Legislative Council,

Wednesday, 6th November, 1918.

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

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

PETITIONS (2)—CRIMINAL CODE AMENDMENT BILL.

Hon. J. NICHOLSON (*Metropolitan*) [4.38]: I have two petitions referring to the Criminal Code Amendment Bill. One bears two signatories who represent a number of womens' unions in this State, namely, the School for Mothers, the Friendly Union of Soldiers' Wives, the Hebrew Women's Benevolent Society, the Young Australia League (Women's branch), and the National Labour Party. The signatories to that petition are Edith Cowan and Mary Meares. The other petition is signed on behalf of the president of the W.A. Organisation of Labour Women, by Elizabeth Clapham, for the W.C.T.U. by Lilian Medcalf, and for the Women's Service Guild of Western Australia, by Bessie M. Rischbieth. The petitions deal with the amendments in the Criminal Code Amendment Bill now before Parliament with reference to the question of raising the age of consent from 16 to 17 years, and with the question of the period in which information may be laid and prosecutions carried out.

Petitions received, read and ordered to be taken into consideration when the Bill was being dealt with in Committee.

BILL—CRIMINAL CODE AMENDMENT.

In Committee.

Resumed from the previous day; Hon. W. Kingsmill in the Chair, the Colonial Secretary in charge of the Bill.

New clause:

Hon. J. NICHOLSON: I move—

That the following be added to stand as Clause 15:—"Sections 317 and 318 are hereby amended by adding at the end of each of these sections the words 'with or without whipping.'"

After the full discussion which took place in regard to the matter yesterday, not much in the way of comment is required from me this afternoon. Hon. members will agree with the remarks of Sir Edward Wittenoom that power should be given to the courts, in cases where a penalty would not meet the enormity of the offence committed, to impose a punishment fitting the crime. Section 317 of the Criminal Code deals with a person who unlawfully assaults another to do him bodily harm, and the penalty may be one of three years imprisonment with or without hard labour. Section 318 deals with serious assaults. Each of these classes of offences is of a serious character. If one required an illustration to emphasise the necessity for the addition of these words, one would only have need to cite the case which arose a few weeks ago, when two men travelling on the train from Perth to Fremantle were violently assaulted.

The Colonial Secretary: No evidence has been heard in the case yet.

Hon. J. NICHOLSON: I am only referring to what appeared in the Press.

The Colonial Secretary: The man has been arrested, but is on remand. I think the hon. member would be the last person to wish to discuss the case in the circumstances.

Hon. J. NICHOLSON: I do not wish to discuss the case, but the circumstances were of such a brutal character, as reported in the Press, that one's feelings were aroused.

The CHAIRMAN: There is nothing in the Standing Orders to prevent discussion of such a case. The matter is left to the good taste of hon. members.

Hon. J. NICHOLSON: When I refer to that case I am only referring to reports which have appeared in the public Press. It is quite possible that some defence will be raised which will protect the man concerned. I am sure hon. members will appreciate that I have no desire to prejudice the man who has been accused and arrested in this case. The reports which have appeared in the Press will be sufficient to show that cases of such a nature are possible, and emphasise the necessity for protection being given to people against brutal assaults on the part of any individual who may be a man of a burly character, and capable of doing mischief to other less offensive members of the public who are not able to take care of themselves. Brutality must be stopped, and that can only be done by imposing a punishment that will be of a sufficiently deterring character. I venture to submit that the addition of the words I propose will protect the public.

The COLONIAL SECRETARY: My objection to the hon. member quoting the case to which he referred did not, from my point of view, touch the question as to whether it was fair or not to the accused person. From my point of view of discussing the clause, it is unfair to hon. members that purely ex-parte statements regarding an alleged offence, which has not yet been tried and of which we do not know the facts should be brought forward, and such a case cannot with safety be taken by hon. members as indicating the necessity for any such legislation as is proposed.

Hon. J. Nicholson: I merely referred to the statements which have appeared in the Press.

The COLONIAL SECRETARY: I do not think the trial of the accused person is likely to be affected, and I am sure the hon. member would be the last to say anything which would prejudice the minds of any persons against the man.

Hon. Sir E. H. Wittenoom: It was only used as an illustration.

The COLONIAL SECRETARY: I would deprecate any member founding any judgment whatever on a report made to the Press

by the injured, or supposedly injured, persons.

Hon. J. E. Dodd: This is the second time in the course of this debate. The same thing occurred in connection with the alleged committal of an unnatural offence at Fremantle, which has not yet been tried before the court.

The COLONIAL SECRETARY: Although you, Sir, say there is nothing in our Standing Orders to prevent it, it does seem to me that we are not likely to arrive at sound conclusions by allowing our judgment to be swayed by other than proved cases. I do not intend to support the amendment, although I admit that a great deal may be said in favour of it in regard to Section 317 of the Code. Why the amendment should be tacked on to Section 318 of the Code I do not know. That does not contemplate brutal assaults, but refers to persons resisting arrest, or interference with people in the execution of their duty, for which a heavy penalty is very properly imposed. I fail to see that such interference suggests brutality, which ought to be put down by means of a whipping. If an assault is committed upon a person in the execution of his duty, amounting to the infliction of bodily harm, the offender may be punishable under Section 317. The hon. member might confine his amendment to that particular section. I am opposed to adding to the offences for which whipping can be inflicted, except in any case such as has been already dealt with—I refer to cases of assaults on girls. I intend to vote against the hon. member's amendment, but cordially admit that there may be something in the argument that this punishment ought to be applied.

Hon. H. MILLINGTON: I object to the amendment. I understood that when this Bill was brought before Parliament the idea was to make the law more humanitarian. It appears to me that an attempt is being made to brutalise punishment rather than bring it up to date by what is considered to be the scientific means of treating crime. It is all very well to make out a case for an objectionable offence, but that does not prove that we are going to get over the difficulty by having brutal punishment. This is a retrograde step. The hon. member is dipping into the future for instances to back up his case. I wish he were as up to date in regard to the treatment of crime as he is in regard to drawing inferences from Press reports. An attempt is being made by hon. members to introduce "with or without a whipping" in certain offences. I do not think that in many cases would have any reformatory effect. I shall vote against the amendment.

Hon. J. NICHOLSON: So far as relates to Clause 318, the reason which induced me to wish to add these words was that one has heard of instances of brutal assaults being committed upon men who were acting in the execution of their duty. It is with the object of providing some form of protection to such persons as will act as a deterrent upon possible offenders that I suggest these additions to Section 318. But I am quite prepared to withdraw the proposed amendment from Section 318 if that will meet the objection of the Colonial Secretary. It will establish the principle so far as it relates to bad assaults. I therefore ask leave to withdraw the amendment so far as it relates to Section 318.

The CHAIRMAN: The hon. member cannot withdraw the amendment in part. An amendment can be moved on the proposed new clause.

Hon. Sir E. H. WITTENOOM: I move—

That the words "Sections 317 and 318" be struck out and "Section 317" be inserted in lieu.

Amendment on amendment put and passed.

Hon. Sir E. H. WITTENOOM: I take the full responsibility of having originated this discussion. Mr. Millington said that this was not in accord with humanitarian views. Which is the most humanitarian, to knock a man down in the street with a sand-bag or a stick, render him senseless and rob him, or to flog the assailant? I think if flogging were instituted it would prevent such crimes. No one wants to see flogging, but if a flogging were part of the penalty, in many instances the assaults would not take place. Mr. Millington also said that the punishment suggested was not reformatory. There is only one way to reform these offenders and that is to give them a little violence themselves. All bullies are cowards, and if they know that for knocking a man down in the street and robbing him they will be flogged themselves, there will be very few offences of this nature.

The CHAIRMAN: Certain consequential amendments are rendered necessary by the amendment which has been passed and they will be made.

Hon. J. CORNELL: I oppose the new clause. I am not conversant with the Bill, but this is a Government measure brought down on the recommendation of the advisory officers of the department and they have not recommended any amendment to the existing law. Those who are administering the department are in a better position to recommend what should be done than any member of this House. I also oppose the amendment because I am against flogging of any description. It is a retrograde step. In our modern progress we have failed in our attempt to deal with criminals and we are now going back to the days of barbarism.

Hon. Sir E. H. Wittenoom: We admit that.

Hon. J. CORNELL: I understand the views of Sir Edward Wittenoom. I would not like the hon. member to judge me. No sane man would brutally assault another man. If members look into the most glaring cases that have occurred it will be found there is something that has warped the mind of the assailant. As statesmen are born so are criminals. In endeavouring to flog a man because of a kink in his brain, it is wrong. It will not bring about the reformation desired.

Hon. J. E. DODD: I also am opposed to the clause. It is a very retrograde step. Further than that, it is likely to do more harm than good. Many a jury knowing a flogging was

part of the penalty would not convict a man. These punishments are rendered necessary owing to the fact that magistrates do not administer the law in regard to assaults as it should be administered. I know of an assault on a railway ticket taker on the Horseshoe Bridge in Perth. It was one of the most brutal assaults I ever heard of and the man was fined £10. To include a whipping as part of the penalty would defeat the object the hon. member has.

Hon. H. MILLINGTON: What I said I believe to be correct. Where the punishment is vicious and of a brutal nature, it has not the deterrent effect some people imagine. History teaches us that vicious punishments do not have a deterrent effect. If the hon. member had his way he might hang a man who committed such assaults, and a man committing such an assault would say, "I shall be hung anyhow and I will make a good job of it." We are taking a retrograde step and I fail to see, because the worst section of the community commit brutal offences, why we should reduce the rest of the community to their level and say we will have brutal, vindictive treatment meted out to the offenders. This is an antediluvian form of punishment. I cannot understand this matter being fought out to the bitter end. It is a savage motion.

Hon. Sir E. H. WITTENOOM: The hon. member is straining his views to a large extent. I am pleased he has such humanitarian views. But the hon. member may not have seen as much of the world as I have, nor has he seen these brutal assaults. Discrimination is given to the judge or magistrate to say whether a whipping shall be administered or not. The hon. member is attempting to show ignorance of what takes place in connection with unprovoked assaults. There is a certain class of people and the only way to meet their violence is with violence. The object is a preventive and not to have a brutalising effect. People come to town from the country with pockets full of money; they are knocked down in the street and robbed. The only way to deal with the offenders is to inflict a whipping. And surely if we leave it to the discretion of the judge it is only fair. Villians who indulge in violence should be made to feel that there is a prospect of their being subjected to a whipping. This measure is intended to be preventive. The whipping will not necessarily be inflicted.

Hon. J. NICHOLSON: It is only at a time like this that one can provide amendments which seem desirable in the interests of the general community. Mr. Cornell said he understood that this was a measure introduced by the Government, and that the respresentatives of the Government had not propounded this amendment. But many Bills introduced by the Government are amended in Committee. There is no provision in our existing law to meet the case of a brutal assault with that form of punishment which a whipping would provide. The moving of the amendment seems to have raised in the minds of certain hon. members the idea that it will be necessary to inflict a whipping in addition to the penalty of imprisonment. That is not so. It will be left to the discretion of the judge. No judge would order a whipping in a case which did not, in his opinion, deserve a whipping; but where the circumstances surrounding the assault are of such a character that, obviously, nothing but a whipping would meet the case, it is only right that the judge should be armed with power to order that sort of punishment. This is only to meet a case of serious brutal assault. Certain hon. members have raised the question of humanitarian treatment. We have a striking instance in connection with the present war. We were all horrified when our enemies resorted to the use of gas.

Hon. J. J. Holmes: Did you say gas?

Hon. J. NICHOLSON: Yes, when our enemies first used gas——

The CHAIRMAN: The remarks of the hon. member have no connection with the subject under discussion.

Hon. J. NICHOLSON: I was about to show——

The CHAIRMAN: When I am giving a ruling I ask the hon. member to cease speaking, and to sit down. The hon. member fails to connect his remarks with the subject under discussion. He is therefore out of order and will not pursue his argument.

Hon. J. NICHOLSON: I accept your ruling, but——

The CHAIRMAN: If the hon. member wishes to dissent from my ruling he must do so at once and in writing.

Hon. J. NICHOLSON: I accept your ruling. An argument in regard to humanitarian treatment was introduced into the debate, and I was dealing with that idea when I sought to introduce those references regarding the present war. But I accept your ruling. Let me say that in connection with assaults, sometimes the circumstances are such that only one form of punishment will fit the case.

New clause put, and a division taken with the following result:—

Ayes	9
Noes	13
Majority against ..	4

AYES.

Hon. J. A. Greig	Hon. J. Mills
Hon. V. Hamersley	Hon. J. Nicholson
Hon. J. J. Holmes	Hon. Sir E. H. Wittenoom
Hon. R. J. Lynn	Hon. H. Stewart
Hon. C. McKenzie	*(Teller.)*

NOES.

Hon. J. F. Allen	Hon. J. W. Kirwan
Hon. C. F. Baxter	Hon. G. W. Miles
Hon. H. P. Colebatch	Hon. H. Millington
Hon. J. Cornell	Hon. A. Sanderson
Hon. J. E. Dodd	Hon. H. J. Saunders
Hon. J. Duffell	Hon. J. W. Hickey
Hon. J. Ewing	*(Teller.)*

New clause thus negatived.

Title—agreed to.

[The President resumed the Chair.]

Bill reported with amendments.

Recommittal.

On motion by the COLONIAL SECRETARY Bill recommitted for the further consideration of Clauses 7, 8, and 9.

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

Clause 7—Repeal of Section 188 and substitution of new provision:

Hon. J. NICHOLSON: I move an amendment—

That the word "sixteen," in line 6, be struck out, and "seventeen" inserted in lieu.

This amendment was previously considered, and I crave the indulgence of the Committee in asking for reconsideration on the ground of the very urgent requests put forward by the various women's organisations in this State. The extension of the age of protection from 16 years to 17 is supported by two petitions which I presented to-day, from organisations representing every class and section of the community. For various reasons which I have previously stated, it is extremely difficult to submit a proposal of this kind. However, the women's organisations are more fully cognisant than we men can be of the dangers to which their sex is exposed, and their request ought to be sufficient to induce us to reconsider the matter. This State and Tasmania are the only two States of the Commonwealth where the age of protection is so low as 16 years. In South Australia and in New South Wales it is 17, and in Victoria it is actually 18. There is no reason why we should be behind the other States in this matter.

The COLONIAL SECRETARY: As I intimated when this amendment was previously moved, the Government in introducing this Bill to amend the Criminal Code, did not take into consideration the question of raising the age of consent. They were content to increase the penalty. In another place a motion with the same object was submitted by a private member, but it received no support at all. In the circumstances I propose, if this amendment goes to a division, to cast my personal vote in support of Mr. Nicholson's proposal, largely with a view to affording members of another place an opportunity of reconsidering the matter.

Hon. A. SANDERSON: I support the amendment, and I have intimated to some of the organisations whose petitions have been received to-day that probably the most effective way of carrying out their wishes would be for them to take counsel with the corresponding organisations in the other States and draft a provision for a Criminal Code. The present position, as has been pointed out by Mr. Nicholson, is obviously absurd, with differing ages of protection in the various States.

Amendment put and passed.

The CHAIRMAN: There is a consequential amendment in Subclause 2.

Hon. J. NICHOLSON: I move a further amendment—

That in Subclause 3, line 3, the word "three" be struck out, and "six" inserted in lieu.

The alteration from six months to three months was made here recently, and I have again to crave the indulgence of the Committee. Be- In England the period fixed is six months, and legislation is now being sought to raise that period to 12 months. Our own local experience has shown that the period of three months is altogether inadequate to allow of justice being done. Many cases of mistakes being made by young girls do not become known to the parents or guardians until after the expiry of three months, when nothing can be done against the offender. The Police records of this State show two cases within the past two months of September and October where the offenders escaped prosecution and punishment, and for that very reason. It must be borne in mind that there are many cases in which the parents or guardians do not attempt to prosecute. We know that a girl will attempt to hide her shame as long as she possibly can, and that, physically speaking, it is easy for girls in many cases to hide the signs of pregnancy for probably more than three months.

The CHAIRMAN: As the amended clause stands now, it reads—

A prosecution under this section must be begun within three months after the offence has been committed.

All the other words of the original clause have been struck out.

Hon. J. NICHOLSON: Previously, the provision here was six months. That period was fixed in another place, and came to us. Recently the House altered the period to three months, and it is because of the representations which have been made through the different women's bodies that I am asking the House to revert to the period of six months as originally provided in the Bill.

The COLONIAL SECRETARY: I take it that the hon. member means that if this amendment is agreed to he proposes to reinsert the remaining words which were struck out, namely, to provide that where the offence is one of attempting, proceedings must be taken within three months. The extension to six months shall only apply to cases where the offence has actually been committed. If the Committee see fit to alter their decision I shall be only too pleased to fall in with the wishes of members.

Amendment put and passed.

The COLONIAL SECRETARY: I move an amendment—

That at the end of the clause the words "and for the offence of attempting to have unlawful carnal knowledge, within three months after the offence has been committed" be added.

The effect of the amendment will be to restore Subclause 3 of proposed Section 187 to the position in which it reached this Chamber.

Amendment put and passed; the clause, as amended, agreed to.

Clause 8—Substitution of new section for Section 189:

Hon. J. NICHOLSON: There is a close relationship between this clause and the other which we have amended relating to the age of consent. The Committee have now agreed to increase the age of consent from 16 to 17 years, and therefore it will be necessary

alter the word "sixteen" to "seventeen." That will bring it into harmony with the other clause. I move an amendment—

That in Subclause 1 of proposed Section 189 the word "sixteen" be struck out and "seventeen" inserted in lieu.

Amendment put and passed.

Hon. J. W. KIRWAN: May I draw the attention of the Colonial Secretary to Subclause 3 of the proposed new section. It may be necessary now, in consequence of the amendment which has been carried, to raise the age in this case from 17 to 18 years. The clause, hon. members will see, refers to assaults on girls by a guardian, teacher, or schoolmaster.

The COLONIAL SECRETARY: It now rests with the Committee to say whether, having raised the age of consent to 17 years, they should increase the age in the case of a girl interfered with by a guardian, teacher, or schoolmaster from 17, as provided in the clause, to 18 years. If this amendment is not made, the first clause which has been amended becomes meaningless.

Hon. J. NICHOLSON: In view of the alteration which has been made in the direction of raising the age from 16 to 17 years, it will be necessary, I think, to increase the age in the clause referred to by Mr. Kirwan. I move an amendment—

That in Subclause 3 of proposed Section 189 the word "seventeen" be struck out and "eighteen" inserted in lieu.

Hon. J. CORNELL: I am opposed to the amendment. Mr. Nicholson a little while ago sprang something on the Committee, and out of generosity hon. members raised the age from 16 to 17. Now he wants to go still further, but I can see no valid reason for increasing the age to 18 in the clause in question. Personally I do not think the clause is necessary. It may be said that a guardian, teacher, or schoolmaster may have more influence over a girl than an outsider, but in my opinion that is hypothetical.

Hon. J. E. DODD: There seems to be more reason for increasing the age in this clause than in the other. Certainly a teacher, guardian, or employer has a greater hold over a girl than the ordinary individual. I am one of those who will go a long way towards supporting many of the proposals placed before us by the societies which have sent petitions here to-day. Those women are giving intelligent thought to many of these problems, and so far as I can I want to try to consider them fairly. But in all the matters we are taking on a mighty big risk. There are many girls who at the age of 16 know as much as a man of 21. In many cases they are women at 16, 17, or 18, and by passing an amendment like this we are putting a big lever in the hands of unscrupulous girls or the unscrupulous parents of girls.

Amendment put and a division taken with the following result:—

Ayes	8
Noes	13
Majority against	5

AYES.

Hon. J. F. Allen	Hon. A. Sanderson
Hon. C. F. Baxter	Hon. H. Stewart
Hon. H. P. Colebatch	Hon. J. Nicholson
Hon. J. E. Dodd	(*Teller.*)
Hon. J. Duffell	

NOES.

Hon. H. Briggs	Hon. G. W. Miles
Hon. J. Cornell	Hon. H. Millington
Hon. J. Ewing	Hon. J. Mills
Hon. V. Hamersley	Hon. H. J. Saunders
Hon. J. W. Hickey	Hon. Sir E. H. Wittenoom
Hon. J. J. Holmes	Hon. J. W. Kirwan
Hon. R. J. Lynn	(*Teller.*)

Amendment thus negatived.

The COLONIAL SECRETARY: Subject to better advice from you, Sir, I propose to allow the question to be carried "That the clause as amended stand part of the Bill." I then propose to move that consideration of the report be made an Order of the Day for Tuesday next. By that time I can have the matter looked up, and ascertain what consequential amendments to this and other clauses will be necessary in order to put the Bill in order, in accordance with the decision to raise the age to 17.

Clause, as amended, put and passed.

Clause 9—agreed to.

[The President resumed the Chair.]

Bill again reported with further amendments.

House adjourned at 6.8 p.m.

Legislative Assembly,

Wednesday, 6th November, 1918.

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

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

BILL—FORESTS.

Report of Committee adopted.

ANNUAL ESTIMATES, 1918-19.

In Committee of Supply.

Resumed from the 29th October; Mr. Stubbs in the Chair.

Colonial Secretary's Department, Hon. H. P. Colebatch, Minister—Hon. R. H. Underwood (Honorary Minister) in charge of the votes.