the floor in the blood.

"I found I could open the window. I tore out the wire with the pen and got out."

The woman, a mother of two, was found blood-caked and naked about 6pm on April 22 by a nursing aide driving on Great Eastern Highway.

Otway was acquitted by a Supreme Court jury of attempted murder and rape. He was found guilty of deprivation of liberty, grievous bodily harm and two counts of indecent assault.

That brutal, fiendish attack on a poor, defenceless woman was committed by a man who obviously convinced his lawyer that he was, to quote his words, "a reasonable, normal and intelligent man and would not hurt a fly when sober."

I am afraid that I cannot accept that alcohol alone is responsible for the type of behaviour witnessed in that case. Alcohol is inevitably mentioned in crimes of all kinds, particularly crimes of violence. There is no question that alcohol contributes to severe social disruption and dysfunctioning in the community. I would like to see a concerted campaign to deglamourise and reduce its use, particularly among our youth, but it is both unrealistic and dangerous to assume that if alcohol were banned all our troubles would be over. I think it is true to say that the majority of adults drink alcohol at different times and in varying amounts. However, all those people do not assault or rape people when they are inebriated. Therefore, there have to be other contributing factors to such behaviour. The underlying causes must be examined and an attempt made to address and correct them.

It is essential to have properly structured and researched re-education programmes for offenders while in prison. Unless we try to treat the underlying causes in an endeavour to change the attitudes of people to have respect for the right of others and for themselves, we are wasting taxpayers' money which, at the moment, runs at about $30 000 per year for each prisoner, plus the many thousands of dollars it costs in police time to apprehend offenders, lawyers' time to defend them, and the court's time to try them.

With those few words I have much pleasure in supporting the Bill.

HON. P. G. PENDAL (South Central Metropolitan) [4.27 p.m.]: I support the Bill and in opening my remarks I want to read to the House the dictionary definition of the word, "euphemism".

Hon. P. H. Wells: From what dictionary are you quoting?

Hon. P. G. PENDAL: I am quoting from the *Collins English Dictionary* which defines the word "euphemism" as follows—

> An inoffensive word or phrase substituted for one considered offensive or hurtful . . .

It goes on to put the word in its context as follows—

> . . . one concerned with religion, sex, death, or excreta.

No matter what the Government says, the use of euphemism in the case of this piece of reform is, I suggest, unjustified as is the use of many other euphemisms.

The word "rape" is, of course, to be abolished or deleted from the Criminal Code of this State and replaced by the words "sexual assault". Nothing will alter the fact that rape is a violent, vicious and degrading crime against

the women of any community. That being the case, why are we seeking to delete the word which has a powerful meaning and which meaning has no ambiguity at all in the minds of that community?

Why should a Government, Parliament, or community be asked to soften the impact of a word and of a crime which, I repeat, is a vicious, and violent display of activity towards any woman? True, it is not only the Government or the Minister in charge of the Bill who supports the view that we should desensitise the use of that word.

From discussions I have had with women on the subject I am convinced that on the whole they do not seem to object to the removal of that word. Yet, there has been no attempt on the part of the Government to offer any sort of compelling reason as to why we should, in fact, downgrade the importance and downgrade the degradation of a woman who is involved in a rape situation by abolishing the word "rape".

That leads me to believe that presumably people see it as some form of genuine reform. I must say that I cannot understand that and I find unacceptable legislative action that is designed to soften the blow in describing cases of the kind such as that with which we are dealing. If anything, it is a resort to that wishy-washy sort of language that has come to mean a fair bit in our Statutes nowadays. The definition—not mine but from the dictionary—is that a euphemism is an inoffensive word or phrase substituted for one considered offensive or hurtful. Therefore, without dwelling on this too long, my point is simply that a community has no right at all to remove from its Statute book a word which is considered offensive or hurtful on the very flimsy justifications that have been offered to us by the Government.

As has been said by other speakers, the Bill contains a number of good and worthy provisions. I refer to that point mentioned by the Attorney General—the wider definition of sexual penetration—which is, in his own words, modelled on New South Wales legislation. It replaces the existing carnal knowledge definition for sexual assaults. We were told earlier by the Attorney General that the existing Criminal Code defines carnal knowledge as relating to penile/vaginal penetration and is said to be complete upon penetration. The Minister told us that, under the amendments, sexual penetration will include penetration of the vagina of any person or anus of any person by any part of the body of another person or an object manipulated by another person except where carried out for proper medical purposes. That, at least, is positive and worthwhile and I commend the Government for it.

I now turn my attention to no more than two or three points with which I have great difficulty. I ask the Attorney General to pay some attention to these points in his reply to the second reading debate. We have been told that the present procedural laws governing rape prescribe certain matters as restricted matters on which evidence shall not be adduced except where leave is granted by the court. The Attorney General went on to say that—

> At present for committal proceedings, leave shall only be granted if the court is satisfied that the restricted matters are of such relevance to issues which arise that it would be unfair to the defendant to exclude the evidence.

In other words, if I follow that correctly the current law leaves that situation to the court to decide. In the Attorney General's words, that leave shall be granted only if the court is satisfied that those matters are relevant. I can understand that.

However, a little further in the Attorney General's second reading speech he said that—

> The proposed changes will have the effect that evidence of the victim's sexual reputation and sexual disposition will be absolutely inadmissible on behalf of the defendant.

I confess to being puzzled because we are then told that—

> Evidence of the victim's prior sexual experiences will be admissible in restricted circumstances with leave of the court.

I ask that question and I am sure that the Attorney General has a simple explanation for it. I am confused as to the difference between those cases. It may be that the answer lies in the sentence that follows, where it is said that—

> It is proposed that in such cases, evidence of or related to the complainants' prior sexual experiences, whether with the accused or any other person, will be inadmissible unless leave of the court has first been obtained in the absence of the jury.

The key words may be "in the absence of the jury", although we are talking about a trial situation in which the jury must decide these matters. Therefore, if anything, that adds to my confusion, in the absence of any explanation

from the Attorney General. In essence, I am saying that, to be told, as we have been, that the victim's sexual reputation and disposition will be absolutely inadmissible on behalf of the defendant, seems to be in conflict with the other comments he has made in his second reading speech and which I have quoted.

I turn briefly to those parts of the Criminal Code, sections 325, 326, and 327, in which we are told by the Minister that—

> Rape—sexual intercourse without consent where the victim is not the cohabiting wife of the accused—is an offence subject to life imprisonment. An attempt to commit rape is subject to a term of imprisonment of 14 years.

I wish to tie that in with the comment made by the Minister a little later where he stated that—

> The Government expects that the new penalties will be taken by the courts to indicate Parliament's view that sexual assaults are extremely serious offences and that should be reflected in the penalties imposed.

There seems to be a suggestion—I know that it is a matter touched upon far more ably by Mr Medcalf—and an attempt by the Government to say that, unless the Parliament stands up and indicates to the courts that the community is demanding a greater degree of severity in sentencing, then the courts will not do it. I ask the Minister why is it that the courts are not doing so at the moment? It cannot be claimed that the current law for a conviction for rape is, in its maximum, some lenient term.

Indeed, if people were sentenced to realistic penalties, which are already available under the Criminal Code, the need for the legislation now before the House might never have arisen.

I was interested to learn that the problem would appear to lie with another Statute, which was mentioned by Hon. I. G. Medcalf, that permits people who are sentenced to long periods in jail to then, under a variety of circumstances familiar to most members, serve very substantially less of their sentence than they were actually intended to serve. That does not remove the problem because it still seems to me that this is a case of Parliament being asked by the Attorney General to approve legislation to make sentences even more severe but without any more guarantee that the Parliament's wishes will be carried out.

We are told by the Attorney General, for example, that at the present time the maximum penalty for rape is life imprisonment. The Attorney General enlarged on that by adding that the actual sentencing practice has deprived that maximum of any relevance or reality. That would indicate that there is not necessarily an inadequacy with our law. It would seem rather that there is an inadequacy with our judges or the courts. I am not one who has made practice of very easily condemning the judiciary for the seemingly light sentences meted out to people in recent years. I am very much aware that, unless one has sat through a case in its entirety and taken all the evidence into account, in a reading of a brief but accurate news report it is very easy to take the line of least resistance and to come to the conclusion that a particular sentence is inadequate. I am not indulging in the much-favoured sport of judiciary-bashing, but I ask the question again: If it is true—and we are told by the Attorney General that it is—that the maximum penalty for rape is currently life imprisonment, is the Parliament to some extent being asked to do what it has already done?

Hon. P. H. Wells: Life imprisonment is pretty severe.

Hon. P. G. PENDAL: There are not too many sentences more severe than life imprisonment.

One could argue that some countries have a sentence of death for rapists and that is certainly more severe than life imprisonment. One could also argue that the death sentence should apply. It is not the severity of the sentences that I am arguing about at the moment, but rather it is the apparent failure of the judiciary repeatedly to apply penalties which the Parliament has already said are appropriate for a violent and degrading offence such as rape.

I want to turn very quickly to some earlier comments made by the Attorney General upon which the Government hung its hat in bringing this legislation to the Parliament. In some cases, the Government does not appear to be able to justify why legislation is brought here and I must say that some of the comments made by the Attorney General earlier disturbed me—if for no other reason than that they tended to be superficial. I do not think that the Government attempted to look at why things happen as distinct from the fact that they do happen. Mr Berinson told us—

In the course of the last election campaign, the Government made the following election commitment—

> Acts of violence against women are increasing at an alarming rate in our community; a problem which Governments have ignored.
>
> Labor will: Enact tougher more effective laws against rape, sexual assault and other forms of violence against women.

That is the nub of what we are dealing with in this Bill—acts of violence against women are increasing at an alarming rate and yet there is really no attempt whatsoever to explain to the Parliament why this is happening. Surely every Government has a responsibility not to just identify the problems but, in fact, to try to discover and apply solutions. At the moment, for example—

Hon. J. M. Berinson: We can hardly do that in the Criminal Code, can we? Let's deal with one part of the problem at a time.

Hon. P. G. PENDAL: Before Hon. Joe Berinson gets the idea that anything at all is being done, I suggest to him that he should be a little cautious and patient and hear me out. As so often happens when the Government seeks to justify itself in this House, it gets deeper and deeper into the mire. My point is that, for example, in the case of the sexual abuse of children, which is the ministerial responsibility of Hon. Joe Berinson's colleague, Mr Wilson, an alarming increase in the sexual abuse of children has been discovered. This sexual abuse is particularly of children from the early months up to the age of five. This is an area in which I have taken an interest because I have been requested to do so, and I am pleased that it is now a matter which is under consideration by the Government for a formal inquiry into the whole question. My point here can be translated to this debate.

The Minister, Mr Wilson, has not only identified what the problem is but he has also shown some desire to get to the bottom of why it is such a problem. Hon. Joe Berinson can tell the House, as he did by his interjection, that, "We can hardly do that in the Criminal Code, can we?" I did not suggest that at all. Mr Berinson unfortunately came in with his interjection a little too early, perhaps in his eagerness to defend his position.

I am suggesting that, when we have been asked to make major changes to legislation of the kind before the House now, the Parliament is equally entitled to say to the Government, "Well, on the face of it you appear to be attacking the problem in a sentencing sense, but we are entitled to ask whether you are making any effort to attack the problem at its root cause." That, I suggest, is something that is quite within the limit of Mr Berinson's capacity as Attorney General to do.

I repeat that there is no justification given, no reason given, no explanation given in all of the second reading speech as to why we have witnessed this alarming increase in violent sexual attacks against women. I am not suggesting that is something peculiar to Perth or to a relatively small community like the whole of WA; indeed, anyone who does any reading at all will acknowledge that it is a problem not only Australia-wide but indeed one that knows no national boundaries.

It may well be that what we are facing is some sort of classical conflict of interest within ordinary people in the community. For example, no-one can deny that we live in a community that more and more is becoming, and has become, preoccupied with matters sexual. For example, no-one would deny that most people now accept a level of behaviour that would not have been acceptable in this community 15 or 20 years ago. I am not making a judgment about that, although I have my own views, strongly held. I am simply making the observation that this is a fact of life. People can bemoan it and be sad about it, but it does not alter the fact that we now generally accept levels of behaviour that simply were unacceptable 20 years ago.

Hon. Lyla Elliott in her speech touched on this matter and at one point she quoted Professor Marshall. I interjected at the time to draw her out as to whether other matters had been discovered by that eminent person in the course of his research. I will touch on that matter very briefly in a second.

My point is that it is not good enough, for example, to simply say that we have a problem and that the Parliament now must be brought together to apply more severe penalities in an effort to combat that trouble. That in itself is simply not good enough. Miss Elliott herself mentioned at some length the acceptance the community now gives to all kinds of pornographic material. However, very clear evidence exists throughout the world, whether we like to accept it or not, evidence produced by very eminent researchers, to show a direct link between the violent attacks on and the sexual

abuse of women on the one hand, and the availability and degree of community acceptance of pornographic material on the other hand.

One can run the risk of being called a wowser in these things, but one cannot ignore for much longer in a community like ours the peril we face if that part of the problem is not to be tackled. I could spend a little time, but I will not, in commenting on the Government's being remiss in relaxing its attitude to X-rated and R-rated video material. We have heard about that in other debates.

Suffice it to say that those researchers to whom I have referred find that the most direct link, and therefore it is inadequate for the Government to ask us as legislators merely to patch up the problem at the end without looking at what caused it.

Anyone who disputes my view on that may well turn to a very instructive article in a magazine entiled *Psychology Today* which is published in the United States and which, I hasten to add, is not intended for professional psychologists but as a learned magazine for lay readership. The magazine indicates the sort of research being done in the United States and elsewhere at the moment to find that link between the availability of that material on the one hand, and the end result of increased violent sexual attacks on women on the other hand. Therefore it does not become the argument just of the wowser or of the so-called narrow-minded individual in our community; rather it becomes the argument and the research topic for people who are pre-eminent in their field.

I intend to quote from the magazine at length and then conclude my speech. It says in part—

> This loss of sensitivity to real violence after repeated exposure to films with sex and violence—

I add here that the research is equally concerned with violent behaviour as it is with the variety of sexual activity. To continue—

> —or "the dilemma of the detached bystander in the presence of violence" is the major focus of our research program at the University of Wisconsin in Madison. We and our colleague, Stephen Penrod, are investigating how massive exposure to commercially released sexually violent films influences viewer perceptions of violence,—

Note this next piece—

> —judgments about rape—

That is the very point we are talking about in this Bill. To continue—

> —and rape victims and general physiological desensitization to violence and aggressive behaviour.

I break in here to say that these sorts of comments coming out of the research institutes around the world follow the sort of opening remarks in this person's own paper which says this, and he is referring to the President of the USA—

> The President's Commission on Obscenity and Pornography concluded in 1970 that there was no relationship between exposure to erotic material and subsequent antisocial behavior.

They at least start with the premise, being professional with their research, that a special commission appointed by a US President said there was no connection. However, a mere decade later people are starting to rethink that. I repeat that it is my belief that that at least is central to some of the matters we are being asked to deal with in the amendments to the Criminal Code.

I go on to quote further from the article entitled "Sexual Violence in the Media: A Warning", an article written by Edward Donnerstein and Daniel Linz, two very eminent US psychologists. I continue as follows—

> Unlike previous studies to which subjects may have seen only 10 to 30 minutes of material, the current studies eventually will examine up to 25 hours of exposure and allow us to monitor the process of desensitization in subjects over a long period of time.

The argument they seek to put forward is that the continued exposure to that material progressively desensitises a person to the point where he or she says that rape is not such a bad thing after all. No-one in this Chamber would suggest that rape is anything other than the worst form of anti-social behaviour.

That is the research direction being taken which so far has indicated that the availability of the material is such that the people who are exposed to it become sufficiently desensitised so that they conclude within a relatively short time that acts such as rape and violence against women really do not amount to much of a crime. Members should bear that point in mind as I continue.

[Questions taken.]

Hon. P. G. PENDAL: I continue to quote from the Donnerstein and Linz article as follows—

> We already have conducted a study to monitor desensitization of males to filmed violence against women and to determine whether this desensitization "spilled over" into other decision-making about victims. Male subjects watched nearly 10 hours (five commercially released feature-length films, one a day for five days) of R-rated or X-rated movies. They saw either R-rated, sexually violent films such as *Tool Box Murders, Vice Squad, I Spit On Your Grave* and *Texas Chainsaw Massacre*, X-rated movies that depicted sexual assault; or X-rated movies that showed only consenting sex. The R-rated films were much more explicit with regard to violence than they were with regard to sexual content. After each movie, the men completed a mood questionnaire and evaluated the films in several ways. The films were shown in reverse order to different groups of men so that comparisons could be made of the same films being shown on the first and last day of viewing.
>
> After the week of viewing, the men watched yet another film. This time, however, they saw a reenactment of an actual rape trial. After the trial, they were asked to render judgments about how responsible the victim was for her rape and how much injury she had suffered.
>
> Most interesting were the results from the men who had watched the R-rated films such as *Texas Chainsaw Massacre* or *Maniac*. After the first day of viewing, the men rated themselves as significantly above the norm for depression, anxiety and annoyance. On each subsequent day of viewing, these scores dropped until, on the fourth day of viewing, their reported levels were back to normal. What had happened to the viewers as they watched more and more violence?
>
> We argue—

That is, Donnerstein and Linz. The article continues—

> —that they were becoming desensitized to violence, particularly against women. But this entailed more than a simple lowering of arousal to the movie violence. The men began to actually perceive the films differently as time went on. On Day 1, for example, on the average, the men estimated that they had seen four "offensive scenes." By the fifth day, they reported only half as many offensive scenes (even though exactly the same movies, but in reverse order, had been shown).

Hon. P. H. Wells: So they were getting used to it?

Hon. P. G. PENDAL: That is exactly the point. The article continues—

> Likewise, their ratings of the violence within the films receded from Day 1 to Day 5. By the last day, the men rated the movies as less graphic and less gory and estimated a fewer number of violent scenes than on the first day of viewing. Most startling, by the last day of viewing graphic violence against women, the men were rating the material as significantly less debasing and degrading to women, more humorous and more enjoyable, and they claimed a greater willingness to see this type of film again.

They are not the ruminations of a wowser or one who wants only to get rid of the rising incidence of pornography; the point that the article clearly makes, whether we as human beings like it or not, is that with that continued exposure, to this material, people become desensitised and so think less of the gravity of those violent attacks against women. The article continues as follows—

> This change in perception due to repeated exposure was particularly evident in comparisons of reactions to two films, *I Spit On Your Grave* and *Vice Squad*. Both films contain sexual assault; however, rape is portrayed in a more graphic and detailed manner in *I Spit On Your Grave* and a more ambiguous manner in *Vice Squad*. For men who had been exposed first to *Vice Squad* and then to *I Spit On Your Grave*, the ratings of sexual violence were nearly identical. However, subjects who had seen the more graphic movie first saw much less sexual violence (rape) in the more ambiguous film.
>
> The effects of desensitization were also evident in the subjects' reactions to the reenacted rape trial. The victim of rape was rated as significantly more worthless and her injury as significantly less severe by those men who had been exposed to filmed violence than by a control group who saw only the rape trial and did not view any of our films.

It finishes on this note—

> Where does the research go from here? We will continue to investigate desensitization effects in reported mood and anxiety ratings, as well as physiologically. Massive exposure to films portraying violence against women will be used to study aggression against women (in a laboratory setting). And we will look into the effects of movies that do not explicitly portray violence against women but that perpetuate ideas about women as sexual objects.

I suggest that those comments are not far from those which you, Madam Deputy President (Hon. Lyla Elliott), made during an earlier part of this debate.

Finally, I wish to enlarge on a further point that you, Madam Deputy President, referred to when speaking about Dr Bill Marshall, who is a native of Western Australia and was recently in this State for an extended time but is now at Queens University in Canada. He has carried out an extensive research on sex offenders and I refer to his studies which I wish to put on the record. I quote as follows—

> Studies by Marshall of habitual sex-offenders at Kingston Penitentiary—

That is where he has conducted those trials. To continue—

> —have shown that both rapists and heterosexual pedophiles use the different types of pornography that they collect for specific ritualized sexual practices.
>
> He found that rapists display greater sexual arousal to forced-sex scenarios than normal males, while child molesters have greater sexual arousal to depictions of sex with children than normal males. Both coercive and noncoercive pornography are provocative to sex-offenders for different reasons.
>
> In his most recent study, Marshall found that almost half of the rapists he interviewed used so-called "soft-core" consenting sex pornography to arouse themselves in preparation for seeking out a victim.
>
> He found that 19 per cent of the rapists used forced-sex, sadistic-bondage pornography to incite them to rape, while 38 per cent used consenting-sex pornography immediately prior to committing an offence.
>
> Even more strikingly, he found that 55 per cent of the homosexual child molesters he studied used child pornography to instigate their crimes.
>
> Most child molesters studied by Marshall displayed little or no arousal to depictions of consenting sex between adults. Nonetheless, they avidly collect this material for use in lowering the inhibitions of children, and to initiate them into the specific sexual practices portrayed in the magazines.
>
> The rapists Dr Marshall studied—

After all, this is a Bill which is dealing specifically with that crime. To continue—

> —reported a two-to-one preference for soft-core consenting sex depictions, rather than for scenes of rape!

I will not continue to quote, because I think that my point has been made by eminent people in the United States; and for those who decry them because they are not conversant with the local scene, I have used someone who does know the local scene, and who is equally eminent.

The implication that those people are making is clear and it is an implication that the Government must take into account if, for no other reason than that it was this Government which relaxed many of those restrictions on the sale and hire of video material. Whether people call it pornography or not, it is the Government which has been responsible for that relaxation. The clear implication from that is that the initial introduction of that material is, on a human level, something which most people find pleasurable. After all, that is what it is intended to achieve. Therefore, one would be closing one's eyes to human nature to say, "Well, that stuff does nothing for me." That stuff is produced to have that precise effect on human beings.

In its initial stages, what people see as its base value is that the video material contains nothing that is terribly offensive, but research indicates that as time goes by people continually exposed to it simply see those acts of violence against women—something about which you, Madam Deputy President, have spoken many times in this House—as matters of less importance. I rest my case on that point, and I plead with the Attorney General and others within the Government to take stock of that point alone.

I acknowledge that much of the content of this Bill is worthy. I acknowledge that there is no-one in the Labor Party—at least I hope there is no-one in the Labor Party—who runs around promoting the very things that we are seeking to limit by this legislation, but it is no good trying to do a mop-up operation afterwards without making any attempt to come to grips with what is causing the problem.

I implore the Government to take those comments on board. I may have more comments to make in the Committee stage, but I have strong criticism of the abolition of the word "rape", the abolition of the crime of rape in Western Australia, because I find it ridiculous, offensive and illogical. Apart from that, I think the Bill contains many worthy provisions.

HON. MARGARET McALEER (Upper West) [5.19 p.m.]: As members will be aware, the crime of rape has been, for a long period, of very great importance to the people of Geraldton. Over a period of some years there have been seven or eight victims of rape where the offender in each case is thought to be the same person. The victims are all women between the ages of 20 and 30 years. They have been attacked in the early hours of the morning between 2.00 a.m. and 5.00 a.m. They are woken from the deep sleep that one commonly falls into at that time to find a knife at their throats.

The circumstances also suggest that the rapist has watched the house and is familiar with the habits of the women and any other people who happen to live in the house or visit it. He is also familiar with the easiest modes of entry and so forth. Fortunately, no great physical injury has been done to the reported victims, but they are all subject to the horrible effects of rape—the intense fear, the feelings of extreme humiliation, the continual reliving of the event and the need for a great deal of emotional support from other people. The fact that the rapist has not been caught and so at any time may attack another victim has caused increasing anxiety in the community in Geraldton, especially among women who for one reason or another are often on their own or virtually unprotected.

There has been talk of forming vigilante groups to try to catch the rapist. Quite recently about 80 women undertook courses in self-defence. Some weeks ago there was a public meeting which had among its objects the intention of explaining to women what their legal rights as victims would be, what procedures should or would be followed when the report of the crime was made, and what support would be available to them from the moment they reported the crime. One of the concerns that was discussed a great deal was the question of the protection that women could expect if the rapist was caught, tried and convicted.

Considerable concern centred on the length of time the rapist could be expected to be imprisoned and the fear that he would be released after a relatively short time. The motive for this concern was not that of retribution, but the need for reassurance that the rapist would not be released into the community to avenge himself on anyone who helped to convict him. An even more strongly expressed and general concern was that he should not be given the opportunity to repeat the crime.

Someone at the public meeting—probably someone from the Sexual Assault Referral Centre in Perth—spoke about this Bill and promised that the Bill, which had at that time just been introduced in the Legislative Assembly, would greatly improve the situation for victims of rape in the trial situation. It was also said that the Bill would make conviction of the rapist more likely and that it would increase the penalties sufficiently to protect the community from a convicted rapist.

Although at that time I had only a very slight acquaintance with the Bill, as it had only just been introduced, I expressed some doubt as to whether the penalties would be more severe than the existing penalties and whether they would not be subject to amelioration by early parole. As the meeting wished to express its concern to the Government, I suggested to the chairwoman that she acquaint the Attorney General with the views that were expressed at the meeting. I also suggested that anybody who was sufficiently interested could write to the Attorney General and that he would welcome such an expression of opinion. I do not know whether anyone has written to the Attorney. I felt that the meeting was perhaps lulled into a sense of security by the explanations which were made about the Bill on that occasion.

I listened with particular interest to Hon. Ian Medcalf's criticisms of the penalties to be exacted under this Bill and the criticisms which he levelled against the Offenders Probation and Parole Act. I will listen with equal interest to the Attorney General's reply. If Mr Medcalf's criticisms are valid, as they appear to be, this Bill will be a great disappointment to the women of Geraldton. I know that they will be grateful for and will welcome those parts of the

Bill which make the trial situation easier for the victim. They hope that the promise which was made that there would be a higher conviction rate can be honoured. They would hope also that the Bill would give protection to women who have been victims of rape.

If the law and the courts are not seen to be providing reasonable protection to the community there is a greater risk that crimes like rape, which are so abhorrent to the community and which arouse very strong emotions, will lead to violent community reactions. We may find that the people will form vigilante groups, not only to catch people like the rapist, but also to deal with him on the spot, as it were. Women have a right to protection. I put it to the Government that it would be very cruel to pretend that it is providing adequate penalties and remedies when the fact is that it is doing nothing of the sort. I hope that the Attorney General will be able to allay my fears on this score.

HON. ROBERT HETHERINGTON (South-East Metropolitan) [5.27 p.m.]: It gives me great pleasure to support this Bill. For many years I have been looking forward to seeing brought into this Parliament legislation to reform the laws on sexual assault. Before I start the main tenor of my remarks, I congratulate Hon. Ian Medcalf on his speech which showed his usual calm and intelligent approach to the subject. I place on record once more—although I have done it before, it does not hurt to gild the lily—the work he did as Attorney General in changing the criminal law. We are following in his footsteps, albeit we are perhaps taking a larger step than he might have when he was Attorney. I was certainly interested not only to hear what he said, most of which I agreed with, but also to note what he did not say, which was quite significant. I did not hear from him some of the anguished protests which come from some people who oppose the legislation and believe that what we are doing is terribly radical and undermining our society. I am grateful for that, and for that reason I will not speak very long. It is not necessary to do so.

I refer first to the matter of sentences. I was a member of a committee which considered the legislation. I point out to Hon. Ian Medcalf that the first draft of the Bill we looked at was very different from that now before us. We have learnt something since Bob Pearce introduced legislation to the other House which would have been different had we seriously expected it to have been passed. However, at that stage we wanted to establish some principles, which was what that Bill did.

Since then we have come a long way and the Government has brought in legislation which is in conformity with the Criminal Code of Western Australia.

Many years ago a very eminent jurist said to me that where aggravation was involved one might do better to look at the Criminal Code and at robbery. Indeed, in the long run, that is precisely what was done.

I would also like to tell Hon. Ian Medcalf how pleased I am he sent Mr Michael Murray to the conference at Hobart where I met him. It helped to educate Mr Murray and also me. The result was to the ultimate benefit of the laws of the State. I would also point out that Bob Pearce went to the conference as well, and it helped to change all of us.

The problem lies when we look at the sentences laid down. We have reached the stage where life sentences, although they are sometimes imposed, are not imposed very often, and they do not seem to mean very much when they are. We must sort out this problem.

Life is the maximum sentence for murder. I believe rape is not the worst thing that can happen to a woman or a man. The worst thing is death; but it can be pretty nasty on the way.

I have not yet taken this up with the Attorney, but I shall in due course. I believe the penalty for rape, followed by murder, should be strict security life imprisonment so that there is no doubt in the mind of anybody who rapes and murders that he will get a worse sentence than if he just rapes. It is worse to kill a person after raping her, but I do not believe rape should be carried out.

I was one of those who thought we should have longer terms of imprisonment. I was eventually overruled, as so often happens to me, by people with more experience than I have. We are trying to be realistic in this Bill and give terms of imprisonment that we think should indicate to the judges that we take this offence seriously and they should genuinely sentence up to 14 years and up to 20 years. This is desirable.

Since the Attorney introduced amendments to the Interpretation Act, the judges now have to take into account the Minister's intention as expressed in his second reading speech, and that is that sentencing should be more severe than it has been. If this is not the case I shall certainly be one of the first to harass the At-

torney to increase the sentence. I do not know whether he will take notice of me, but I think he will. If the judiciary takes note of the second reading speech and of the fact that we have said that life imprisonment has become a sort of myth—it does not mean what it used to mean; we have set finite maximum terms which are quite severe—then perhaps we will have more severe and better sentencing from my point of view and from the point of view of many of the women who are protesting against rape laws at present.

This is the intent. I do not know whether it will happen; I hope it will. I agree with Hon. Margaret McAleer; we must have realistic sentences and sentences which have some deterrent effect.

I was interested to hear remarks by Mr Brian Tennant and Mr John Rando. Mr Tennant is a person for whom I have the greatest personal respect, but I do not think he is always right. This time I think he was wrong.

In reference to sentencing he said that one did not make people any better by keeping them in prison for five years; it did not make any difference. Perhaps it does not, but I want these people kept in prison. I believe the sentences should be longer for the very reason Hon. Margaret McAleer mentioned.

One of the things that we find with rapists is that the rate of recidivism is higher. A disturbing number of people on probation after some form of sexual assault go out and rape. Therefore, just as a deterrent, I think the sentences should be long; but also I want to keep these people off the street in the hope their libido might drop. We can give them a series of 10 or 20-year terms till we can do something about it.

A psychologist working in our gaols says one convicted rapist has expressed remorse for his crime; one only. Most of them do not. They cannot see that they have done wrong.

I know we must do other things, but in the meantime we must keep these people off the streets. Some of the crimes committed are truly horrific. For this reason, we must increase the sentences. I hope Hon. Ian Medcalf takes this point. I do not know whether he will agree with it, but this is the intent behind the terms of imprisonment provided for in the Bill.

Of course, it must be left to the discretion of the judge, but we want to persuade judges that they should impose higher sentences than they often do at present. Whether four or five years and so forth are the right sentences, I personally do not know. As a member of the Government I take the advice I have received for the time being and I support the Bill, but certainly with reservations. I shall be looking very closely at the operation of the legislation when it comes in.

For that reason I think we must persuade the courts, the learned judges, that they should sentence in accordance with the intent of Parliament. I say to Hon. Phillip Pendal: Parliament is here to indicate what it thinks the law should be and what the judges should do. If we do not like what the judges are doing, then we can change the law. We are changing the law to try to indicate that we think realistic, finite sentences should become the norm in the future. I hope that this will be the case.

I want to come to the point raised by Hon. Phillip Pendal, which is quite important, concerning the term "sexual assault". It is not a euphemism, it is an attempt to describe what happens.

Hon. P. G. Pendal: "Rape" does that.

Hon. ROBERT HETHERINGTON: No, it does not. I am going to suggest rape means a great number of things to a great number of people, from the old Army joke about seduction, which says that seduction is for sissies, a he-man likes to rape. That used to be said. Hon. Des Dans can tell what they said in the Navy too.

Hon. J. M. Berinson: He was always very shocked when they did.

Hon. ROBERT HETHERINGTON: The thing is that rape means to some people merely an extension of the normal sexual act, therefore it is terribly human. To other people it means the most horrible thing that can happen to a person. Some people believe that people who rape should be hanged and that we should bring back the death sentence, or that they should be castrated—I gather without the benefit of anaesthetic so that they can enjoy it the more. It is debatable whether this would have a great deal of effect because the castration of adult males does not necessarily drop the libido. If rape is, as I will argue, a matter of power and not sex, then it might not make much difference.

It may mean that the castrated male will seek once more to take his revenge on society through the weakest of society; that is, the 80-year-olds and the young children, who are quite often raped because they are easier to handle;

they are easier to give the person with the necessity to develop this kind of power a sense of power over other people.

Indeed, one of the things that has been discovered is that sexual assaults are primarily about power. For that reason and for the reason we wanted to widen the definition, we are dropping the term "rape" to try to bring home in the legislation that rape is not just an extension of sex for the unfortunate young man who thought he was on to a good thing and the girl said, "No", too late. Rape is not this. In fact, it is usually a deliberate exercise of power, quite often by a person who in his own life is powerless. One of the things discovered by the research into the behaviour of rapists is that quite often they are young men on the bottom of the socio-economic heap; they are pushed around by the rest of the world and so they themselves push the world back through the victim they choose.

Rape involves the humiliation of women. A friend of mine who was a prisoner-of-war in Germany told me the experience of a person who was in camp with him and who was part of the troops of one of the conquered nations who had been forcibly taken into the German Army. They had been told to shoot a group of women who had done something or other but before they shot them they were to rape them. The first person who refused was shot, so the rest then raped. Fear does not stop libido. They then shot the women, who had first to be humiliated. The Nazis knew what rape was all about. It was—and is—about power and about the humiliation of the women of one's enemies. Rape is still about the power over and humiliation of women and of other people's property—as many people see women. This is one of the things we are trying to change.

For this reason we are trying to broaden the legislation and get away from the pure sexual connotation, particularly because, as the way the law stands now, it might be better to be raped in the old fashioned, penile to vaginal assault, rather than to suffer some of the other things that happen now that are merely considered indecent assaults, such as attacks with long-handled brushes and fists thrust into vaginas with power, and a whole range of other things. I could go on and on but there would be no point in my doing so because I believe I have made my point. We are trying to deal with the whole range of sexual assaults because we are doing it globally.

I say to Hon. Ian Medcalf that section 181, the sodomy section, will still be there; the police can use it if they want to, although they rarely do. Anal sexual assault of a male by a male is far too common in this town. Sexual assault of male by male without consent is something everyone should be made aware of and something that should be dealt with.

The same applies to anal sex without consent by a husband on his wife; that also should be dealt with. Although it is against the law, I would hate to see a husband and wife who consentually practise anal sex prosecuted for doing so. I do not believe the law should apply to them. It is not something I wish to practise myself because it is something I find quite distasteful. But, "Chacun a son gout"—each according to his own taste. Any woman who is forced to have anal sex, even with her lawful wedded husband, should have the right to report it and have that person prosecuted.

So we are trying to extend the range of acts; we are trying to accentuate, to stress, the fact that rape has become a euphemism, we are trying to get rid of that euphemism by describing rape as sexual assault.

Hon. P. G. Pendal: You may not achieve that.

Hon. ROBERT HETHERINGTON: But this is an honest attempt.

I would like now to follow on Phillip Pendal's argument on eroticism and violence, subjects causing me a great many problems. However, if we are going to canvass the whole business of the whole underlying causes of sexual assault, not only must we look at films and videos but also at unemployment, the power situation, advertising and a whole range of other subjects. I point out to the honourable gentleman that one of the things that happens with all great cities as they grow bigger is that the incidence of violence grows as well, including sexual violence. Therefore I am not surprised that we are getting more of it in Perth than we used to as we grow. It is not just that, but I do not have the time to canvass the whole range of possibilities. No-one wants me to make a speech for two or three hours tonight; I do not want to do that. Rather, I want to keep to the basis of the Bill.

I will refer to the Bill rather than the Attorney's speech notes. The Bill at page 8 talks about the evidence relating to the sexual reputation of a complainant and evidence relating to the disposition of the complainant in sexual matters and explains that evidence will not be

adduced or elicited. I say quite strongly that a person's sexual reputation is nothing that invites anyone else to forcibly have sex with that person. If someone says—I do not know whether things were as crude when Hon. Phillip Pendal was young—when referring to a woman that she is the "town bike", that person means that anyone can regard her as someone with whom any man can have sex. But that does not give the right for any person to have sex with that woman against her will. It still needs to be a consentual thing.

A prostitute has to be able to decide whether she wants to have sex with a person. Anyone who has sexual penetration of a prostitute without her consent commits a crime. It does not matter what her reputation is.

The same applies to a person's sexual disposition. Rumours exist about the sexual disposition of many people even within this Parliament, that they are fond of "it", some more fond than others. However, that does not mean that any person who is known to be fond of promiscuous sex should be forced to have sex with another person.

These things are irrelevant in evidence; but prior sexual relations with people are not necessarily irrelevant. It will be relevant at the end of a gang rape where the particular gang is in the habit of having girls perform "onions"; in other words, the girl takes on the whole gang one after the other. That is how they earn their kudos in their society. If a person came in at the end of a gang rape and thought it was an "onion" because he had seen other fellows before him having sexual intercourse, that is a prior sexual experience. In a number of cases learned judges who have looked into this matter have cited where evidence of prior sexual experience is in fact relevant to the case.

For this reason it is allowed in the Bill. It must be decided by a judge that it is in fact relevant to the case. This happens in a whole range of matters where a defence lawyer or a prosecutor will say, "In this particular instance the evidence about to be led by my learned friend is not relevant." Then the jury is thrown out and counsel have a debate on matters of law. That is what is proposed here so that evidence of prior sexual history will not be introduced unnecessarily.

I am pleased that social attitudes have changed. I remember some years ago when I spoke on rape in this House many members reacted quite differently from the way the present House is reacting. I know my own attitude towards sexual assault is quite different from what it was in 1980 when I first went to the conference on rape. We are trying to deal with the external behaviour of people, and of course there are a whole range of problems we must look at but which we cannot deal with in the Criminal Code. Therefore, I commend the Attorney for bringing in this legislation and give it my wholehearted support.

I commend it to the House.

HON. P. H. WELLS (North Metropolitan) [5.52 p.m.]: I support the second reading of this Bill. Unlike the last speaker I will not be saying I am bowing to those of my colleagues who have more experience because I make it clear, I have no experience in connection with this Bill. It is the sort of Bill where one does not go out into the community and find a large number of people to discuss it with. One would not find large numbers of people with experience in these matters, despite the fact that 102 cases of rape were reported in the year ended 30 June 1984. Of those, 85 were cleared which represents something like an 83 per cent clearance rate. There were 44 offenders which indicates that multiple rapes are taking place; they appear to be very much the norm.

I noted the issues raised by Hon. Lyla Elliott and Hon. Phil Pendal who said that we have some responsibility to look at the treatment of people involved in these cases and somewhere down the line challenge society to do something about it. I posed a question to the Minister relating to whether children involved in sexual offences were treated and whether there was treatment of young offenders. I was given an indication that no treatment was available in this State. The reason I asked that question was that it had been put to me by people who claim that very often a young person who is involved in a sexual offence early in life continues to be caught up in rape cases later in life. That may be right if one looks at the statistics on multiple rape cases. I believe we have some responsibility not only to catch offenders, but to treat them in such a way as to rid society of the scourge of rape.

I am not certain whether the penalties to be imposed will achieve what the Attorney General sets out to do. Let us take the illustration of the latest case which appeared in *The West Australian* of 2 October. In that article the Chief Justice, Sir Francis Burt, was reported as scotching the notion that 10 years was the maximum sentence likely to be imposed for serious rape. He made his comments when the Court of Criminal Appeal refused to interfere

with a sentence of 10 years maximum and 5½ years minimum imposed on a parolee who abducted, bashed, and raped a runaway girl aged 15. I suggest in a case such as that there is built up an expectation that the prisoner will get out after about six years. If the courts hand down two sentences that expectation is created not only in the mind of the prisoner but the whole parole system. It is expected that he will be released earlier. I notice the Attorney General has made some announcement about the Parole Act, but it always puzzles me that we have this system of dual sentencing.

When one looks at New Zealand and other places one finds they do not have the dual sentencing system which exists here. Let us take the 10 years maximum sentence to which I referred. I suspect that would bring the person out on parole, based roughly on one-third—

Hon. J. M. Berinson: Half.

Hon. P. H. WELLS: If it is half it is worse because a sentence of 10 years will become five years.

Hon. J. M. Berinson: For parole, not unconditional release.

Hon. P. H. WELLS: I know, but the person gets consideration for parole. He is due for parole at five years and has to serve another six months because he must serve a minimum.

Hon. J. M. Berinson: I am sorry, I misunderstood. I was saying that as a rule of thumb minimum sentences are about half of head sentences. If a term of 5½ years is set by the court that is the period set for consideration.

Hon. P. H. WELLS: I understand very well the minimum sentence is half. As I understand the Parole Act, if a minimum sentence is not set a prisoner is automatically eligible for parole after half of the sentence unless the judge gave a reason for not setting a minimum sentence.

Hon. J. M. Berinson: That is incorrect.

Hon. P. H. WELLS: It is rare that judges do not set a minimum sentence. If we studied the case of rape to which Hon. Lyla Elliott referred we would see it was a case in which no minimum sentence was set. I rarely see a report of a case in which a judge says he will not give a minimum sentence. That builds up an expectation. In this case the terms are 10 years and 5½ years, and based on a reduction of one-third before being eligible for parole, the prisoner would be eligible after serving six years eight months. The prisoner must get something off for good behaviour during that time.

Hon. J. M. Berinson: The one-third remission is under the Prisons Act; it does not apply to minimum sentences.

Hon. P. H. WELLS: I am saying that if one takes the maximum sentence of 10 years it would be reduced to six years eight months with allowance for good behaviour. The prisoner's minimum term is 5½ years, so he will be released between 5½ years and six years eight months.

Hon. J. M. Berinson: That is right.

Hon. P. H. WELLS: So it is useless to say that he is sentenced to 10 years' imprisonment. Why give him that sentence in the first place when he will be out in close to half that time?

Hon. J. M. Berinson: If he breaches parole he is liable to serve the whole 10 years.

Hon. P. H. WELLS: I am not disagreeing with the system whereby we give some remission for good behaviour.

The PRESIDENT: Order! The honourable member is not allowed to carry on a private discussion with the Attorney General. We are debating a Bill, and he should direct his comments to the Chair so that all members will be able to participate.

Hon. P. H. WELLS: That is why I was looking your way, Mr President. I am saying that if a judge gives a sentence of 10 years he can make an allowance knowing what the parole allowance is. But if he sets a minimum sentence it builds up expectations in people's minds. Let us look at the example of New Zealand, which has a maximum term of 14 years.

Sitting suspended from 6.00 to 7.30 p.m.

Hon. P. H. WELLS: Prior to the tea suspension I was dealing with the existing system of maximum and minimum penalties, which in my opinion leaves a lot to be desired. Any revision of the penalties should ensure that there are greater penalties, or that the penalties set by this Parliament are more closely followed. When addressing a review of the system which at present has both maximum and minimum penalties, we should bear in mind that many other countries do not have such a system. A single penalty is provided for by a number of countries.

I also pointed out that in the annual report of the Police Department for the year ending 30 June 1984, it was indicated that 102 rape charges had been laid, of which 85 were cleared. That represents an 83 per cent clearance rate. There were 44 male offenders.

The matter of multiple rapes has also been mentioned. I draw the attention of the House to the fact that this move to a change in penalties follows the New South Wales approach. The number of rape charges cleared in Western Australia is approximately 20 per cent more than the number of charges cleared in New South Wales. In other words, New South Wales has a clearance rate of between 50 and 60 per cent, whereas in Western Australia the figure is between 70 and 80 per cent. It would therefore appear that the present law has a greater clearance rate than the proposed law.

In relation to the proposed new law and penalties, I ask whether in fact the penalties are greater. I cite the situation in New Zealand, and read from a rape study involving a research report put out by the Department of Justice, Wellington, New Zealand in May 1983. It points out on page 71 that—

> The maximum prison sentence that the court can impose upon a convicted rapist is 14 years. Preventive detention can be imposed (under certain circumstances) upon a recidivist sexual offender.

The report points out that the main length of prison sentence for rape was 48.94 months, or approximately four years. The shortest prison sentence imposed was six months, and the longest was nine years. In New Zealand, where the maximum penalty was 14 years, we find that the most severe penalty the courts imposed was a nine-year sentence. It would therefore seem that, regardless of the penalty imposed by this legislation, once we decide on a finite sentence, certainly the judiciary will interpret that to suit individual cases; and only on rare occasions will that mean the maximum sentence. I do not think the change will guarantee that there will be greater penalties.

For instance, South Australia has a provision for imprisonment for life, just as is the case in Western Australia at present. In Queensland there is also a provision for life imprisonment. The Northern Territory has a graduated penalty system in which there is provision for seven and 14-year sentences; but the ultimate penalty for aggravated sexual assault is, again, life imprisonment. I do not know what could be more harsh than life imprisonment, but I presume the judiciary is able to make a determination as to the number of years they will give as a maximum sentence in each case. Given that, it is hard to see how we can really say we are increasing the penalties by deciding on a figure such as 20, 10, or four years. We must remember that the set of penalties we bring in will be penalties that have already been brought forward and made law in other States, such as New South Wales.

I have read the Criminal Code and the general review which came out in June 1983 and of which many members will be aware. On page 219 of that report the actual reform and interesting connections between these penalties are discussed. It states—

> That pressure for reform was certainly Australia wide and culminated in a National Conference, which I was required to attend, held in Hobart in 1980. More recently we have seen such proposals given effect to in N.S.W. by the enactment of the Crimes (Sexual Assault) Amendment Act, 1981 to amend the Crimes Act so as to abolish the crime of rape and repeal the sections providing for indecent assault and indecent acts and replace them with the following offences—
>
> (a) sexual assault category 1—doing grievous bodily harm with intent to have sexual intercourse (defined to include ordinary sexual intercourse, buggery, fellatio and cunnilingus)—penalty 20 years imprisonment.
>
> (b) sexual assault category 2—doing or threatening bodily harm with intent to have sexual intercourse—penalty 12 years imprisonment.
>
> (c) sexual assault category 3—sexual intercourse without consent—penalty 7 years imprisonment.
>
> (d) sexual assault category 4—indecent assault or indecent acts—penalty 4 or 2 years imprisonment respectively.

The important point of that discussion is contained in the very next words of the writer, who said—

> There are a large number of things wrong with that course in my view. In the first place I think it unnecessarily downgrades the seriousness of the offences.

They are not my words. I do not claim to have a great knowledge of this matter. As I pointed out at the beginning of my remarks, if one speaks to a number of people on this matter, one finds that not many of them have any experience.

In fact, I believe that if members' wives were in the Chamber and were asked to make a decision right now they would probably say, "Shoot them."

Hon. Robert Hetherington: Nonsense.

Hon. P. H. WELLS: I know of women who have said exactly that.

Hon. Kay Hallahan: I do not have a wife.

Hon. P. H. WELLS: I will excuse Kay Hallahan who does not have a wife.

Hon. G. C. MacKinnon: A few grandfathers would go out and shoot them, make no mistake about that.

Hon. P. H. WELLS: If one asked people in the community what the penalties should be, I think the reaction of Mr MacKinnon would be quite typical. If a member were to go home tonight and find that his or her 10-year-old daughter had been raped, what would that member think about the penalty? Certainly, he would think along the lines of Mr MacKinnon.

I am drawing attention to the fact that the penalty is currently imprisonment for life and it has been suggested that we change that penalty for the other categories which are increasing the penalty.

One authority in the report to which I have referred said that the crime had been downgraded. That may well be incorrect, but I will make reference to a discussion which took place with regard to the New South Wales situation. We must remember that penalties along the lines proposed in this legislation have been in place in New South Wales since 1981. I am querying whether those penalties are workable and whether they will achieve what this House seeks to achieve, which is to increase the penalties that the courts will impose in terms of sexual offences.

I have strong doubts that by simply putting these offences into four categories we shall achieve our aim. On 28 March 1985 an article appeared in *The Sydney Morning Herald* under the heading "The laws have changed but are they working?" A preface to the article stated that it would be four years in July since New South Wales radically overhauled the rape laws. It was the first State to do so and Lindy Simpson was looking at whether the changes were working.

That article was written to inform the people of New South Wales of what had happened in terms of the laws against rape passed in 1981. The article explained the various categories and referred to the fact that more cases of sexual offences were being reported to the police but that there were still gaps in the law. The current New South Wales legislation does not contain a provision covering pack-rape, but I gather that situation has been covered in the Bill before us.

Hon. J. M. Berinson: It is covered in the aggravation provision.

Hon. P. H. WELLS: That is good. Fortunately Western Australia is able to benefit by the experience of other States.

I draw to the Attorney General's attention a further quote from that article—

> A solicitor who has instructed the Crown in rape trials for the past five years believes that the new laws have reduced rape to a minor crime, slightly more serious than common assault.

The opinion of that solicitor is similar to the statement made in the Criminal Code review to which I referred earlier. The review made the following statement—

> There are a large number of things wrong with that course in my view. In the first place I think it unnecessarily downgrades the seriousness of the offences.

The question I pose to the Attorney General is: The Government has said that it wants to make rape a more serious crime; therefore, what is the answer to the statement made by a solicitor that the New South Wales legislation has downgraded the charge of rape to something slightly more serious than common assault? If this House passes laws that change the penalty for rape with the result that courts impose lower sentences, there will be an outcry in the community.

Hon. J. M. Berinson: How can that follow from this Bill?

Hon. P. H. WELLS: The New South Wales penalties were very much the same as the penalties proposed in this Bill. New South Wales was the first State to go down that path by changing the definition of rape and placing offences in four categories, yet the argument has been put forward that the offence has been downgraded.

The Attorney General will be more versed in the meaning of such statements and I quote a further statement that was made in this connection in the newspaper article—

> The public defender says that the grading of offences had meant that the punishment does not always fit the crime.

Remembering that the current penalty for rape is life imprisonment—and, therefore, I gather that a judge is able to impose imprisonment for life—the judge may impose a maximum sentence within that time frame. It has been accepted that life imprisonment might in fact be 10 years or 20 years, but who decides what is the maximum penalty for life imprisonment? Is it only available to the judiciary to determine that period? No Statute is in existence which sets out that information. If we in this Parliament set down a penalty of imprisonment for life, there is nothing to say that that penalty could not be 20 years. In cases of serious rape, what is stopping the judiciary from imposing sentences of 20 or 30 years? What is the basis for the decisions of the court? I understand from the statement attributed to the public defender in New South Wales, that the punishment does not always fit the crime. Since four categories of offences will be in place, importance will be placed on the charge made. Very often a person may be charged with a lesser offence in order to secure a conviction because that crime may be on the borderline. We must make certain that we do not create a system under which people will be charged with lesser offences in order to ensure that they are convicted.

I am happy for this legislation to be given a trial, but I pose that question which I ask the Government to examine. The Government has more experience and resources available with which to examine the situation in other States.

These possibilities occurred to me when I read the legislation and I query whether the system will really achieve what I believe we want it to achieve; that is, that realistic penalties be imposed for the offence of rape.

I am fully aware of the reaction in the community and I find it hard to understand why, in terms of the current penalties, we tend to consider property as more important than persons. For example, if a person robs a bank he is given 20 years' imprisonment but if he rapes a 10-year-old child he may receive something less than 10 years' imprisonment. Most members would agree that that does not stand to reason.

We are making a decision tonight that will affect the penalties to be imposed. When examining those penalties we must ensure that they will achieve the Government's aim. Statements have been made that the New South Wales system has not achieved what it set out to do.

With reference to the New South Wales situation, I have statistics covering the various penalties handed out over the years. I note from the penalties relating to grievous bodily harm—the maximum offence in that State—that there were four offenders in 1981 and by 1984 there were 12 offenders.

There has been a 50 per cent increase. I was interested to note that the total penalties involved in the four categories of sexual assault in New South Wales do not have anything like our good clear-up rate in Western Australia. New South Wales appears to be having a decreasing ability to clear up the cases. Western Australia has figures which relate to the four categories. These were as follows: For category 1 offences, the figures rose from 8 in 1981 to 12 in 1984; for category 2 offences, the figures rose from 104 in 1981 to 163 in 1984; for category 3 offences, the figures rose from 256 in 1981 to 554 in 1984, and category 4 offences rose from 538 in 1981 to 580 in 1984. The 1981 figures which were available were for a six-month period and I have doubled them to enable a 12-month comparison to be made.

These figures seem to be astronomical and I wonder whether the studies that the Government has done in the breakup of these figures indicates whether there should be a doubling of the actual recorded number of sexual offences. Does the Government believe that there are a large number of sexual offences that are not reported under the present system and, if that is the case, can we expect a doubling of the number of offences of this nature to come before our courts? If this eventuates will it mean that there will be greater pressures put upon the court system to handle this situation? In view of the report that has been made about the inability of the courts to handle the large number of cases that come before them, has some consideration been given to how this situation will be handled?

I suspect that it is the feeling of members on both sides that in terms of rape, penalties should be greater. Thus we need to accept that people will spend longer periods in our gaols. It will do no good to come back here next week and complain that our gaols are over-full and that they need to be emptied. It might well be better to avoid imprisoning people for offences such as drunkenness and so on. We need to accept that we are dealing with sentences which will be longer and that we are proposing that people spend more time in prison for offences such as rape. I think the community must ac-

cept that ultimately this circumstance will lead to greater costs, but I do believe that if we decide to institute heavier sentences we must decide not to let people out earlier for these offences.

Recently we have had the controversy of the release of Ronald Joseph Dodd and I do not think that the community in general accepted the release of that man. We are dealing here with rape and I trust that we will not go to the trouble of revising these laws only to have these people convicted of such offences, appeal, and be allowed out earlier. This would only waste our time of having gone to the trouble of increasing the penalties. Although I have some doubts about what the penalties will achieve I think it is necessary that they should be increased. We should see whether this new system will work. If it does not, I trust that the Government will gear itself to quickly rectify the situation.

If we do not find the penalties reflecting what this Chamber and Parliament believe should happen in the community, I believe that this Bill should be brought back very quickly. We need to be strong enough to admit that we might have failed. I am not 100 per cent confident that the Bill before the House tonight has any great certainty of success, because sometimes Bills of this type do not totally succeed. However, I believe this legislation deserves a chance and therefore I support it.

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [7.55 p.m.]: This is an important Bill on a serious and disturbing issue. I agree with Hon. Phillip Pendal's view that rape constitutes anti-social behaviour of the most serious kind. I also agree with Hon. Phillip Pendal that it would be preferable by far to find the means of preventing rape rather than punishing it. Unfortunately, that is not an option that we have, and we must take whatever measures are available to us. The least we can do is to reflect the utter repugnance of the community to rape and to the other types of sexual assault with which this Bill deals.

I welcome the general support from both sides of the House for this Bill and in view of that general expression of support I will restrict my comments at this stage to the reservations which have been expressed by some members of the Opposition.

Hon. Ian Medcalf asked me whether this Bill had been the subject of comment by the Law Society, and if it had been, whether I would make those comments available. The position of the Law Society, as I understand it, is that when Bills are made available to it—which I do make available as a general practice when relevant legislation is first introduced into the House—the society regards itself as free to make comments to the Government or Opposition, or both, as the council of the society thinks fit. I think that is a perfectly proper course to take and it is one which I believe is well recognised. In the case of the present Bill, because of the complexity of a number of the issues involved, I thought it preferable at the stage of the preliminary draft to advise the Law Society of the point we had reached and to invite its earlier response. Both the draft at that time and the response were provided in confidence, but there is no secret about either. I have taken the opportunity over the dinner period to secure a copy of the relevant correspondence and I have made it available to Hon. Ian Medcalf. However, this is one of those cases where the society has found itself unable to enunciate a clear view. What the council did was to refer the draft to its crime committee, which was divided on the issues.

The committee returned both a majority and minority recommendation to the council which, in turn, was unable to present a single view. The long and short of the exercise was that what we received from the Law Society at that early stage was really a balanced expression of alternative views as expressed by various members. Still, it was useful advice and, in fact, a number of the comments that were made by the society at that time were reflected in the later drafts of the Bill. Nonetheless, I think I can only summarise this part of my answer to Hon. Ian Medcalf by saying: Yes, we did ask the society. The society provided some comments, and I have made those comments available. I think the member might agree with me that they are not of the usual definitive type which the society has been able to provide on other occasions.

Hon. Ian Medcalf, Hon. Phillip Pendal, and Hon. P. H. Wells raised the question of penalties. From all sides came the question: Do the new penalties in fact increase the penalties which already apply under the existing provisions of the Criminal Code? I tried by way of interjection, to the limit of the Deputy President's patience, to pursue that question by way of the friendliest type of discussion with Hon. Ian Medcalf but, since our mutual efforts to

avoid an extended Committee stage were thwarted by the Standing Orders, I might elaborate a little at this stage.

The position is this: Under the current legislation indecent assault attracts a maximum penalty of three years' imprisonment in the case of male victims, and four years' imprisonment in the case of female victims. Under this Bill indecent assault offences will attract penalties of a maximum of four years' imprisonment in both cases. What the present Bill provides and what is not reflected in the current legislation is the provision for aggravated indecent assault. In such cases the maximum penalty, both in respect of male and female victims, will be six years' imprisonment and that six-year period of imprisonment, I remind the House, is to be compared with the current three-year maximum sentence for indecent assault in respect of male victims, and four years in respect of female indecent assault victims.

In other words, the Bill provides a 100 per cent increase in respect of male victims, and a 50 per cent increase in respect of female victims. Simply by enunciating the criteria for aggravation this Parliament, on the passage of this Bill, will be sending a clear message to the courts that, in such cases, penalties in the future are expected by the Parliament to be at a higher level than they have been in the past.

It is important to understand that that is not the limit of the increases. For example, some offences are now caught only by the indecent assault provisions but in the future will be caught by the sexual assault provisions. By way of example, I refer to the penetration of the vagina, by other than the male organ. In such cases the relevant provision until now has been that relating to indecent assault. In future it will be the provision relating to sexual assault, and there the potential increase, as reflected by maximum penalties, will be from three or four years' imprisonment, depending on whether the victim is male or female, to 14 years' imprisonment. Moreover, if that act is accompanied by circumstances of aggravation as defined in the Bill, it will go from three or four years to a maximum of 20 years' imprisonment. That is another measure of the increase in penalties which is contemplated by the Government in presenting this legislation and which will come to the attention of the courts when adopted by the Parliament.

Questions have been raised tonight, as they have been since the public discussion began, as to whether the imposition of a 20-year maximum penalty for aggravated sexual assault is in fact a greater penalty than the existing penalty of life imprisonment; literally, it is not. Of course, one concedes that it cannot be so but, as I attempted to point out in my second reading speech, it is one thing to look to the terminology of an Act; it is another to observe the way in which that Act is implemented when the courts come to impose sentence.

The reality is that, despite the isolated example which Hon. Ian Medcalf was able to produce in regard to a life sentence for rape—and the honourable member was fair enough to say that that sentence was imposed several years ago—the experience in recent years has been that, for effective purposes, even the worst and most brutal instances of rape have attracted a maximum sentence of about 14 years. We do not expect the passage of this Bill to produce a sudden spate of 20-year sentences for rape or even aggravated rape. It is acknowledged that this is a penalty for the worst and most brutal sort of aggravated sexual assault.

Nonetheless, also in this part of the Bill we will be giving a clear indication to the courts of where we see the proper penalty for the worst cases. If, as we have observed, it has been the recent judgment of the courts that the worst sort of cases should attract sentences of 14 years' imprisonment, we are suggesting that penalty ought to be increased and, in such of the worst cases, a penalty closer to the new 20-year term should be applied.

Hon. Ian Medcalf took the opportunity when dealing with this Bill to raise one of his many enthusiasms, and that is for some change to the Offenders Probation and Parole Act. With respect, I believe that, to a large extent, that part of our discussion is of limited relevance to this Bill. I do take the opportunity though to reject the comment by the honourable member that the Government has turned its back on the life sentence provisions of the Offenders Probation and Parole Act. Hon. Ian Medcalf was referring to the fact that, under the current provisions of that Act, persons sentenced to life imprisonment, depending on whether the crime was murder or wilful murder, can be considered for parole after five and 10 years respectively.

We have not turned our backs on that provision, nor have we turned our backs on the whole problem which exists with the present Offenders Probation and Parole Act.

I have indicated already publicly and to this House that, the legislative programme permitting, we will in this session introduce an in-

terim measure affecting the parole Act for the purpose of freeing up the discretion of the judges as to whether a minimum penalty ought to be imposed at all—that is, whether a provision for parole ought to be made available for defendants at all.

Hon. D. J. Wordsworth: Relating to the cycle of reporting, are you still investigating whether that should be continued?

Hon. J. M. BERINSON: I will come to that.

I have also publicly indicated that I am in the process of conducting a review of the whole of the parole Act. Although I am not in a position to anticipate Government decisions one would not have to be Einstein to know that the provisions relating to the minimum period for report on persons sentenced to life imprisonment would have to be a prominent part of that review.

There are existing, very clear recommendations in respect of those questions. Of course, they will be part of the review. If anything, some decisions in respect of that question will be easier than decisions in respect of many other questions which are raised by the Offenders Probation and Parole Act.

I do not agree with the view of Mr Pendal that the change of terminology from rape to sexual assault in some ways downgrades the offence. I think Mr Wells had a somewhat similar concern. Although a number of reasons have been offered by various parties who have supported the change from rape to sexual assault, I believe that the most practical reason is that the term "rape" would no longer match the description of the offence which will now be covered by the sexual assault provisions, and that to continue to use the term "rape" would, in a sense, be misleading.

The popular connotation of rape has got to be of heterosexual intercourse. Sexual assault as defined by this Bill goes very much further than that. Indeed, it is part of our stiffening-up of the legislation in respect of sexual assaults of all kinds that many other acts which, until this point, have attracted no more than the indecent assault provisions, will now attract the same attention and the same range of penalties as will the offence formerly known as rape. This is not a question of downgrading rape as an offence, but of upgrading the seriousness of other offences which until this point have been caught by the less stringent provisions.

I suspect that, in spite of my best efforts, we may yet have some limited discussion in the Committee stage. However, I hope that I have, at least to some extent, met a number of the more serious reservations which were expressed in the debate.

I thank all members for their contribution to this debate. I believe the Government would not be at all shy to review the situation further after we have had some experience of the implementation of the new provisions. However, I am confident that this Bill will go a long way towards achieving the aims which have been set forth and which I believe closely reflect the attitude of the community—that sexual assaults are intolerable and repugnant and ought to be met with whatever pressure and protection we are able to provide.

Question put and passed.

Bill read a second time.

In Committee

The Deputy Chairman of Committees (Hon. John Williams) in the Chair; Hon. J. M. Berinson (Attorney General) in charge of the Bill.

Clause 1: Short title—

Hon. I. G. MEDCALF: I take this opportunity of clearing up a couple of points arising out of the Attorney General's comments. I would be the first to agree that it is entirely up to the Law Society of WA whom it makes its reports available to. I did not suggest that the reports should necessarily be made available to the Opposition. I suggested that the Attorney General might make available to members of the House reports which he had obtained from the Law Society and which would have thrown some light on some of the issues which were otherwise not sufficiently clear to the members. I did not have the opportunity of reading the report before it was handed to me a few moments ago. I do not say that as any criticism of the Attorney General. However, I wanted to clarify the issue.

There was a time when the Law Society made a statement to the effect that henceforth its reports would be made available to the Opposition as well as the Government. I do not propose to name the president at the time.

Hon. J. M. Berinson: I think that is still the position.

Hon. I. G. MEDCALF: However, on this occasion my only information came from a statement which I read in *Hansard* in relation to the debate in the other House where Mr Mensaros said that he had been given a copy of the report by the Law Society but that it had to be treated as confidential.

I mention that particularly in the presence of the representative of the council of the Law Society, because I think it should be drawn to the society's attention that the Opposition is just as interested as the Government in ensuring that it has good independent advice.

As far as my own enthusiasms are concerned—the Attorney referred to the Offenders Probation and Parole Act as one of my enthusiasms—I am very flattered to feel that, at my advanced age, he still understands that I can be enthusiastic about something.

I also add that I feel I am enthusiastic about good causes. I think that is the important thing. Lest there be any suggestion that my enthusiasm runs riot, I make it quite clear that I believe that my enthusiasm about amending the Offenders Probation and Parole Act is a very good cause and one that requires attending to without any further delay.

I add that in 1982 I organised a committee of officers of the Crown Law Department, one of whose tasks was to proceed with changes to be made in the Offenders Probation and Parole Act. The fact that nothing has happened is a cause of concern to me. I think perhaps it is a good thing for the public that I am still enthusiastic about that cause.

Hon. J. M. BERINSON: It is largely irrelevant to our present discussions, but I would like to say that I respect Mr Medcalf's enthusiasms all the more because I share them. I believe that the Offenders Probation and Parole Act is in need of very substantial review and I have devoted a great deal of attention to it. It is a measure not of any lack of interest but of the difficulties in that exercise that we do not now have available a new Bill.

Clause put and passed.

Clauses 2 to 7 put and passed.

Clause 8: Chapter XXXIA inserted—

Hon. I. G. MEDCALF: I have been extremely concerned that the penalties which are prescribed in this clause are not tough enough. The Attorney General has given an indication that he believes that they are. I listened carefully to what he had to say. In effect, he has said that in relation to the first offence of indecent assault the penalty is equivalent to what already exists in the code in terms of the maximum period.

In relation to the next offence of aggravated indecent assault a new section is to be inserted for which there is no exact equivalent in the present code. Therefore, it relieves from the indecent assault category some of the more objectionable aspects and puts them in a new section.

Hon. J. M. Berinson: And increases the penalty.

Hon. I. G. MEDCALF: Yes. However, I do not believe that that explanation necessarily encompasses all the matters which are now dealt with under the category of aggravated indecent assault. This is now quite a substantial area. It certainly includes more of the items which were formerly dealt with under the indecent assault provisions but which are now accentuated by circumstances of aggravation and which are defined in this Bill. I ask the Attorney whether there is a possibility that someone might be charged with attempted rape under the offence of aggravated indecent assault. I am aware that a person could be charged under another section of the code, but we are actually eliminating from the code by this Bill the offence of attempted rape. My question is whether or not the facts in relation to attempted rape could be brought within proposed section 324C.

Hon. J. M. BERINSON: We will need to get used to the new terminology.

Hon. I. G. Medcalf: I am talking about an attempted rape under the code at present.

Hon. J. M. BERINSON: The first point I was going to make in response to that is that the equivalent of the current attempted rape charge would in future be a charge of attempted sexual assault. It might well be the fact that attempted sexual assault might also constitute attempted aggravated indecent assault, but in the normal course of events it would be the more serious charge that would be laid. Thus if facts exist which would today justify a charge of attempted rape, one would look to the new provision that provided for attempted sexual assault, not attempted aggravated indecent assault.

Hon. I. G. MEDCALF: That offence would carry a penalty of seven years. That penalty, of course, was provided in the section which we have repealed in this Bill. Presumably it could by virtue of that explanation come under proposed section 324C or 324D. However, the point of my comment is that these two offences—either indecent assault or aggravated indecent assault—irrespective of the exact technicalities of those types of offences, are very serious offences. They are far more serious respectively than simple assault or any form of

aggravated assault. It is my view that by and large they should carry a more severe penalty than four and six years' imprisonment, the terms which are prescribed in this Bill.

I would like to know the justification for selecting imprisonment terms of four years and six years in deference to any higher penalty in view of the seriousness with which the Government has indicated it views these offences.

Hon. J. M. BERINSON: I do not know that I can go much beyond my comment in reply to the second reading debate. The fact is that in respect of male victims the penalty is as much as doubled and in respect of female victims it is increased by four to six years' imprisonment as a maximum. However, as I tried to make clear earlier, the provisions and the increased penalties go very much further than that. I agree with Mr Medcalf that under current circumstances what is described as indecent assault can constitute very serious offences against the person.

The most serious of those will now fall within the expanded definition of sexual assault and in those cases the risk in terms of penalty will move from six years for aggravated indecent assault to 14 years for sexual assault or 20 years for aggravated indecent assault. It is not possible to specify the whole range of possible factual circumstances, but it might be agreed that what are now regarded as the more serious instances of indecent assault will, in fact, fall within the expanded definition of sexual assault and, therefore, become liable to the new penalties which, compared with the three or four years applying now, are very heavy indeed.

Hon. P. H. WELLS: When one makes a comparison between these penalties, the penalty of six years for aggravated indecent assault can be related to the penalty for a similar offence in New South Wales, which is seven years. In studying this Bill, has the Attorney General's department looked at the penalties applying in New South Wales, and, given the penalties set down, examined what penalties have in fact been imposed by the courts?

Hon. J. M. BERINSON: We have been guided in the general pattern of this Bill by the New South Wales legislation, but we have not made the sort of statistical study to which the honourable member refers.

I can only say that questions as to whether one should move to six or seven years are matters of judgment. In general I believe that moving to a doubling of the penalty in one case, and a 50 per cent increase in the other, should reasonably be regarded as a fair indication of the increased seriousness with which we are looking to the courts to view such matters.

Hon. I. G. MEDCALF: The point which I have been endeavouring to make—and I frankly admit that it is a matter of fine judgment as to what a penalty should be—is that I want to make certain that Parliament gives a lead to the courts in relation to this matter. I have heard and read time and time again that a court will excuse itself if it can find no intention on the part of Parliament to take a particular action. I am concerned that the courts may well end up at the conclusion of this exercise by believing that there has not really been a substantial increase at all.

The Attorney General has said that the maximum term awarded for rape is approximately 14 years. That has been awarded, he said excluding the one life case to which I specifically referred. I do not know how many cases exist because I do not have statistics on this matter. However in recent cases 15-year terms have been awarded. Very recently Mr Justice Olney awarded 15 years' imprisonment with no minimum; I think the person involved was Douglas Ross Thomas. He will effectively serve 10 years with one-third remission. The judge awarded 15 years under the existing legislation.

My concern is that we ensure that the Parliament passes a Bill which makes the judges believe that it intended to increase the penalites in line with the thinking of the community on this subject, of which we are all aware. We are aware of the community's thoughts because this information is more readily available to members of Parliament. Clearly there is grave public concern and Parliament must indicate to the judges without any doubt that it wants the penalties increased. This could perhaps be done in a silly way by dramatically increasing the penalties, but I would be the last to suggest that course. On the other hand, I want to be assured that we shall end up with sentences in the normal course which the judges should award based upon these debates in the Parliament and the fact that we are making substantial increases in the penalties, which will be much tougher. If the Attorney General can give that assurance, I may stop talking.

Hon. J. M. BERINSON: Yes. I cannot give assurances as to what the courts will do but I believe that both the structure of this legislation and indeed the nature of the debate itself will convey very clear indications to the courts of the feeling of the Parliament. I do not want to presume too far, yet I do not think it would

be unreasonable to suggest that even the recent couple of cases—I think there was more than one case in which a 15-year sentence was applied—could well have been in part a reflection of the attitude emerging from the Parliament and at least in some sense in anticipation of what we are in the process of doing tonight.

The other question is whether Hon. Ian Medcalf would agree that an increase from 14 or 15 years to 20 years is a significant increase. That is a matter of judgment. Twenty years is the minimum sentence before parole applied for strict security life imprisonment which is the most stringent term now available to the courts. I believe it is reasonable to say that a term of 20 years, or even a term approaching 20 years, represents such an awesome part of an ordinary person's lifetime that it can reasonably be accepted as a very severe penalty indeed.

I do not know whether Mr Medcalf was going to the point of questioning whether 20 years was adequate; I would be inclined to say that is the point at which a line can reasonably be drawn.

Hon. I. G. MEDCALF: I am pressing my own opinion when I say that I believe the judge in the Thomas case, when awarding 15 years' imprisonment with no minimum, was probably working in terms of the fact that if he awarded life imprisonment—which he may have been tempted to do for a series of such serious crimes—the man would perhaps have been out of prison after five years. That comes back to the question with which I will now deal, about the Offenders Probation and Parole Act.

I believe that the judge may well have been motivated by the fact that life imprisonment was probably equivalent to 20 years, because, as I mentioned earlier, that is a colloquial estimation which people seem to have. That explains why offences are sometimes considered so serious that a 25-year period is prescribed, as in the case of some of the drug offences and in a number of other jurisdictions where such a sentence is quite common.

I would personally have been inclined to give very serious consideration to whether an aggravated sexual offence should not have attracted a period in excess of 20 years. What concerns me is not the case of Mr Olney handing out a sentence of 15 years; I merely instance that to say that these sentences are being awarded now.

What concerns me is some of the cases where very small sentences appear to be awarded. I freely admit here that it is not very proper to judge a case from newspaper or media reports because one sometimes has only the sensational side; one certainly does not know all the matters placed before the judge.

I have been concerned, as the Attorney General knows, because I asked him a question a few months ago, about the case of Alex Thomas Williams, a rapist who dragged a girl across the street from Victoria Avenue into the Supreme Court Gardens, assaulted her and raped her in a sordid and vicious manner within 50 yards of Barrack Street. Eventually, after submitting her to the most humiliating and degrading acts, she was left to go onto the streets with such few clothes as she could get together, if any.

That man received a minimum sentence of four years eight months. I do not have the maximum sentence here. Against that he would have further remissions for good behaviour and the usual things which go on in the prison system.

His excuse was that he had been drinking too much, and the judge accepted this—much to my surprise. I asked whether the Crown would appeal, and the answer was that it would not for the reason the sentence was much in line with other similar cases; it was not out of line with other sentences.

This I can well believe. It is those very sentences which concern me, because the time has come to make certain that the courts understand that an extremely strong line has been taken by the Parliament in relation to this. Were we to impose 25 years for the top range of offences it would be very evident to all and sundry that a strong line had been taken. The judges could not miss it, because they would read it on the front page of the newspaper.

Hon. J. M. Berinson: In fact they read 20 years on the front page of the newspaper previously.

Hon. I. G. MEDCALF: I only hope this is right, because if it is not we will have no other opportunity. That is why I am raising the matter now. I say we will not have another opportunity, because we will not, as an Opposition. It behoves us to take a very responsible view of this issue.

I would very much like as firm an assurance as possible from the Attorney that he believes—he can only say what he believes; he cannot say what the court will do—such a firm view has been taken on increased penalties that

it must have a marked effect on the sentencing processes of the judges who decide these matters in the Supreme Court or in the District Court.

I can only ask him for a statement of his honest belief. If his honest belief is given and it reciprocates that of his principal adviser who is sitting alongside him, I shall be happy to make no further comment on that aspect.

Hon. J. M. BERINSON: I have expressed that belief several times in the course of this debate and I am happy to repeat it.

Hon. I. G. MEDCALF: In that case I shall not pursue the question further. I am glad it has been placed on record, and I hope that view will be drawn to the attention of the courts in one way or another.

I now wish to raise an associated matter in the same clause. This is a reference to section 324D, which reads—

> 324D. Any person who sexually penetrates another person without the consent of that person is guilty of a crime and is liable to imprisonment for 14 years.

The point I made earlier was, if there is a charge and the victim or the other party has consented, there would be no crime; there would be no offence and the charge would be dismissed. One of the elements is that it must be without consent.

I draw attention to the inconsistency between this clause and the earlier clause relating to offences against morality. I am now repeating what I said before, because I want the Attorney General to comment on this. If a person is acquitted on the ground that consent has been given, he may still be liable under one of these earlier sections where consent is not an element.

Hon. J. M. BERINSON: Yes, I believe that is a fact. As I attempted to say by way of interjection during the second reading debate, this does not necessarily raise a question of inconsistency as long as one accepts the conditions of a section such as section 181 of the Criminal Code. That is part of the Code which deals with consent. We are now dealing with a non-consenting act.

Hon. Tom Knight: Consent to a homosexual act does not make it legal.

Hon. J. M. BERINSON: That is precisely the point which Mr Medcalf is making and which I am conceding. That has always been the case.

Hon. Tom Knight: We are bringing in sexual assault under all headings. That is what the member is getting at.

The DEPUTY CHAIRMAN (Hon. John Williams): Order! I am willing to allow a certain free flow of debate.

Hon. J. M. BERINSON: I think I have given my answer to that as far as I can.

Hon. I. G. MEDCALF: I am not at all clear what the Attorney General has said. What I am saying is that if a person is charged under section 324D and he pleads that consent was given, and he succeeds, then that charge would be dismissed. He may well be guilty under sections 181 or 184 of the Criminal Code where consent is irrelevant. Is that not so?

Hon. J. M. Berinson: Yes, that is so.

Hon. I. G. MEDCALF: I am pleased that that has been established because before the Deputy President prevented the matter from continuing during the second reading debate, I was unsure whether the Attorney was agreeing with that.

I observe again what I said at that stage: It appears that we are quite inconsistent in that we are allowing, in sodomy cases, a defence of consent whereas sodomy is an offence under another section. This is very curious because it means that not only are we being inconsistent but we are also, in effect, permitting a homosexual act to be excused on the ground that consent has been given under this clause. I can see the Attorney is furrowing his brow.

Hon. J. M. Berinson: Would you like to put it another way?

Hon. I. G. MEDCALF: I will explain, not in detail, because we have a lot of boy scouts in the public gallery and I would not want to offend the young.

This makes a homosexual act an offence if it occurs without consent, but if it occurs with consent it is no longer an offence.

Hon. J. M. Berinson: It is no longer that offence, but it can constitute another offence.

Hon. I. G. MEDCALF: So it is not an offence under one section, but it is an offence under another section of the code. A point of basic principle is involved in this in that it is a question of whether consenting adult males can commit homosexual acts. We are allowing them to enjoy that practice if they wish to under section 324D, but not under other sections. Does the Attorney follow?

Hon. J. M. BERINSON: No. Uncharacteristically, Mr Medcalf is not making himself clear. The point is that the section we are now enacting cannot relate to consenting acts, because it is specifically related to an act where there has been no consent of the other party. That is the long and short of it. If we have consenting parties it would not be appropriate to lay charges under section 324D.

Hon. I. G. Medcalf: What if you don't know they are consenting and they prove in the course of the trial that that was so?

Hon. J. M. BERINSON: What about it? If consent is proven then a charge under section 324D fails. That is the charge and that is the result of the charge if consent is shown.

The DEPUTY CHAIRMAN (Hon. John Williams): Order! Could I suggest a most unusual departure. If the Attorney is willing, a private conference could take place if I was not in the Chair. I do not know whether that would help Hon. I. G. Medcalf and the Attorney General. We do have a very distinguished adviser here. I could well leave the Chair for a few moments to allow a private discussion to take place where certain things could be clarified. I am in the hands of the Committee.

Hon. I. G. MEDCALF: Mr Deputy Chairman, I thank you for your comments, and perhaps your concern for the susceptibilities of certain people promoted you to make your suggestion. I can resolve the matter more simply by saying that I believe I have sufficiently made the point. I am sure the matter is quite clear to most members and will become apparent to the Attorney should he have time to study the transcript of the debate. Clearly there is an inconsistency. I am not saying it is of the Attorney's making, but there is an inconsistency in principle here in relation to this question of consenting adults engaged in homosexual acts.

I have a further question. Should a person be charged under section 324D with sexual penetration without consent, and in the course of his trial it be shown the other person had consented and therefore the charge was dismissed as not proven, he has still committed an offence under the other section. I would like the Attorney's opinion as to whether that person would be likely to be charged under that other section and, if not, why not?

Hon. J. M. BERINSON: I find it difficult to pursue these hypothetical questions too far. I can only say that at the point of acquittal on the grounds of consent, as agreed both by the defendant and the person who at that stage was being presented as the victim, a decision would have to be made as to whether a further charge under section 181 was appropriate.

Hon. I. G. MEDCALF: I have only one further question now and perhaps the Attorney can let me have an opinion on this also. Would there be any prospect of the defence in this case being able to claim that the facts in both cases were the same and therefore the defendant, having been acquitted under one section, should not be convicted under the other section?

Hon. J. M. BERINSON: My opinion would be, no, because one of the essential factors under section 324D is consent.

Hon. I. G. MEDCALF: That is not really the answer I anticipated. The basic facts surely do not involve consent, which is irrelevant to the other charge because the other charge does not have consent as a defence. The basic facts in both cases are exactly the same.

Hon. J. M. BERINSON: I think we are gradually reaching the point of the real question that Mr Medcalf was putting to me before. I would like to take further advice on this. Mr Deputy Chairman, can we leave this clause for now?

The DEPUTY CHAIRMAN: You can postpone the clause and come back to it at a later stage or you can ask me to leave the Chair.

Hon. J. M. BERINSON: Does Mr Medcalf propose to raise any other questions under this clause?

Hon. I. G. Medcalf: No.

Hon. P. H. WELLS: It seems to me that the sentences of 20 years and 14 years based on the experience of New Zealand, where the penalty was 14 years and the prisoner served nine, lead us to the reality that we will end up with a situation where instead of the maximum term being 14 years it will be nine years. People will be getting out in 4½ years in those circumstances, and in the case of a 20-year maximum sentence it will come down to 13 years and people will get out in six. That is probably too simplistic, but we should consider the situation in New South Wales which had 12 cases last year and 10 the year before. Surely the Attorney is able to get the exact penalties and advise the Chamber what the reality of those penalties is. In that way we could have some evidence as to whether a penalty of 20 years will mean an actual term of 13 years or 15 years. That will give us some feeling of whether what the Attorney is saying can be achieved. I

would have thought a telephone call could have obtained those facts if they are not available in the department.

Hon. J. M. BERINSON: I do not think those are the sort of facts which could be obtained by a telephone call, and I do not think one can jump from jurisdiction to jurisdiction in that way and anticipate that an average proportion in New Zealand or New South Wales might be translated into a similar proportion or average sentence here.

What we are looking at here is an established pattern of sentences and a Bill which is indicating that, especially in the more serious cases of each offence, an increased sentence is regarded as appropriate by the Parliament. We have to look not at the pattern in other jurisdictions, but at the pattern of sentences here and how it might be altered by a proportionate increase in the maximum penalties provided.

Having considered again the question Mr Medcalf raised, it may not be necessary to postpone this clause. I am now advised, and it seems to me on further consideration, that the facts involved in a charge under section 324D would be so similar to those involved, for example, in a charge under section 181 that an acquittal under section 324D would preclude a later prosecution under the other section.

Hon. I. G. MEDCALF: I am indebted to the Attorney for that answer. I suspected that was probably the case, and the reason I raised it is really that what this amounts to is, if a person is charged under section 324D and the charge fails because of consent, he cannot be charged under one of the other sections. In effect, we are permitting consent as a defence in relation to a particular homosexual act of sexual penetration.

Hon. J. M. BERINSON: I do not believe it can be generalised as far as that as a defence to a charge under section 324D. I do not think we can take the theoretical possibilities too far. It must be borne in mind that a charge under section 324D can only arise where a person claiming to be a victim of a homosexual assault has brought a complaint leading to a charge.

It is not hard to conceive of a situation where the charge would fail on a defence of consent just as current charges of rape sometimes end in an acquittal on a defence of consent. At the end of the day though, one has not proved consent of the alleged victim; what has been established is that non-consent has not been proved to the required degree of satisfaction of the jury. I am really saying that at the end of the process of a section 324D charge leading to acquittal it is assuming too much to suggest that one then has a case of consenting homosexuals.

Hon. I. G. MEDCALF: The Attorney will be relieved to hear that I am not going to pursue the matter any further, but I believe it has raised an interesting avenue which perhaps might well have been given greater consideration earlier.

Hon. TOM KNIGHT: The whole problem we are facing tonight has arisen by virtue of the fact that we are removing the word "rape" from this Act.

Hon. J. M. Berinson: Not at all.

Hon. TOM KNIGHT: If it was left at "rape", which is an internationally known term, people would know what we are talking about. However, we are mixing the two and calling one sexual assault. That is where the problem to which Mr Medcalf referred has arisen. Even if we have to define rape as meaning sexual assault between a male and a female, it might clarify matters because the confusion appears to be coming from the fact that we are bringing in the term "sexual assault" between all people. That is where the confusion arises—it should relate to the act between certain people and be specific by name. If it is known to be between a male and a female and consent has been given it is clear there is no case to answer, but if the act is between two males and consent is given it is still an illegal act. That is where the confusion arises.

Hon. J. M. BERINSON: I will not deny there is some confusion in the air, but I do not think that is the source of it. It is simplifying the question too far to say that all that is happening in this Bill is that we are getting rid of the word "rape" and adding the concept of homosexuality, and calling both of those acts sexual assault. In fact, the matter goes much further. I am not sure whether Mr Knight is saying we should retain the term "rape" in its current meaning or whether we should retain it under the meaning we want to ascribe to what this Bill calls sexual assault.

Hon. Tom Knight: Now you have confused the issue again.

Hon. J. M. BERINSON: I do not believe I have. If Mr Knight wants to retain rape with its current restricted meaning, he is eliminating all of the acts of sexual assault which are specified in proposed section 324F and which the Bill

sets out as sexual assaults attracting the same penalties as are attracted by what we now call rape.

It is our view and the view of the groups with which we have consulted that the concept of sexual assault should be much wider than that of rape in its present sense or rape plus homosexuality in the present sense.

Hon. MARGARET McALEER: During my second reading speech I mentioned that a public meeting was held in Geraldton to discuss the crime of rape and that an interest was shown among those women who were present about the actual duration of prison sentences. I advised them that they should write either as a group or individually to the Attorney General to express their view. I ask if the Attorney General has received any representations from those women?

Hon. J. M. BERINSON: I am, sorry I cannot respond directly to the question. It is a matter which has attracted substantial interest and I have received a number of items of correspondence, but I have no way now of being able to recall where they came from.

Hon. P. H. WELLS: I come back to the prison sentence for aggravated sexual assault. I do not feel comfortable because I feel it will not be adhered to. The Attorney says it is no good looking at the prison sentences set by other States. I believe that the 14-year sentence will be reduced to nine years and a 20-year sentence will be reduced to 15 years. The Attorney General has said that 14 years will apply in this case.

Hon. J. M. Berinson: What sort of aggravated assault are you referring to?

Hon. P. H. WELLS: I am referring to aggravated sexual assault.

What will happen in a situation where a person is being charged before the court for an offence and the victim dies? I gather that the charge will be proceeded with. Is it likely that the court will take into account that the 20-year sentence will cover aggravated sexual assault including the death of the victim or will he be charged for the victim's death under the Criminal Code?

Hon. J. M. BERINSON: I will answer that question with another question because I am not sure I get Mr Wells' point. It depends on whether Hon. Peter Wells is postulating the position of where a death occurs during the course of, or as a result of, the same events which led to the charge of sexual assault. In such case we may be looking at a murder charge. We cannot deal with the facts in this hypothetical way.

Hon. P. H. WELLS: If a 20-year sentence is a maximum sentence it makes me question the range of penalties set out in the last year. There would only be four maximum penalties.

I think the community is looking to the courts to impose a suitable penalty that would be a deterrent against people committing aggravated sexual assaults. Other types of penalties have not been mentioned. I am aware only of those cases which were quoted in *The West Australian* when the proposed changes to the Act were outlined.

I ask the Attorney General if he can give me examples of the maximum penalties which have been imposed regarding aggravated sexual assault and to compare those penalties with life imprisonment. What does the Attorney General consider to be life imprisonment and what maximum penalty will be imposed on persons charged with aggravated sexual assault?

Hon. J. M. BERINSON: It is impossible to answer that question. The point is that at the moment we only have the single charge of rape.

Hon. P. H. Wells: What is the maximum penalty?

Hon. J. M. BERINSON: I recall 14 years and Mr Medcalf recalls that a few weeks ago a penalty of 15 years was imposed. It was an exceptional case and it attracted media attention.

Hon. I. G. Medcalf: The Thomas case was about two years ago.

Hon. J. M. BERINSON: The penalty was 15 years.

Hon. I. G. Medcalf: There was another case.

Hon. J. M. BERINSON: Yes, there was another case recently.

Mr Medcalf can recall a sentence of 15 years about two years ago and I can recall a case which attracted the same penalty about a month ago. I do not see where these facts lead us.

It is impossible to get into an exercise where we list the limitless range of factual possibilities and attempt to judge what was imposed before, against what might be imposed now.

In general terms I express the view that this Bill can be expected to lead to an increase in penalties and that it would apply virtually across the board except in the case of indecent assault charges which would not have aggravated assault attached to them.

[Quorum formed.]

Hon. P. H. WELLS: No real evidence has been presented to this Chamber to prove that what the Attorney General is saying can be achieved or will be achieved. In other words, it is guesswork. The attitude is that it might be achieved so we will include it in the Bill and see how it works. There has been no evidence to suggest that the penalties are wrong.

Certainly, the community thinks that the present penalties are wrong, but no evidence has been given to the contrary in this Chamber. The proposed 20-year sentence will not achieve an increase, nor will the 14-year sentence for sexual assault.

It appears that offenders will serve five or six years only. Evidence within the community shows that it wants increased penalties.

The New South Wales Government has implemented new laws, but the Government does not want to look at them and it does not want to look at the Western Australian laws.

Hon. J. M. Berinson: Who says that?

Hon. P. H. WELLS: The Attorney General cannot say what is likely to happen in terms of our current penalties. Are the penalties high? What will be the range of the penalties?

I must admit that all I am going on is what is written in *The West Australian* or by other people that we should have higher penalties. Going by what the solicitor in New South Wales said, where a 20-year penalty was brought in, that State downgraded the offences and therefore there were lesser penalties; because there was a mixture of penalties it was not able to charge people and get them in the correct category.

There is a chance that the proposition we put together may not work. I hope it does, because there are those who say it is not working in New South Wales. The Minister cannot say to me that, given the present judiciary, we have this type of penalty; and the Parliament wants to impose penalties of another type. I cannot see how we are going to achieve a penalty of 20 years just by saying it.

Clause put and passed.

Clauses 9 to 11 put and passed.

Clause 12: Section 596 amended—

Hon. J. M. BERINSON: I move an amendment—

Page 5, lines 23 to 30—To omit paragraphs (a) and (b) and substitute the following—

(a) by deleting "rape" and substituting the following—

"sexual assault or aggravated sexual assault";

(b) by deleting "he" in both places where it occurs and substituting in each place the following—

"that person".

By way of explanation, I indicate that the Bill proposes to amend section 596 of the code. As originally drafted, it inadvertently has the effect that female principal offenders pursuant to section 7 of the code would not be able to be convicted. This is rectified by the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 13 and 14 put and passed.

Clause 15: Sections 36A and 36B repealed and sections 36A and 36BE substituted—

Hon. J. M. BERINSON: I move an amendment—

Page 8, line 29—To insert after "person," the following—

"not being part of the *res gestae* of the proceedings,".

The provision at present requires leave if the defendants wish to put in evidence the sexual experience of the complainant of any kind, at any time, and with any person. That may appear to require leave even to ask questions about the facts of the particular case and that was, of course, unintended.

The existing legislation prevents this result by excluding from the restricted matters "among the *res gestae* connected with any offence with which the defendant is charged at a trial". The proposed words are inserted for the sake of clarity.

The DEPUTY CHAIRMAN (Hon. John Williams): On behalf of the Committee, I would ask the Attorney General if he would be kind enough to translate *res gestae* for the benefit of the Committee. It is not abundantly clear to every member of the Committee.

Hon. J. M. BERINSON: The term refers to that part of the surrounding circumstances which is central to the issues in a case.

Amendment put and passed.

Hon. I. G. MEDCALF: I refer to new section 36BD on page 9, which forms part of clause 15. This is the clause that requires the judge to give a warning where a complainant has delayed in making a complaint. The judge is required to

give a warning to the jury to the effect that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false, and inform the jury that there may be good reasons that a victim of an offence such as that alleged may hesitate in making, or may refrain from making a complaint of that offence. During the course of the second reading speech, I indicated that I felt it was not right to require the judge to take this course as a matter of direction or instruction, and that it would be more appropriate if this were permissive.

I have since had the opportunity of reading the correspondence from the Law Society of Western Australia on this topic, and there is no doubt that the Crime Committee took a dim view of this but the council of the Law Society had other views, although they are not particularly explicit. They seem to deal mainly with the other section, which refers to uncorroborated evidence, to which I am not referring.

Furthermore, the Law Society took the view that this was in accordance with the current practice of the judges. So it is, but it is not in accordance with their current practice to be required to do this. That is the significant difference. It is in accordance with their current practice where they see fit to make such an inclusion, but I am not aware that their current practice requires them to take this step.

If, indeed, the courts take the step on every occasion when this matter is raised, irrespective of how long ago the complaint might have been made, then it would be in accordance with their current practice even though not set out in any formal way.

It appears to me that it is an imposition on our judges in all circumstances to require them to inform the jury. I am referring particularly to paragraph (b) of new section 36BD. There may be good reason; the judge may be inclined to say there may not be good reason, but he would not say there may not be good reason, because by saying that, he would be making persuasive comments which would have a bearing on the outcome of the trial. It would undoubtedly be ground for an appeal if a judge were to say there may not be good reason. Here we are saying the judge himself could say there may be good reason but there may not be. I find the requirement that the judge should take affirmative action quite disturbing. I believe it ought to be permissive in the second part but not mandatory.

Hon. J. M. BERINSON: It is a fact that the general rule of practice is that reference is made to this kind of consideration, and I am advised that is the normal course at the stage of summing up.

This new section departs somewhat from the rule in that the intention is that the caution should not only be given on each occasion that such a question arises but that it should be given about the time, in the course of the case, that the question arises. In other words, where suggestions are made either expressly or impliedly that delay might lead to some question of the truth of the allegation the judge, as close as convenient to the time that that question arises, should draw the jury's attention to the considerations listed in proposed new section 36BD.

It is the intention that that should be the invariable practice. That is a deliberate decision which has been taken in the course of an effort to not only amend the substantive law in respect of sexual assaults but to facilitate prosecutions consistent with protecting the proper rights of defendants.

[Quorum formed.]

Hon. I. G. MEDCALF: We are here to change the practices, as the Attorney General has said; so whilst it may be the practice of judges in normal cases to make these comments in their summing up, comments will be made immediately the question is asked or answered. But at the time this occurs, during the course of a trial, the comment will be made by a judge. To that extent the practice is changing.

Whilst I can appreciate that that change has been made, I still have very grave doubts about this matter and my doubts appear to have been shared by the crime committee of the Law Society. There seems to be a difference in view of which I was unaware until I received these papers tonight. I want to hear a positive assurance from the Attorney that in all cases this is a rule of practice which the judges now observe in relation to summing up, that is to say, that they give warning to the jury that the absence of complaint does not indicate that that was the victim's fault.

In the second part, the judges in the normal course as a matter of practice inform the jury that there may be good reasons why a victim of an offence may hesitate or refrain from making a complaint. I want to hear that positive assurance, and if that is the case—

Hon. J. M. Berinson: You are not suggesting that is what I said before.

Hon. I. G. MEDCALF: I do not think the Attorney said that before.

Hon. J. M. Berinson: I did not and I cannot say it now.

Hon. I. G. MEDCALF: That is exactly the point. Perhaps I could ask the Attorney to explain it in his own way.

Hon. ROBERT HETHERINGTON: One of the things that concern a great number of people about this proposed new section is that so often in rape cases the question of lack of an early complaint is brought up against the victim, and one of the things one finds when talking to the counsellors in the Sexual Assault Referral Centre, which I have done at great length, is that a great number of rape victims do not make immediate complaints and sometimes they have to internalise the whole trauma before they make a complaint. Therefore a layman who is aware of some of the problems that face women who have been raped, knows it is a fact that they may not make an immediate or early complaint and that they may have good psychological or other reasons for not making a complaint at all. I believe that many women I have spoken to on this subject feel that this provision should be incorporated in the Bill.

I cannot enter into fine legal argument with the Attorney or Hon. I. G. Medcalf, but I am talking about what happens in rape and about common justice for women. It is true that women cannot necessarily make an early complaint, and it is true that in cases of rape and sexual assault they may and often do have good reason for not doing so. I am quite sure that if there is any doubt in the learned judge's mind, in his summing up he would draw out the questions the jury had to consider. This is quite essential and I am led to believe this is essential in this Bill by my dicussions with women who have dealt with victims of rape. For this reason I strongly support it and think from the layman's point of view it is a matter of common and important justice.

Hon. I. G. MEDCALF: I assure Hon. Robert Hetherington that I fully agree with the comments he has made. I am not questioning the fact that there are occasions when women have good reason for not making a complaint; and I can understand that. They may be under duress or in some situation which precludes them from making a complaint. I am not objecting to that. What I am saying is that it seems to me to be extremely curious that we are requiring a judge to descend into the court and make a statement by informing the jury that there may be good reasons.

It is almost a self-evidentiary statement. I do not mind if it takes a while for the woman to complain. I do not hold that against her. I quite agree that the judge should give a warning that the absence of delay in complaining does not necessarily indicate that the alleged offence was false. That is a pretty independent sort of statement, but when it goes on further and the judge is required to inform the jury that there may be good reasons why a victim may hesitate, that is a different matter. While that is undoubtedly true in many cases, obviously there are good reasons for and against a delay. It depends on the facts of the case and those are the facts at issue to which the Attorney General referred a moment ago—the *res gestae* of the matter. For the judge to make the statement may well have a persuasive effect.

I do not think that is quite fair, and I have asked the Attorney General to clarify whether it is common practice in all those cases that judges make that statement. That more or less is what the Law Society has said. The crime committee said that the committee considered both new sections constituted an unnecessary attempt to circumvent the manner in which a judge summed up to the jury.

They are not even talking about this section; they are talking about the summing up. This refers to what happens all the time. I am not particularly objecting to this being said at the time, but I have doubts that it ought to be said by the judge. I assume that council of the Law Society which considered that crime report did not agree with it. Some strong disagreement was expressed with the view of the crime committee that the proposed two sections constituted an unnecessary attempt to control the contents of the judge's summing-up. They said the contrary view was that it was the present practice of the courts in the area particularly of the need for corroboration, which dictated the need for some specific legislative provision. If that is the common practice of judges, we are not imposing on them by requiring them to do it, if in fact they do this in all cases inevitably throughout the trial which would surprise me, I would have no objection to its being put into the legislation.

Hon. J. M. BERINSON: I think Hon. Ian Medcalf was asking whether I would say that the judges invariably give some caution in their summing up. My understanding is that it has

not been invariable practice but cautions or directions to that effect are commonly given. There is no doubt about it and I have attempted to make this clear earlier. This section does look to an amendment of the current practice in making cautions invariable and also bringing them closer to the stage of trial where the relevance of the delay is raised.

Hon. I. G. MEDCALF: I will take the matter no further. I have expressed my view and I must confess that I maintain that view. I believe it is wrong for the judge to roll up his shirt sleeves, metaphorically go into the arena, and say something which may well be construed as evidentiary and be required to do it. I take the view that it is contrary to the independent attitude that judges should have in these matters. I appreciate the point made by Hon. Robert Hetherington and I do not quarrel with it but I believe this is wrong. I do not propose to do anything about it. I just want to reiterate that I think it is a mistake and that view may well be echoed by others in the future.

Clause, as amended, put and passed.

Clauses 16 to 21 put and passed.

Title put and passed.

The DEPUTY CHAIRMAN (Hon. John Williams): I will just make sure that members know that what the Attorney General defined in the Committee proceedings as *res gestae*, comes from the Law Commission. I wish to put that on record so that the Committee is perfectly clear as to the definition of *res gestae*. The doctrine of *res gestae* allows evidence to be led—amongst other things—of everything said and done in the course of the incident or transaction that is the subject of the trial.

Bill reported with amendments.

LIQUOR LICENSING (MORATORIUM) AMENDMENT BILL

Returned

Bill returned from the Assembly without amendment.

ELECTORAL DISTRICTS AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon. J. M. Berinson (Attorney General), read a first time.

Second Reading

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [9.51 p.m.]: I move—

That the Bill be now read a second time.

The principal reason for this Bill is to introduce into the State's distribution of electoral boundaries procedures, provision for inputs earlier in the process than at present.

The Act at present simply requires the Electoral Commissioners to inquire, recommend, and publish proposed alterations, and thereafter consider written objections before presenting their recommendations. Generally participation by interested parties is limited and, in practical terms, occurs quite late in the process.

Though there seems to be no hindrance under the Statute for people to present their views prior to the commissioners' publishing their proposals, when the Act is silent the presentation of such views may be seen by some as tantamount to improper influence. Thus possibly helpful and innovative material may well be denied to the commissioners.

The proposals require the commissioners to invite suggestions relating to the distribution of boundaries, to invite comments on them, and to consider such suggestions and comments. The time schedules proposed are—

Suggestions to be received by the commissioners within 30 days of the notice of invitation. Copies of these suggestions are to be made public;

comments on the above suggestions to be in hand within the next 14 days;

commissioners' initial proposals to be published within 42 days of expiry of the comment period above;

objections to the initial redistribution proposals may be made within 30 days of their publication;

after the commissioners have considered the objections, the fixed redistribution is to be presented to the Governor within 60 days of the close of the period for objections;

the Act also requires the publication of the redistribution; the whole redistribution process could take approximately six months under these proposals.

The overall effect is intended to be the production of a better and therefore accepted redistribution. Electoral Commissioners should

continue to draw on other sources of information and assistance in their work if they believe this will help them.

A shortcoming in the present Act is remedied by the proposal that a recognisable day in the redistribution process will be identified as the date of the rolls. The enrolment on that day will be the enrolment for the redistribution. The day selected is the day of the proclamation which sets the redistribution process in operation.

The use of the word "acceptance" in relation to any redistribution within the parameters of this Act must be heavily qualified. The term "acceptance" is qualified by an Act which presently prescribes gerrymandered boundaries and enforces malapportioned enrolments, and until such time as these features are reformed there can never be full acceptance of any redistribution.

I turn now to a further objective of the Bill. The second proviso to section 7 of the Electoral Districts Act requires the commissioners to give due consideration to community of interest, means of communication and distance from the capital, physical features, and existing boundaries of districts.

The Bill contains the proposal in clause 6 that the trend of demographic changes be included with these criteria. Electoral Commissioners appear to have given some consideration to the trend of demographic change in past redistributions even though the Act has been silent on this significant matter. This is desirable so that the number of disruptive redistributions may be minimised.

For example, in the most recent redistribution of boundaries which took place in 1981 the range of enrolments struck by the Electoral Commissioners was 14 per cent in the metropolitan area.

Joondalup was set 8.5 per cent below the metropolitan quota while Melville was set 5.5 per cent above. Where growth was predictable in districts such as Joondalup and Murdoch enrolments should have all been set low and in fact were in 1981. Districts like Victoria Park, Clontarf and Nollamara are now well below average and should therefore have been set higher in the beginning instead of being set below the average as they were.

Keeping in mind that this Act permits a margin of allowance of 15 per cent above or below the average enrolment in the agricultural, mining and pastoral area, the 1981 redistribution figures show the range of enrolments there as 16.3 per cent. Warren was set seven per cent below the agricultural, mining and pastoral quota while Avon was set 9.3 per cent above. Dale, Mitchell and Mandurah are now high and should have begun life among the lowest enrolment districts, but the highest growth area of Dale commenced life with an enrolment already above average. If information was available about population trends, seats like Warren should never have been set low initially because their lack of growth has meant that they are now well below average.

A key reason for preparing this addition to the criteria for redistribution is to encourage the commissioners to bring forward a set of boundaries that are likely to remain accurate for a longer period.

The 10 per cent margin of allowance can assist in achieving this goal in normal population trends. Enrolments are significant because the only evidence which may bring about a redistribution is when at an election eight or more districts exceed their enrolment quotas by more than 20 per cent. The force of this provision was indicated in 1961 when a reluctant Liberal Government was forced by the Supreme Court to a redistribution. It is because the Act uses strict enrolment criteria to make and unmake electoral redistributions that the Act should make clear that the Electoral Commissioners are to take the trend of demographic changes into account.

The proposals would re-order the Act into this sequence—

Appointment of commissioners: section 2

Commencement of distribution process: section 2A

Commissioners' functions and the process selection: section 3

Bases and criteria for distribution: sections 4-9

Promulgation and commencement of recommendations: section 11

Requirement for absolute majority for amendment to Act: section 13

Schedule of statutory boundaries: schedules 1 and 2

The mechanism proposed for achievement of this is to insert section 2A, repeal and re-enact section 3, repeal section 10 and transfer its purpose to section 3, repeal and re-enact section 11, and repeal section 12 and transfer its contents in part to sections 2A and 11.

Nobody should think, because this Bill does not remedy the fundamental defects of the Electoral Districts Act, that the Government resiles from its determination and responsibility to legislate the principles and machinery of a fair electoral system.

The Electoral Districts Act as it stands constitutes unfair discrimination between citizens of this State. The Act also reserves to Parliament the drawing of the actual electoral boundaries of the four districts and two provinces in the north-west-Murchison-Eyre area; the boundary of the agricultural, mining and pastoral area; and the boundary of the metropolitan area. A political party in control of both Houses of Parliament, as the Liberal Party was in 1981, has drawn electoral boundaries and determined the allocation of the numbers of districts and provinces. This is a disgraceful situation which has been cynically exploited. Measures to guarantee to every elector the right to vote equal in value to any other vote and to ensure all electoral boundaries are drawn by Electoral Commissioners were a part of the rejected fair representation Bill of 1984.

This Bill proposes amendments which do not affect representation to Parliament. The amendments therefore do not deal with the democratic allocation of power but rather with less central matters. It is the belief of the Government that people should have the opportunity to participate more in the redistribution process and that there are many people in our community who have the knowledge to make useful contributions. The legitimacy of the power of Parliament will be marginally enhanced by inviting greater public participation in the electoral redistribution process.

But the main task of reform of representation to Parliament remains and will continue to be among the top priorities of this Government.

I commend the Bill to the House.

Debate adjourned, on motion by Hon. N. F. Moore.

LOCAL GOVERNMENT GRANTS AMENDMENT BILL

Second Reading

Debate resumed from 26 September.

HON. P. H. LOCKYER (Lower North) [9.58 p.m.]: The Opposition does not oppose this Bill. It is in fact quite a simple Bill, although I am a little curious as to why the Government is removing a member of the Treasury from the Local Government Grants Commission and replacing him with a representative elected by the councils themselves. I cannot see why we could not just extend the commission to include a representative from names submitted by the Country Shire Councils Association. This would be much more representative of the total area, because it is the Opposition's view that it would be more beneficial to all concerned if a member of Treasury were on the committee. However, the Opposition is in favour of local government having more say, particularly in the area of the Grants Commission because, after all, this is the commission which, to coin a phrase, cuts up the cake that is available to local government.

The Opposition has studied the Bill and we are happy to support it.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon. J. M. Berinson (Attorney General), and passed.

WILDLIFE CONSERVATION AMENDMENT BILL

In Committee

Resumed from 25 September. The Chairman of Committees (Hon. D. J. Wordsworth) in the Chair; Hon. J. M. Berinson (Attorney General) in charge of the Bill.

Clause 1: Short title—

Progress was reported after the clause had been partly considered.

Clause put and passed.

Clauses 2 to 8 put and passed.

Clause 9: Section 26A inserted—

Hon. A. A. LEWIS: I have explained to the House why I will move an amendment to this clause. I have taken advice from the relevant people. There seems to be some problem in Government circles about the acceptance of the amendment. The rationale behind the Government's inserting the two-year limit was that the Fisheries Act included the same two-year period allowing for charges to be laid. That was inserted before the amalgamation, so the wildlife and fisheries officers in those days before the amalgamation were familiar with the two-year limit.

I believe that my amendment is acceptable in departmental circles. This two-year limit sets a precedent for all sections of the department in relation to charges—that is, in relation to forestry matters, national park matters, fishery matters, and all other matters. It is a bad precedent. I will not push the amendment any further. All I will say is that if the two-year limit is approved it will be of great detriment to this State. I believe that, for the benefit of this State, the Government should accept a one-year limitation for charges to be laid. I therefore move an amendment—

Page 3, line 16—To delete "2" and insert "1"

Hon. J. M. BERINSON: I am unable to support this amendment. I urge the Committee to accept the two-year period. I have been advised by the executive director of the department that the two-year period represents the departmental view, and it is not just a matter of establishing a period consistent with that provided in the Fisheries Act in 1982. It is a question of providing an adequate period for cases which the department believes will take that long to bring to fruition.

The executive director has provided a number of cases in which a 12-month period would create difficulties. These relate to cases firstly, where there are complicated and serious offences which would involve the checking of financial records based on illegal dealings with birds and reptiles; secondly, to cases where false names have been given and offenders have to be identified and located—I am advised that that sometimes involves interstate inquiries—and thirdly, to situations of the construction of illegal drains which discharge water into nature reserves are involved and which are sometimes not obvious until heavy rains have occurred.

I also convey to the Committee, although I am not able to provide details, that a number of cases are currently under investigation which demonstrate the need for the extended period and where the prosecution of each case would be jeopardised with less than the two-year period.

Finally, it has to be said that there is no objectively correct period and that 12 months, two years, or five years for that matter, might be justifiable depending on the complexity of the investigations which have to be made.

There is no excuse for delay in prosecution once the facts are known, but there can be considerable difficulties involved in the time taken to become aware of infringements of the Act and then in obtaining the necessary evidence. At the end of the day the real question is, accepting that there has to be a decision made on one basis or another, to whom are we going to give the advantage? Are we going to give it to the authorities who are charged with the enforcement of provisions which we are all agreed ought to be enforced, or are we going to give the relative advantage to the people who have actually broken the law? When that is the balance to be considered, if there is some question of going one way or the other, I suggest to the Chamber that we ought to go in the direction which will facilitate the enforcement and the proper administration of the requirements of the Act.

Hon. G. C. MacKinnon: Do you agree that the association between fisheries and wildlife is so strong that they should never have been separated?

Hon. A. A. LEWIS: I suspect that that was the jackboot approach.

Hon. J. M. Berinson: It was not a jackboot approach.

Hon. A. A. LEWIS: Of course it was a jackboot approach. The department has been operating since 21 March, but the Attorney is not prepared to accept a reasonable compromise. He wants the wildlife enforcement officers to become little Hitlers instead of encouraging the public to love and respect flora and fauna. The Attorney is not in any way trying to see that the education process is the major function of the department. If this provision is passed a precedent will be set and every part of that department will be able to use it as an excuse for forestry matters or for national park matters.

Some of us have spent some time on this subject. I was horrified to hear what the Attorney read out about what the departments say. As it is now on the public record, I will use it elsewhere. I want to know the reasons for the Attorney extending the time for commencing proceedings. Nothing was said about it in the second reading speech. Admittedly, the Attorney was away at that stage. I was trying to be fair and to sell a story that I believe this Committee should accept. The Attorney tried to snow the Committee. He did not give one example. Once we start talking about drains running through nature reserves we begin to worry. Those of us who know something about

the matter know that the department does not know where most of the nature reserves are, let alone whether drains run through them.

Hon. J. M. Berinson: Perhaps that is why it takes them more than six months to find out.

Hon. A. A. LEWIS: If that is the extent of the Attorney's argument he ought to rest his case and let the Committee decide.

Hon. J. M. Berinson: Of course it is not.

Hon. A. A. LEWIS: He has been given a bit of a hiding tonight on other subjects. I would hate to give him a hiding on wildlife. I will not argue with him about legal matters, but I think I know a little more than the Attorney about wildlife.

A member interjected.

Hon. A. A. LEWIS: The feral people are coming in from outside.

It must be obvious to the Attorney that I am trying to be extremely fair about this.

Hon. H. W. Gayfer: Even docile.

Hon. A. A. LEWIS: Yes, I rose in a very docile manner.

Hon. J. M. Berinson: So did I, but you said that I came in jack boots and all.

Hon. A. A. LEWIS: Yes, but the Attorney is putting first the enforcement function of the department when it should be a very minor function. Surely the Attorney in all conscience can see that when we are trying to create a new Department of Conservation and Land Management for the first two years we should try to make education and public awareness a priority rather than give enforcement officers two years in which to grab people who offend.

Some people want this department to work properly. It seems to me that the Government does not want the department to work in a new and clear atmosphere. For years, people have said that the wildlife people have been too enforcement minded and that the section of the department devoted to education has not been as good as the enforcement section. That got the department into a lot of trouble.

I do not accept the reasons the Attorney read out for extending the period to two years. The Attorney should not miss the point. Some of us, including three members of this Chamber, have worked very hard to see that the department works properly. For the Government thus to dismiss the sort of advice that it has been given, smacks of standover tactics and an attitude of being not prepared to look. I hope that the Attorney will either postpone the matter and go back to the department or will give some reasonable reasons for his statement.

Nothing in the second reading speech and nothing in what the Attorney said tonight leads me to think that any clear-thinking person would automatically agree with the proposition to extend the time from six months to two years. I can imagine that the time might be extended from six months to 12 months. I can see that there may be problems over one season, but not over two seasons. The Attorney must give us far better reasons than he has.

Hon. J. M. BERINSON: I cannot add anything to the reasons I have already conveyed to the Committee. I ask Mr Lewis to reconsider the basis of his objection. There is nothing in any particular limitation period which goes to the question which I understood Mr Lewis to be stressing; that is, the desirability of the department's putting greater emphasis on the education process than on prosecution. The same thing might be said even if there were only a six-month period in which to commence proceedings. It is not the limitation period that determines the concentration on prosecution as opposed to education. It is the attitude taken either to using the prosecution process or the persuasive process. Nothing in the period itself determines which avenue is taken.

The end process of saying that an ability to prosecute effectively will detract from an education effort is to say that there should not be a prosecution power at all or that it should be limited to three months or 30 days or suchlike so that the department has no effective capacity. All we are talking about in terms of a limitation period is the practical capacity of the department, in cases where it comes to the conclusion that a prosecution is warranted, to be able to pursue the inquiries, the gathering of evidence and the other matters of factual detail which are required. That is all that is involved in this matter. It is a matter either of facilitating that process or of cutting out some prosecutions, not on the merits, but purely for the technical reason that the limitation period has run out by the time the department has been able to get into a position to mount a prosecution.

Hon. A. A. LEWIS: The Attorney's example in his second reading speech was about birds' eggs. The birds' eggs example does not need more than one season. Another example he gave concerned water running through reserves, which might take 50 seasons, depending

on the rain. What the Opposition is trying to do is to do it steadily and sensibly. It may be 14 days, three months, or six months. A practical land manager, as all the farmers in this place know, always considers things by seasons—a complete 12 months.

If we cannot find people stealing birds' eggs within 12 months of the eggs being laid, in the next month after those eggs have been squashed by a motorcar running over them, one will not find the vandals. I dealt with this before in regard to rainbow birds.

None of the Minister's arguments holds water. In a practical sense one can say 12 months is enough because that is a full season. But one cannot give any evidence that that shows one should go for that extra year.

Perhaps six months was wrong. One could double that time. It is passing strange that when the Fisheries Act provision was introduced the Labor Party said, when the two-year period was suggested, it should only be a year, and the then Opposition spokesman said it should be only a year.

Hon. J. M. Berinson: What did the Government say?

Hon. A. A. LEWIS: The Government was high-handed, as the Attorney is being tonight. The Government had no argument and the Minister dealing with it remembers the thump under the chin he received from me about the same subject. I have not altered.

Hon. J. M. Berinson: I hope he has not either.

Hon. A. A. LEWIS: He has. He has to alter because he sees the sense of it now.

The Minister should report progress and sort this out with the department. I know it is not his portfolio. I have had some very practical and sensible discussions on it with the department. I cannot understand how the Minister has been given those answers.

As the Minister knows, I am under constraints for another month or so. I cannot really say what I would like to about this Bill and this clause. I suggest the Minister reports progress and goes back to the department. I will accept the two years and then move my amendment. I will say no more about this subject. The State Government is making a very serious mistake. It should show some trust. The members on the Government side who know more than anybody else agree with what I am saying. The Minister should report progress and seek leave to sit again.

Amendment put and negatived.

Clause put and passed.

Clause 10 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [10.29 p.m.]: I move—

That the Bill be now read a third time.

HON. A. A. LEWIS (Lower Central) [10.30 p.m.]: I thought the courtesy shown to me by the Attorney was up to the usual standard of this Government, because he refused to rise and discuss the matter. He is taking the bull-necked approach that this Government takes with so many matters. Of course the ALP would have loved the Opposition to amend the Bill so it could have said that this was another Bill we had defeated. There was no way that I was going to give the ALP that joy.

Let the Attorney and his colleagues live with the fact year after year, when they are in Opposition next year, that this evening they did this State one of the greatest disservices ever done to the cause of conservation and nature preservation. I hope they can live through it, these people who crawled and catered to a section of the community in order to get into Government. Are they interested in true conservation? Not a bit. The Government is interested only in enforcement.

It disgusts me that a man who says he is fair, who says he listens, and who says he weighs up things, is not prepared to report progress but just sits there without answering an argument and pushes the Bill through. The Labor Party will have to live with this for years to come.

HON. FRED McKENZIE (North-East Metropolitan) [10.32 p.m.]: I was inclined to support Hon. Sandy Lewis' amendment because I thought the department would be prepared to accept it. I understood that Mr Lewis had rung the department and had spoken with Dr Barry Wilson and that Dr Wilson had indicated that the 12-month period was satisfactory. However, having had the opportunity to read a letter from the department I can understand the Attorney's position. In view of Mr Lewis' statement, I feel obliged to enlighten the House on a section of that letter. It is cru-

cial that I do so and I hope Hon. Sandy Lewis will then understand the position in which the Attorney found himself. Obviously some misunderstanding has occurred either on the part of Hon. Sandy Lewis or on the part of Dr Barry Wilson. I quote as follows—

> Approximately eight days' ago, the Hon. Sandy Lewis rang a senior officer of my staff (Dr Barry Wilson, Director of Nature Conservation) regarding the above amendments. He specifically queried what the Department's position was on the provision to extend the period which allowed for prosecution of offenders from six months to two years. Mr Lewis' position was that he regarded this as unnecessary. Dr Wilson responded that the Department's position was that it preferred to retain the amendment at two years because it had had considerable difficulty in making prosecutions under the Wildlife Conservation Act. However, if the Parliament was unable to accept that amendment, the Department would have to live with a lesser period of twelve months, as suggested by Mr Lewis.

Obviously a misunderstanding has occurred.

Hon. A. A. Lewis: You are an honourable man, Mr McKenzie, and you know when that was done and where it was done. I am not very happy with what you are doing now.

Hon. FRED McKENZIE: I have merely quoted from the letter.

Point of Order

Hon. JOHN WILLIAMS: Right now we are debating the third reading of the Bill and new information is being given. I could be wrong but I believe that new material cannot be introduced at the third reading stage of a Bill. If I am wrong, Mr Deputy President, I will bow to your ruling.

The DEPUTY PRESIDENT (Hon. P. H. Lockyer): There is no point of order. My interpretation is that Hon. Fred McKenzie is introducing a fresh argument to offset a misapprehension that may have arisen from the second reading debate. I am prepared to let him continue provided his remarks remain in that narrow corridor of explaining any misapprehension the House may have.

Debate Resumed

Hon. FRED McKENZIE: In no way am I suggesting that Mr Lewis was trying to mislead the House. Obviously there has been a misunderstanding, and I do not believe it has been on the part of Mr Lewis. If Mr Lewis says he received a clear understanding about the matter, obviously the misunderstanding is in another area. My purpose in rising was to protect the Attorney General, who acted quite honourably and honestly.

Personal Explanation

HON. A. A. LEWIS (Lower Central) [10.37 p.m.]—by leave: Mr McKenzie has just read from a letter, which I want to be tabled. I do not know whether I should ask now for him to table that part the Attorney tore off the bottom when Mr McKenzie started to speak or after he had started to speak, or to explain the misrepresentation.

The DEPUTY PRESIDENT: I did not hear your request to have the material tabled.

Hon. A. A. LEWIS: I thought that the end of Mr McKenzie's speech was the time at which to ask for the document to be tabled and that then I should seek to make my statement about having been misrepresented.

The DEPUTY PRESIDENT: I am happy for you to proceed with your claim to have been misrepresented and then we will proceed with the tabling of the document.

Hon. A. A. LEWIS: At no time did I mention by name any officers of the department. I said I had spoken to the department. I am horrified that personalities should have been brought into this by way of a letter read by Mr McKenzie. I had purposely not named people in the department. It overwhelms me that the Government should use the letter and quote the names of members of the department. It is very unfair of the Government.

Now I seek to have the total letter, the one that was torn in half after Mr McKenzie started quoting from it, tabled in the House.

The DEPUTY PRESIDENT: Order! That is not possible because Hon. Fred McKenzie quoted only after it had been torn. I viewed the Attorney removing some of the letter. It is not in my power to ask for that part to be tabled. I can ask only that the part quoted from be tabled.

Point of Order

Hon. A. A. LEWIS: I do not want to disagree with your ruling, Mr Deputy President, but Mr McKenzie was quoting from the letter as the Attorney lent over and tore off the bottom. The whole of the House saw it. I expect the whole letter to be tabled.

The DEPUTY PRESIDENT: Order, please! Was the honourable member quoting from a total letter?

Hon. Fred McKenzie: I did not start quoting from the letter until after the Attorney General had taken part of it away from me. I did so after that period and I am quite categorical about that.

Hon. N. F. Moore: I don't think you are right.

The DEPUTY PRESIDENT: In that case, I must give a ruling. The honourable member is quite right. He was quoting only from a section of the document that he had in his hands prior to that time and he tabled only that letter.

Hon. A. A. LEWIS: I ask that that document be tabled, and express my disgust at the attitude of the Government and the way it is handling this matter which shows its double standards.

The DEPUTY PRESIDENT: Order, please! The honourable member will table the document from which he quoted.

(See paper No. 216.)

Debate Resumed

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [10.41 p.m.]: I will be brief. In my time I have been accused of most things but I do not think I have ever previously been accused of discourtesy. I did not mean to, nor did I in fact, extend any discourtesy to the House or to Hon. Sandy Lewis. My reason for not responding to his last contribution to the Committee stage was simply that I had nothing to add to the two or three statements that I had made previously. The fact that I declined to report progress was not a question of discourtesy either, but simply a reflection of the Government's position on this Bill.

With those comments, I support the third reading.

Question put and passed.

Bill read a third time and passed.

ACTS AMENDMENT AND REPEAL (STATUTORY BODIES) BILL

Second Reading

Debate resumed from 9 October.

HON. JOHN WILLIAMS (Metropolitan) [10.42 p.m.]: It will come as no surprise to this House from my point of view that I will recommend we support this Bill, as weak as it is.

It is a pretty weak Bill. It is a Bill which has ignored the work of the Standing Committee on Government Agencies. It is one of those things that has been filched by the review committee. It acted as quickly as it could to try to do a bit of a catch-up after a report was published by the Standing Committee on Government Agencies.

I did not rise last night or yesterday to speak in respect of the Standing Committee on Government Agencies on what I sincerely considered to be the shock resignations of three members of the committee. I did not comment on the matter then because, not only was I shocked, but also I was a little perturbed. I always think it does us well to spend a little time considering our decisions. Like it or not, I will enshrine in the record of this Parliament a very simple statement which I mean most sincerely.

I want it placed on record in the annals of this Parliament that the Chairman of the Standing Committee on Government Agencies pays tribute to the wonderful work performed by his three colleagues who resigned. It has never been the case that I have had more loyal colleagues than the three members who resigned.

In particular, I pay tribute to the work of the deputy chairman (Hon. Robert Hetherington), and in saying that I am in no way excluding the work and effort that was put in by Hon. Jim Brown and Hon. Kay Hallahan. In my opinion, it is a tragedy that they left the committee because they were people with four years' experience and added value to the whole committee procedure. I know in part the reasons for their resignation and I have no criticism of them as individuals. Their departure from the committee has served someone else's purposes, to weaken the Parliament.

I have sat in this place firmly anchored to the back bench for 14 years because of a principle that I have fought for. The principle is a very simple one: I believe that Parliament is the ultimate authority. I do not subscribe to previous Governments, this Government, or future Governments saying that the Executive and those who may have controlled the Executive are the ultimate authority. Ministers of the Crown are paid servants of this Parliament. They are elected or selected according to the party which is in power to do the extra onerous jobs and they are suitably remunerated. However, when they are elevated to the Ministry they tend to forget about the members of Parliament and Parliament itself.

Hon. Garry Kelly: If Parliament was more democratically elected—

Hon. JOHN WILLIAMS: I do not wish to listen to that garbage.

Hon. Garry Kelly: It is not garbage.

Hon. JOHN WILLIAMS: I do not wish to listen to that garbage. I was elected to this Parliament by a majority of the people and the guidelines were laid down at that election; therefore, I am democratically elected to this Parliament.

Hon. Graham Edwards interjected.

Hon. JOHN WILLIAMS: I do not care what the interjectors say.

The DEPUTY PRESIDENT (Hon. P. H. Lockyer): Order, please! Honourable members, firstly, I cannot see that this has anything to do with the Acts Amendment and Repeal (Statutory Bodies) Bill now before the House, but I do want honourable members to know I will not tolerate any further interjections.

Hon. JOHN WILLIAMS: I will return to the Bill because, while we may disagree in principle, Mr Deputy President, I will not disagree with your ruling. The Acts Amendment and Repeal (Statutory Bodies) Bill came into being because of the work done by the Standing Committee on Government Agencies—nothing more, nothing less. The committee drew attention to this matter in no small way. However, I will not tell my colleagues that they should support the Bill because that is what the committee was all about. The Bill does not go far enough. It names eight bodies, yet others have been ignored. In the same silly state of suspension these eight agencies have never met or have never operated for a lengthy period of time. The people inside were not quick enough to pick it up and the people outside were not quick enough to crib the work that had been done.

The Standing Committee on Government Agencies has identified the boards which are inoperative and which will not be abolished through this Bill. They are missing. I mention the Central Mining Board, the District Mining Boards, the Dairy Industry Promotion Committee, and the Wheat Products Prices Committee. These boards are totally inoperative and they are not mentioned in the Bill. That could be a mistake. I know the Minister for Budget Management would love to find out. They are totally inoperative.

Finally, I draw attention to the fact that this business of controlling the number of QANGOs was ever so important.

In deciding upon it the Attorney General—I give him credit as a past member of the committee—did some sterling work in establishing the committee. However, it became a little too successful and someone was obviously worried. I do not know from where the worry has come but the word came out that the committee should be abolished and that it should not be allowed to continue. It certainly is a sad day for this Parliament.

Since July 1983, 13 agencies have been abolished and the Government is to be commended for that. Since that same date the Government has established another 35 agencies—a net gain of 22. Another three are to be established and that will make a net gain of 25 agencies.

All the committee was asking for and is asking for in regard to support for this Bill is that it should have been given a fair go and someone, somewhere in the halls of power beyond this Parliament, should let the general public know that this committee is no longer effective. It is controlled by some other agency and no longer is it accountable to this Parliament. There is an outside element.

Hon. Garry Kelly: This Parliament is accountable—

Hon. JOHN WILLIAMS: Hon. Garry Kelly is not accountable to himself and he should tell his constituents that he is no longer accountable. I do not see him resigning because we are so undemocratic.

Hon. Garry Kelly: You want the place to yourselves.

Hon. JOHN WILLIAMS: According to Hon. Garry Kelly we have it to ourselves.

However, I am sad about the turn of events. I will ask my colleagues to support this Bill for the abolition of these statutory agencies and not one member in this House should be surprised at the tone of my delivery.

I repeat what I said: The Government has not gone far enough because there are a few more agencies which it should have abolished.

Once again I pay tribute to the committee and thank those members who have resigned for making me a better parliamentarian and helping me in my career. Now that the satisfaction of being a member of that committee has

gone I think the committee system, under the present regime, has gone. It is a very sad day for this Parliament.

HON. D. K. DANS (South Metropolitan—Leader of the House) [10.53 p.m.]: I thank Hon. John Williams and other members in this House for their support of the Bill. I take on board the comments made by Hon. John Williams and may I say that this may be the first of a number of Bills, as we go down the track, dealing with the same subject.

Question put and passed.

Bill read a second time.

In Committee, etc.

Bill passed through Committee without debate, reported without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon. D. K. Dans (Leader of the House), and passed.

ADJOURNMENT OF THE HOUSE

HON. D. K. DANS (South Metropolitan—Leader of the House) [10.55 p.m.]: I move—

That the House do now adjourn.

Western Australian Marine (Infringements) Regulations

HON. TOM KNIGHT (South) [10.56 p.m.]: The House should not adjourn until I clarify something which was brought to my notice today. It refers to the Western Australian Marine (Infringements) Regulations which have been introduced into this House.

This matter has been brought to my attention through a Press report which states—

> The State Government has approved on-the-spot fines ranging from $20 to $50 for boating offences.
>
> It is hoped that the new system will start next January.
>
> A $20 penalty will apply for offences such as failing to produce a registration certificate.
>
> Offences such as boat navigation which interferes with other boats will attract a $30 penalty.
>
> Offences such as exceeding the speed limit by more than 10 knots or setting off distress flares except in an emergency will carry a $50 penalty.

The next part of that report concerns me. I have perused the regulations and I must have missed the section dealing with the following because I have not been able to find it. It reads as follows—

> People who elect to go to court could face higher maximum penalties which range from $200 to $500.

The implication contained in the article is that if a person pays an on-the-spot fine it will cost him between $20 and $50. However, if a person chooses to go to court his fine could range from between $200 and $500.

Something is wrong and I would like one of the Ministers to explain the situation to me. However, if it is proved that it is the case it will be my intention to move for the disallowance of that part of the regulations because I believe it will have the effect of forcing people to admit that they have committed a crime because they will not be inclined to go to court and pay a fine which will be 10 times more than the on-the-spot fine.

The Press report to which I have referred was published in *The West Australian* on 9 October 1985 and was headed, "Instant fines for boating 'yahoos' ".

I reiterate that I am concerned about the paragraph which states that people who elect to go to court could face higher maximum penalties which range from $200 to $500. I cannot see anything in the regulations referring to fines of that nature. As I have said if it is proved that that is the case I will oppose it.

I have brought this matter to the attention of the House because time is running out to move for the disallowance of regulations.

Question put and passed.

House adjourned at 11.00 p.m.

QUESTIONS ON NOTICE

247 and 248. *Postponed.*

ABORIGINAL AFFAIRS: LAND RIGHTS

Seaman Inquiry: Expenditure Accounts

249. Hon. N. F. MOORE, to the Minister for Employment and Training representing the Minister with special responsibility for Aboriginal Affairs:

(1) Has the Minister received accounts of expenditure from all persons and groups which received assistance to prepare submissions to the Seaman inquiry?

(2) If so, will he now table all accounts?

(3) If not, which persons or groups have yet to provide accounts?

Hon. PETER DOWDING replied:

(1) All individuals and groups which received financial assistance through the Aboriginal Liaison Committee to prepare submissions to the Seaman inquiry have now provided acquittals for grants received. These acquittals are in the form of a signed statement of expenditure.

(2) As statements of expenditure were provided it was not necessary to request copies of actual accounts.

(3) Not applicable.

TRANSPORT: SCHOOL BUSES

Balga: Social Trainer

250. Hon. P. H. WELLS, to the Minister for Employment and Training representing the Minister for Education:

(1) Did the Minister give an assurance that unless the parents of children transported to the Balga Special School were absolutely confident that the social trainer's presence on buses was no longer required there would be no possibility that the social trainer would be removed?

(2) Was the social trainer removed?

(3) If so, why?

(4) Do all buses delivering handicapped children to Balga Special School have aides or social trainers?

(5) If not, why not?

(6) If "Yes", why is the situation different for some buses delivering children to other special schools?

Hon. PETER DOWDING replied:

(1) to (6) Balga Special School no longer exists. However, two of the buses travelling to the Gladys Newton school have bus aides.

HEALTH: DISABLED PERSONS

Buses: Aides

251. Hon. P. H. WELLS, to the Minister for Employment and Training representing the Minister for Education:

What action has the Minister taken concerning the petition presented to the Legislative Assembly during August 1984 concerning the need to have aides appointed to all special buses that carry handicapped children?

Hon. PETER DOWDING replied:

Substantial changes have taken place in the provision of special education which have major implications for bus services. To plan the necessary changes a transport review committee on which principals of involved schools are represented has been meeting. This committee's advice on the need for aides on education support buses will be considered when it is available.

ROAD HAZARD

Woodvale Drive: Students

252. Hon. P. H. WELLS, to the Minister for Employment and Training representing the Minister for Education:

(1) Is the Minister aware of the potentially hazardous situation for students attending the Woodvale High School caused by a section of Woodvale Drive-Duffy Road being so narrow that young riders are forced off the road when vehicles have to pass on the narrow sections of these roads?

(2) What is the Government doing to ensure that this situation does not exist in the 1985 school year?

Hon. PETER DOWDING replied:

(1) and (2) The road works in the vicinity of the school are the responsibility of the developer and the local authority. The Education Department is working with both groups to ensure that the road system is upgraded.

TRANSPORT: SCHOOL BUSES

Safety

253. Hon. P. H. WELLS, to the Minister for Employment and Training representing the Minister for Education:

Concerning the October 1984 report of the committee reviewing the safety of children travelling on buses in Western Australia will the Minister advise—

(1) What action has been taken concerning each of the 34 recommendations of this report?

(2) If no action has been taken in any case, what action does the Government propose and when?

Hon. PETER DOWDING replied:

(1) and (2) The report has been accepted in principle; recommendations that require action by the Police Department have been forwarded for its consideration and appropriate action.

Of the balance of the recommendations, a number have already been implemented and steps are now being taken to implement most of the remaining recommendations from the commencement of the new school year.

STRATA TITLES ACT

Explanatory Booklet

254. Hon. P. H. WELLS, to the Leader of the House representing the Minister for Lands and Surveys:

(1) Has the Minister or his department considered printing a handbook of simple explanations of the Strata Titles Act for use by members of committees of strata title corporate bodies?

(2) Will the Minister print such a guide?

(3) If not, why not?

Hon. D. K. DANS replied:

(1) to (3) The production of a handbook or similar publication is currently receiving active consideration. However, the member should realise that the Strata Titles Act is a complex Act containing 132 sections and 3 detailed schedules and cannot be satisfactorily dealt with in a pamphlet of simple explanations. In New South Wales, where similar legislation exists, the private sector took it upon itself—in its own interests—to publish a number of books dealing with the legal and practical aspects of strata title ownership.

STRATA TITLES

Corporate Bodies: Annual Meetings

255. Hon. P. H. WELLS, to the Leader of the House representing the Minister for Lands and Surveys:

(1) Are corporate bodies of strata titles involving duplexes required to hold an annual meeting regardless of any issues to discuss?

(2) Do such bodies have to forward a copy of the minutes of their meeting to the department?

(3) To whom do they have to send it and why?

Hon. D. K. DANS replied:

(1) The Act requires the original proprietor to convene the first annual general meeting within three months after the registration of the strata plan. Thereafter the holding of meetings is governed by the by-laws. The model by-laws require general meetings to be held once a year and not more than 15 months apart. It should be remembered that the by-laws are controlled by the proprietors and may be amended by them if necessary.

(2) No.

(3) Not applicable.

POLICE

Emergency Calls: Diversion

256. Hon. P. H. WELLS, to the Attorney General representing the Minister for Police and Emergency Services:

(1) Does the new telephone system recently installed enable local stations to divert their after-hours' calls to a manned station?

(2) If not, will the Minister consider the provision of funds to enable the provision of a telephone system that enables local stations to divert their calls to manned stations when they are closed?

Hon. J. M. BERINSON replied:

(1) No.

(2) Yes. When the Police Department has completed its current investigation into the proposal and its report on same has been received.

POLICE CENTRES

Staffing: 24-hour Day

257. Hon. P. H. WELLS, to the Attorney General representing the Minister for Police and Emergency Services:

(1) How many police centres are staffed 24 hours a day?

(2) What is the location of such stations?

(3) How many other police centres are there in—

(a) the metropolitan area;

(b) the country area?

Hon. J. M. BERINSON replied:

(1) Eleven.

(2) Perth City
East Perth
Victoria Park
Warwick
Fremantle
Midland
Albany
Bunbury
Geraldton
Kalgoorlie
Northam

(3) None, because a police centre by definition provides a 24-hour service. However, there are 32 other police stations in the metropolitan area and 116 other police stations in the country.

258. *Postponed.*

PORTS AND HARBOURS: DISPUTE

Fremantle: Shipping

259. Hon. G. E. MASTERS, to the Minister for Industrial Relations:

(1) Is the Minister aware that two container ships by-passed Fremantle port late last week because of a port dispute?

(2) If so—

(a) what were the ships due to discharge;

(b) has the Minister or his office been contacted by people badly affected by the ships' action; and

(c) how many other ships this year have made the same decision because of disputes at the port of Fremantle?

Hon. PETER DOWDING replied:

(1) Yes.

(2) (a) European general cargo;

(b) no;

(c) two.

ORANGE PEOPLE

Lesmurdie Property: Purchase

260. Hon. G. E. MASTERS, to the Minister for Employment and Training representing the Minister for Community Services:

(1) Has the group known as the Sanyassins obtained, solely or jointly, title to a property in Gilchrist Road, Lesmurdie?

(2) What health, welfare and educational regulations laid down by law are required of adults supervising on a 24-hour long-term basis, the care of 30 to 35 children?

(3) Is it necessary for persons other than parents, adopting parents, and foster parents, to obtain approval from the Department for Community Services to care for children aged under six years on a 24-hour basis?

(4) Has it been established if the children aged under six years and with the group known as the Sanyassins are with their parents, adopting parents, or foster parents?

(5) If the children aged under six years are not with their parents, adopting parents, or foster parents, has the Department for Community Services issued a licence to an individual member or the group of Sanyassins for the care of these children?

Hon. PETER DOWDING replied:

(1) to (5) As this information will take some time to compile I shall arrange for a written response to be forwarded to the member as soon as possible.

261. *Postponed.*

COURTS: FAMILY COURT

Access: Letter

262. Hon. P. G. PENDAL, to the Attorney General:

I refer to my letter to him of 7 October 1985 relating to a Family Court matter and access to the two children named in the letter and ask could he arrange an urgent response to me?

Hon. J. M. BERINSON replied:

Yes.

BICENTENNIAL CELEBRATIONS

Australian Bicentennial Authority: Grant

263. Hon. P. G. PENDAL, to the Minister for Budget Management:

(1) Did he approve a grant of $92 000 for the Australian Bicentennial Authority last year?

(2) Did he approve a grant of $143 000 in this year's State Budget?

(3) Can the Minister inform me how much of this State's contribution was included in the settlement for the former director of the ABA?

(4) If he does not know, would he ascertain whether the ABA is using these State funds to finance that person's $500 000 settlement?

Hon. J. M. BERINSON replied:

(1) and (2) Yes.

(3) Nil. In accordance with a memorandum of understanding between the Commonwealth and the State, as from 1 July 1983 the State has contributed 50 per cent of the administrative costs of the Australian Bicentennial Authority's Western Australian State Council.

(4) Not applicable.

ADVERTISING SIGNS

Regulation

264. Hon. P. G. PENDAL, to the Attorney General representing the Minister for Local Government:

(1) Under what Statute are advertising signs or hoardings in WA regulated?

(2) Who or what body is responsible for the enforcement of any laws or regulations?

(3) Have any prosecutions been launched over illegal advertising signs or hoardings in the past two calendar years?

(4) If so, with what result?

Hon. J. M. BERINSON replied:

(1) Local Government Act 1960-1985.

(2) Local governments are empowered in the above Act to make by-laws for the regulation of advertising signs or hoardings. Eighty-six councils have by-laws dealing with signs, hoardings, and billposting.

(3) My department does not keep records of prosecutions. These would be available from the individual local governments and I suggest that the member contacts those of immediate interest to him.

(4) See (3).

QUESTION WITHOUT NOTICE

HEALTH

Noise Abatement Regulations: Exemptions

229. Hon. G. E. MASTERS, to the Minister for Industrial Relations:

(1) Is a report correct that the Minister granted an exemption to the entertainment industry from the hearing conservation regulations?

(2) If it is correct, is the Minister prepared to give exemptions to other businesses and industries where he considers special circumstances warrant such action?

(3) Has he granted any exemptions other than the one I first mentioned?

Hon. PETER DOWDING replied:

(1) to (3) I do not intend as a matter of policy that there should be exemptions under regulations. I have further had drawn to my attention a very serious concern in relation to the entertainment industry which differs from all other industries in respect of which these regulations might apply in that the entertainment industry's product is noise, and that noise is not simply a by-product of an industry or other process. The product which is being sold is noise itself. I have indicated that I am not satisfied that the industry and the impact on the industry, on both the workers and the consumers of the product, was adequately addressed prior to 21 October which is the date of the implementation of these regulations; and accordingly I have indicated that the regulations will apply to that industry from 1 June 1986. As well, a working party to address a series of issues will be set up by the peak employer and employee bodies and the relevant industrial bodies and the unions concerned who represent the workers in that industry.

I have set the terms of reference and I have communicated those to the peak bodies. Unfortunately the Occupational Health, Safety and Welfare Commission does not meet in time to consider the decision prior to 21 October, but I make it quite clear that no exemption is being granted to the entertainment industry. The Government, and I am sure the Opposition, will look to the protection of workers and consumers in that industry. We will seek to ensure that we have a satisfactory arrangement for the introduction of those regulations on 1 June next year.

In respect of exemptions generally, I have made it clear that I do not believe there is a case for exemption for particular employers or workplaces. On Monday I will be releasing a very detailed statement which will include, as I have said previously in this House, a policy on implementation and prosecution of the people who do not comply with the regulations. The thrust of the statement will be to indicate that the Government and the department will be encouraging compliance with the regulations and will be providing counselling to people who have any doubt as to what they need to do under the regulations. We will be establishing a number of other initiatives which will assist in that process.