CRIMINAL LAW (PROCEDURE) AMENDMENT BILL 2002

Second Reading

Resumed from 27 March.

MS SUE WALKER (Nedlands) [10.17 am]: The Opposition supports the Criminal Law (Procedure) Amendment Bill. In essence this is a simple Bill, but it represents in reality for anyone who has practised in the Court of Petty Sessions as a criminal lawyer an enormous shift in the criminal justice system in this State, and it is one that I and the Opposition support. This Bill will modernise and improve the operation of justice by reducing court delays and streamlining the efficient and effective use of state resources. The Attorney General said in the second reading speech that this Bill implements an election commitment by the Labor Government. I do not know whether that statement is true, but the Attorney General cannot take credit for this Bill. I put the credit where it deserves to be put; that is, in the lap of the former Attorney General in the coalition Government, Hon Peter Foss. I congratulate Hon Peter Foss for having the wisdom, courage and foresight to give the Law Reform Commission of Western Australia the terms of reference to review the criminal and civil justice system in this State. This Bill is the result of that review, which is an initiative of the former coalition Government, and specifically of the then Attorney General, Hon Peter Foss. The current Labor Attorney General said in the second reading speech that it is a high priority of the Government to modernise and improve the efficiency of the justice system in Western Australia. He also said that he intended to make the Law Reform Commission of Western Australia report the blueprint for the structural reforms in Western Australia, and that during the election campaign the Labor Party made a commitment to implement the recommendations of the report. It must be hard for government members to praise the former Attorney General; however, the truth is important.

Mr Kucera interjected.

Ms SUE WALKER: The minister does not know anything about that. If he cannot accept that the coalition Government brought about the Law Reform Commission report, which is a blueprint for the State, that is his problem, not mine. I will take credit for it on behalf of the coalition Government.

I note the words of Wayne Martin, QC, who is the Chairman of the Law Reform Commission of Western Australia.

Point of Order

Ms QUIRK: I note that the member appears to be reading from notes.

The SPEAKER: It is a common practice in this place to allow members to extensively refer to notes. In the past, members in this place have referred to notes far more extensively, and that practice will continue.

Debate Resumed

Ms SUE WALKER: In his foreword to the report, Wayne Martin, QC referred to Hon Peter Foss and said -

> In September 1997, the Attorney General gave the Law Reform Commission of Western Australia the broadest reference in its 30 years of existence: to Review the Criminal and Civil Justice System.

I refer to the submissions summary of the review of the criminal and civil justice systems in Western Australia. The issues paper released by the Law Reform Commission was made very simple so that people could easily understand it. In his foreword, the chairman stated -

> We felt strongly that ideas for change should come from those users of the justice system with first hand experience of it, so we decided to do more to reach out to the people of Western Australia. To facilitate communication between the users and the operators of the justice system we began by explaining the purpose of the Review in an Issues Paper which was the Commission's first attempt to use plain English to describe the system and explain this project.

That is important because if this Government is to use the review as a blueprint for future reforms of the criminal and civil justice systems, the work done by Hon Peter Foss, the coalition Government and the people at the Law Reform Commission should be put on the record. The people at the Law Reform Commission worked very hard and I congratulate them for that.

Although the report is multifaceted, today we are dealing with one aspect of it; that is, the review of preliminary hearings in this State. The criminal justice system is very complex and intense for those people involved in it. This Bill gives effect to the recommendations made by the commission relating to preliminary hearings. The report is a fantastically thorough examination of the matters outlined in the terms of reference. I have read the report and other material.

I will say something about the way in which the Law Reform Commission gathered material and information for the final document in the report - "Project 92". In order to gather ideas for reform, the commission commenced what it termed a "public outreach". It is important to know what that involved to appreciate the extent to which the commission went to find out and determine what the stakeholders in the criminal justice system were thinking on issues such as preliminary hearings. The final paper included in the "Project 92" document in the Law Reform Commission report is an analysis of submissions received.

Public outreach involved, firstly, a series of have-your-say meetings in response to an issues paper, as I have discussed, in which the commission used plain English to describe the system's project. Secondly, an hour-long television program was broadcast via a satellite to reach Western Australians. Thirdly, submissions were received; and, fourthly, a stakeholders' survey was conducted that involved 100 stakeholders in the justice system as well as a survey of the topics, including surveys from the police and victim associations. Fifthly, all consultation papers and drafts were put on the Law Reform Commission's Internet web site and the commission actively encouraged people to participate, use it and respond. Some 70 000 hits were recorded on its web site.

I congratulate the former Government for giving the Law Reform Commission the means, the wherewithal and the terms of reference to enable such a comprehensive review of all matters contained in the reference to be conducted, particularly in relation to this Bill and preliminary hearings. This Bill is dated 2002 and the Law Reform Commission report is dated June 1999. It cannot be said in any way, shape or form that the Liberals were tardy in this area. The report would have been released in June and the Christmas break would have been not long after. However, the state elections were called -

Mr Templeman: Six months ago.

Ms SUE WALKER: I will take that interjection. It was a squeaky voice, but I think it was the member for Mandurah. It has taken this Government this long to get the legislation in place. The member should be careful about what he says.

[Quorum formed.]

Ms SUE WALKER: Before I educate members on the other side about what a preliminary hearing is, I will speak on behalf of the Criminal Lawyers Association of Western Australia. The member for Innaloo was associated with some of its members for quite a while. I had a briefing with the editor of the newsletter of the Criminal Lawyers Association. Criminal lawyers are very dark on the member for Innaloo because of his support for the abolition of preliminary hearings. They are horrified because they wonder how he can support the abolition of preliminary hearings now that he is a politician when he made so much money out of them in the past. In fairness to the Criminal Lawyers Association, it is made up of criminal prosecutors and criminal defence lawyers. I was one of the first prosecutors who went to its meetings. Also, I used to be a member of its committee. Although I do not agree with his point of view, it is fair to read what Mr Tom Percy, QC wrote about the abolition of preliminary hearings in his editorial. The member for Innaloo could have penned this article not so long ago. This is from the May 2002 edition -

> The anticipated move to abolish Preliminary Hearings is about to occur. The Criminal Lawyers Association must oppose it.
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> Any supposed cost saving is simply illusory when compared to the blow out that will occur to the lists and the delay in the District Court.
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> The present system works well and identifies both weak and strong prosecution cases at an early stage.
>
> Prosecutors pull out the weak ones, Defence Counsel plead to the strong ones.
>
> It has a filtering effect, preventing numerous matters proceeding to trial and saving literally months of Court time each year.
>
> Without a system of Preliminary Hearings the Prosecution brief lies virtually untouched until the matter is listed for trial, when it is too late to salvage anything from a late plea or a late Nolle.

I do not agree with that aspect, but this is their view. It continues -

> It must be conceded that there was a time in the early nineties when the system appeared open to abuse, and a number of long and expensive Preliminary Hearings cast some doubt on the relevance of the process.

Here is the irony. I am led to believe that the member for Innaloo will handle the third reading and not the Attorney General. The case in Western Australia, Connell v The Queen, is known by all people who practise in the criminal justice system. The Attorney General did not know of its existence when he was asked about it a few days ago, but that is fine. I am led to believe that the instructing solicitor on that case, who perverted the

criminal justice system with delaying tactics at a preliminary hearing, was none other than the member for Innaloo. It will be interesting to hear him stand up today -

Withdrawal of Remark

Ms QUIRK: The member for Nedlands is impugning the reputation of one of the members of this Chamber and should withdraw.

Mr BRADSHAW: The member for Nedlands is using an example to further emphasise a point.

The ACTING SPEAKER (Mr Edwards): There is no point of order. I think it was said as part of the robustness of the debate. The member for Nedlands has the floor.

Debate Resumed

Mr Quigley: She's just provoking me.

Ms SUE WALKER: The member will get his chance. I raise this issue because I recall that, not long after I came to this Chamber, the member for Innaloo got to his feet and said to me words to the effect, "You will tell the truth in relation to what happens in the court." I think that had something to do with judges' discretion. The member for Innaloo might remember that is what he said.

Mr Quigley: I did.

Ms SUE WALKER: I will continue to. The member for Innaloo was involved with the criminal defence lawyers and I was involved with the crown prosecutors. They cannot understand the member's position on this matter, but that is something he will have to wear. The case of Connell v Reynolds, 9WAR, involved the late Laurie Connell who was undergoing a preliminary hearing. I am sure the member for Innaloo will let me know whether this is correct. Although the member is not recorded as an instructing solicitor on this matter, I am led to believe by members of the criminal defence clan that he was the instructing solicitor.

Mr Quigley: I was not on the appeal. Jackson McDonald were the solicitors on appeal. I was the solicitor and junior counsel at the preliminary hearing.

Ms SUE WALKER: That was their point.

Mr Quigley: It is a very bad point, but I will deal with that in due course.

Ms SUE WALKER: That is their point and they are very, very dark about it. They are interested in what the member has to say about this Bill. Richard Bayly, the President of WACLA, says in the same 2002 edition -

> It is disappointing that the Labor Government is again attacking the rights of an accused person by legislating to abolish Preliminary Hearings.
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> The Government's justification seems to be that the abolition of Preliminary Hearings will make the Court system more efficient and that intervention of the Director of Public Prosecutions will prevent unnecessary committals. Since when has it been the function of the Director of Public Prosecutions to safeguard the rights of an accused.

In fairness, I am expressing the views of criminal defence lawyers who are mainly associated with the Western Australian Criminal Lawyers Association and, of course, those of some crown prosecutors. I am not sure what the make-up is. I have received a very extensive letter from Ross Williamson of Williamson and Company, barristers and solicitors. Quite a few people have received this letter. I am happy to table it. He thinks this is a terrible Bill and he is very disappointed in the abolition of preliminary hearings.

I will return to what is a preliminary hearing and set this Bill in context. We need to look at how an accused person becomes involved in a preliminary hearing. A preliminary hearing is conducted in a Court of Petty Sessions before a magistrate. A Court of Petty Sessions is an inferior court as opposed to a superior court, a Supreme or District Court, and it will involve an indictable offence. As has been said by the Attorney General, there are three categories of offences in Western Australia: simple, misdemeanours and crimes. The significant division between those is simple and indictable offences. Although simple offences are determined before a Court of Petty Sessions, and in some limited cases so are crimes and misdemeanours, the remainder of the crimes and misdemeanours for indictable matters are heard in the superior District and Supreme Courts. Preliminary hearings can be conducted only for persons charged with indictable matters that are heard in those superior courts. The foundation of all proceedings in the Court of Petty Sessions starts with the laying of a complaint and, broadly speaking, the complaint is just a statutory piece of paper on which the person making the complaint, usually a police officer, lays out the offence and the nature of the charge. That complaint is then lodged and filed at the court, and administrative arrangements are made to bring the matter before the magistrate along with the accused. I will refer to the person as the accused; it is usually the defendant at that stage.

The complaint is read to the accused. He is not required to plead, but he is given a notice explaining procedures under part V of the Justices Act, which Act is relevant to this Bill. This Bill seeks to amend seven pieces of legislation, the most important being the Justices Act and the Criminal Code. The prosecution must serve on the accused or his representative a statement of material facts and copies of confession material. At that stage, on a not guilty plea, the justice reads to the accused the words of the ninth schedule, and that ninth schedule is subject to repeal in this Bill and replacement by a fresh provision. The proceedings are adjourned in order for the accused to consider whether he wants to elect to have a preliminary hearing, and the prosecution is ordered to lodge with the Court of Petty Sessions four days before the next hearing a copy of the written statements of each person - known as a hand-up brief - on which it relies and which it intends to use in evidence. The relevance of that brief will become apparent when I look at the history of where the preliminary hearing developed in this State in 1850 and how it comes to be where it is today. The hand-up brief is sometimes called the committal paper, the election paper or the deposition, but it is not comprehensive at that stage. The accused in this process is advised openly in court that he has a right, if he wishes, to test the evidence for sufficiency to put him on trial, and after such a hearing he or his representative can move for a no case submission, in which case, if the magistrate agrees, he is discharged.

The committal, or the preliminary hearing, has a history and a purpose, which is to screen charges, to ensure a person is not sent to trial without there being sufficient cause. I will not bore members with the history, dating back to the English precedent, because they can read that in the report. I find it interesting and relevant, however, that preliminary hearings in this State, according to the Law Reform Commission report, date back to 1850. Justices at that time were given the power to discharge a defendant following a committal hearing, which recorded the depositions or transcript of the evidence of the witnesses. The magistrate would hear the evidence, and then make a decision on whether the accused was to be committed for trial. In 1850, such a hearing was required in every case. I do not know what the purpose was - it is not contained in the Law Reform Commission report - but I suppose it was for the same purpose that the Bill before the House today is meant to achieve: to avoid the expense and delay and to promote efficiency.

In 1902, Parliament passed the Justices Act, which is one of the Acts to be amended quite substantially by the Bill before the House in the area of preliminary hearings. The screening procedure I have just outlined, which purportedly commenced in 1850, found its way into the Justices Act 1902. The procedure remained unaltered until the introduction of the hand-up brief in 1976, which gave the accused the right to elect whether or not to have a preliminary hearing. That reform came about as a result of recommendations made in 1970 in another Law Reform Commission report. Interestingly, the reasons given for the changes made in 1976 could be the same as those given in the 1999 review for the abolition of preliminary hearings. Much has happened in the period since 1850, with the introduction of hand-up briefs, and now preliminary hearings have had their day. I will come to that issue shortly. The reasons given in the 1970 report were, firstly, the adverse effect publicity of a preliminary hearing had on the trial; secondly, the inconvenience, waste of time and expense involved, particularly if a plea of guilty was entered; and, thirdly, the delay in getting to trial. The hand-up brief introduced by the 1976 reform contains a copy of the complaint, a statement of material facts, relevant witness statements and sometimes relevant exhibits and reports. The 1976 legislation gives the accused the right to elect whether or not to have a preliminary hearing. This position has now existed for nearly 30 years.

Currently, a person is committed for trial in one of three ways. Firstly, following election of the hand-up brief, the defendant may plead guilty. Secondly, following a preliminary hearing, the magistrate may find that sufficient evidence exists and commit the charge to a superior court. Thirdly, after the defendant has been discharged by the magistrate, the Director of Public Prosecutions still has the power to indict him ex officio. I do not have the statistics, but not many cases are discharged that go forward to the magistrate, and of those four that were discharged, in 2000-01, three were ex officio indicted by the Director of Public Prosecutions.

What is the procedure of a preliminary hearing? It is tempting to call the member for Innaloo "my learned friend", but I have had the experience of being the junior counsel or instructing solicitor when the member for Innaloo found himself involved in a preliminary hearing. The member for Innaloo tells me that it was one of the longest preliminary hearings in Western Australian history, which I cannot answer, but I do have some first-hand knowledge, having been involved in some very long preliminary hearings, as well as doing a few myself in the Court of Petty Sessions. I have not done as many as the member for Innaloo because I dealt mainly in the superior courts, but I have sufficient experience to be able to record what happens at such a hearing. If an accused elects to have a preliminary hearing, section 102 of the Justices Act applies. This section will be repealed under the present Bill, along with the other relevant provisions, and will be replaced by a new section 102. When an accused elects to have a preliminary hearing, he is inviting the Crown to show, on the evidence, that a prima facie case is made out. This is different from a trial, in which all the relevant evidence is presented before the judge and jury and the Crown needs to establish the guilt of the accused beyond reasonable doubt. A preliminary hearing differs from this in that it is not a judicial proceeding, but merely an examination of the

sufficiency of evidence. The accused is not entitled to particulars of the charge. I do not think many people understand this, but the prosecution decides what evidence is put forward at the preliminary hearing. There may be, for example, a brief in which 10 witnesses are mentioned. I have had occasions on which the defence lawyers have stamped their feet and demanded that all 10 witnesses be presented, but the crown counsel on the day, after examining the brief, may decide that only one witness is required. The criticism I have been hearing from defence counsel relates to the discovery of the crown case. It is a very limited process for defence lawyers because they are in one sense at the mercy of the Crown, which is under no obligation to bring all the witnesses forward before the magistrate. Only enough of the evidence to show a prima facie case is necessary. That is different from a jury trial. The defence cannot insist that the prosecution calls any particular witness, although the defence can summon witnesses itself, as I believe it does with police officers. The accused can give evidence, but this very rarely happens.

During a preliminary hearing, the accused's counsel can cross-examine the witnesses. That is one of the difficulties I have had in my experience with preliminary hearings. One of the main reasons I believe preliminary hearings should be abolished is that they put victims in the witness box, and they must go through the process twice. I refer particularly to some very appalling sexual assault cases. The accused, with a smart counsel, will insist on a preliminary hearing, and a very vulnerable witness will have to give evidence and be subjected to cross-examination. The victim must reveal, not just once - at the jury stage - but twice, the intimate, humiliating experiences that have happened to him or her in a sexual assault. I have seen this happen time and again, and I have found it quite distressing for the victim. I believe other people in the criminal justice system also have found it distressing. It is even more distressing encountering defence counsel - I am not referring here to the member for Innaloo - who simply do not know what they are doing. Of course, it is worse when they do know what they are doing and they put the most outrageous proposition to a woman or a man who has been severely sexually abused. I am very supportive of this Bill in that regard. I do not believe that the accused will, in any sense, lose any of his rights as a result of the removal of preliminary hearings. The preliminary hearing is often used as a tool by defence lawyers to badger very vulnerable witnesses who should never have to give their evidence twice. I could spend a lot of time in this Chamber giving horrific examples but I will not. Time and again I have seen completely innocent victims be subjected to such behaviour by what I call professional head kickers or some novice counsel. It is disturbing and I am pleased that it will be abolished.

The evidence of vulnerable witnesses is put in a deposition that goes to the Director of Public Prosecutions' office and forms part of the brief. When there is a delay in a trial in the criminal justice system and it comes on 18 months later, the smart lawyer will get this evidence and pick it to death - bit by bit and word by word. Innocent victims should not have to go through that. It is just basically sharp practices. I accept that the accused has a right and that the accused's counsel must test the evidence, but it should not happen twice; a victim should not be put through two ordeals. From my observations of defence counsel - the member for Innaloo is one - they can behave very badly and badger and bully a witness and get away with it before a magistrate. They get away with things that they would not do in front of a jury because the jury would turn against them and they would lose their case. I have seen witnesses badgered and bullied and spoken to in the most appalling way, yet the defence counsel has got away with it because the hearing was before a magistrate. They behave in a way that they would not behave before a jury and it is shameful. I am pleased that this type of shocking behaviour will not happen in future, as a result of the abolition of preliminary hearings, because defence counsel will not do it in front of a jury.

Other reasons that the abolition of preliminary hearings is justified have been outlined by the Attorney General and the report of the Law Reform Commission. When a person is indicted on, for example, a burglary, and elects for a preliminary hearing, the complaint then goes to the DPP. The DPP can then alter that complaint and upgrade it if he chooses. An individual crown prosecutor assesses the complaint and it can be changed. The complaint becomes an indictment and is a piece of paper on which the charge is written. That critical power is vested in the state Director of Public Prosecutions. When the brief goes from the Court of Petty Sessions to the DPP's office, a crown prosecutor will make an independent assessment of the whole of the evidence and decide whether to proceed. An indictment will be created, which can be amended, and usually that indictment will go forward and be used in the different procedures and processes leading to trial. The crown prosecutor is guided by the DPP's guidelines. I am familiar with those because I, along with another professional assistant, drafted those for John McKechnie, the first DPP, who is now a Supreme Court judge. The DPP guidelines contain significant disclosure requirements, which John McKechnie placed on the DPP's office, to disclose whatever information it could to defence counsel as it came to hand. The criminal practice rules have been used in relation to those disclosure guidelines. In relation to the DPP's office, there are disclosure or discovery guidelines afoot, and they will stay afoot and be self-imposed with this legislation. Times have moved on and that disclosure has put another nail in the coffin of preliminary hearings.

I note the statistics supplied to the Attorney General, although it is disappointing that no complete record exists in the Court of Petty Sessions of the number of preliminary hearings it has. I find that very odd. I would have thought the court would have recorded statistics. It has a new magistrate and a deputy stipendiary magistrate, and I would have expected that one of the first things they would do is establish their workload. From the Attorney General's second reading speech, I note that between 1 July 2000 and 30 June 2002, only 14 per cent of 3 295 accused elected to have a preliminary hearing and 86 per cent of defendants went straight to the superior court for trial. Of course, then the fast-track system was introduced by the coalition Government; it was a good system that streamlined the judicial processes, and it is another feather in our cap. I hope this Government can do as well in streamlining the justice system as did the coalition Government.

In his second reading speech the Attorney General outlined why so few cases elect to go to a preliminary hearing. He said that the difficulty in obtaining legal aid is becoming even more difficult. I note that only four of the 209 matters in Perth were discharged in the Court of Petty Sessions for 2000-01 and, following a briefing yesterday with the state DPP and Mr Tom Percy, QC, I understand that of those four, three were ex officio; that is, only one case was discharged. In any event, when the briefs go to the DPP they are then automatically and conscientiously reviewed. That was rightly pointed out by the Attorney General. The Attorney General also pointed out, and I support him in all these views, that these days the people who elect for preliminary hearings are usually those accused of sexual offences, drugs, fraud or offences under corporation law. I will add to that list vexatious litigants who have had the opportunity to consider, or study, the Connell case and use some of the sharp practices of different lawyers.

I now refer to sexual offences, which were discussed yesterday in our briefing.

Point of Order

Mr QUIGLEY: I felt that I was being impugned when the member referred to the Connell case. I had disclosed earlier that I was the instructing solicitor and junior counsel, and she referred to the Connell case and referred to the sharp practices of some lawyers. By referring to the sharp practices of some lawyers, the member has impugned my professional integrity in that case.

The ACTING SPEAKER (Mr Edwards): I do not believe there is a point of order. I am sure the member for Nedlands will make an explanation in relation to that matter.

Debate Resumed

Ms SUE WALKER: I thought I heard a muffled cry when I said that. I do not know whether the member for Innaloo was involved in sharp practice. I certainly was not referring to him; I was referring generally to some sharp practices, and I was going to say that. I cannot comment on that; I can comment only generally in relation to the profession.

I was talking about sexual offences. Currently, provisions in the Evidence Act allow child sexual victims to have their evidence recorded. One of the problems with an adult woman or man who has been the victim of sexual assault is that lawyers must go through a very difficult procedure under the Evidence Act to have those people declared special witnesses to have their evidence recorded. Often the lawyers cannot get that declaration and often the victim of sexual assault must come along. I have seen it, and it is tragic. I draw that distinction with sexual offences and children.

Often, people who have money can employ high profile members of the legal profession, often from the eastern States, who use tactics that, according to the Law Reform Commission, pervert the course of the true nature of the hearing. They are sometimes used as a fishing expedition or dress rehearsal for the accused at public expense. A lot of concern in the system is focused on the expense to the public, through a range of departments. A range of departments and individuals are involved. I refer to some statistics of the cost in time and resources in the report of the Law Reform Commission. Page 852 of volume two of the commission's 1999 report states -

> Of the 124 preliminary hearings in the Perth Court of Petty Sessions and taken over by the DPP in 1997, the total court time listed was 175.5 days, with an average allowed of just over seven hours for each listed hearing. The average court time used was 2.6 hours, or 36.6 per cent of the time assigned. Of the 66 preliminary hearings which proceeded, only 54 per cent of the time allocated was consumed. To minimise wasted days, the Perth Court over-lists in the knowledge that many preliminary hearings do not proceed. Preliminary hearings, and the listing of preliminary hearings which do not eventuate, consume time and resources of prosecutors, the courts, the police, witnesses and defendants (and legal aid bodies who fund them). This cost in time and resources is a major criticism of preliminary hearings and the manner in which they are used.

> By far the greatest criticism of the present committal system is attracted by long and unwieldy preliminary hearings, aimed at frustrating and delaying the progress of a case. It is true that these are uncommon. It is also true that some problems may be solved by giving magistrates greater, legislatively sanctioned, control over which witnesses need to be called by the prosecution and the extent to which they may be cross-examined.

Several times I have prepared very complex fraud or drug matters. It takes a long time to prepare those matters. Then, at the preliminary hearing, defence counsel or the accused decides to proceed to trial. It is a complete waste of time, and it happens in many cases.

In relation to the justification for the abolition of this procedure, I have mentioned already that there is a delay in coming to trial. When someone knows the system, that person can delay the process. I am not saying that everyone does that, but it can be used as a delaying tool. That takes several months. There is already an 18-month delay in the system before the matter comes to trial. The jury cannot be told why the charge has taken so long to get to court. In a not too subtle way, that can be used against a crown case because the jury wonders whether the accused has become a victim of the criminal justice system, and it may cause sympathy or bias towards him.

One of the reasons put forward for the retention of the preliminary hearing is that it sets out a time for further disclosure of the crown case. Depositions can be more comprehensive than statements taken by police. This allows the defence to discover more about the case. Criminal defence lawyers feel very agitated by this. Perhaps the member for Innaloo can tell us more about that. Having been a defence lawyer, he would know all about that, and perhaps he can speak about that issue on behalf of defence lawyers. This argument can be rebutted by the very extensive disclosure guidelines created by the first Director of Public Prosecutions. An examination by the Law Reform Commission of other jurisdictions in Australia, England and Wales reveals resorts to varied attempts to overcome the shortcomings I have described. Advocates for the retention of preliminary hearings argue about the disclosure. As the Attorney General rightly pointed out, and as I pointed out when I spoke about how these procedures started, the original purpose of the procedure was for screening evidence and not for obtaining information about the prosecution case. If the worry is about obtaining further details or more information about the prosecution case - that is the criminal defence association's concern - I am pleased that, in response to those concerns, the disclosure obligations on the Director of Public Prosecutions in the Bill are styled, I understand, on rules 37 and 38 of the criminal procedure rules. They are being enshrined in statute. As a consequence, the defence will now have to be more up front, because it has an obligation to disclose.

I raise with the Attorney General - he might be able to respond to me in the consideration in detail stage by briefing the member for Innaloo - proposed section 611C, which requires the accused to disclose expert evidence to the prosecution. It also legislates for a provision in rule 38 of the criminal procedure rules. Why does the Bill not go further and require the accused to file and serve those matters contained in rule 37 - that is, proposed subsection (1)(a) to (d) and in proposed section 611B(1)(a) to (d) and (f) - except for any statement or proof of evidence that he or she has made for trial? This preserves the right of the accused to silence, but it allows the prosecution to know what a witness called on behalf of the accused will provide in evidence, and to refer to a prior inconsistent statement if the witness gives differing evidence. That is a suggestion that would seem to balance the disclosure requirements while at the same time preserving the accused's right to silence.

After this Bill comes into operation, matters will proceed directly to trial following a plea of not guilty. The prosecution has been obliged to disclose and so has the defence. It has been expressed to me that it has been very difficult for the prosecution when it has to disclose everything prior to trial and the defence has to disclose very little or nothing. In that case, the prosecution lawyers must try to work out what the defence might come up with, and often they did if they had a bit of experience. Now that has been evened out a little for the Crown. According to the Attorney General, the prosecution has three steps of disclosure. I have already alluded to the point that police are required to disclose limited material to the defendant at the early stages of prosecution. If a defendant does not plead guilty, the second stage of disclosure occurs. Disclosure occurs after what is known as the hand-up brief or the election brief period; that is, after a defendant has been committed to a superior court for trial. At that stage, the disclosure is the obligation of the Director of Public Prosecutions.

I will not go into detail because the Attorney General made these points in his second reading speech. The three-step process of disclosure will be replaced by a more streamlined and efficient process, which will place obligations on all parties. That new process will be enshrined in legislation. Under the new system, the first step will remain the same; that is, police will still be required to provide the defendant with a statement of material facts and copies of any confessional material. According to the Attorney General, and I agree, this will ensure that prosecution resources are not wasted when a defendant intends to plead guilty at the earliest possible

opportunity. If the defendant does not plead guilty, a date for what will now be termed a committal mention will be set by the Court of Petty Sessions.

The second stage of disclosure must occur at least 14 days before the committal mention date. The prosecution must comprehensively disclose its case to the defendant and will have to serve on the defendant copies of every statement or deposition it has obtained, the names and addresses of any witnesses who may be able to give relevant evidence, a copy of the criminal history of the defendant, and copies or details of other relevant documents. The defendant will be required to plead to the charge at the committal mention stage. If he pleads guilty at that stage, the court will commit the defendant to a higher court of competent jurisdiction for sentence. Alternatively, if the defendant does not plead guilty, the court must commit the defendant for trial in a superior court.

After a defendant is committed to a superior court for trial, and an indictment is presented against him, the third step of disclosure comes into play. As soon as practicable after the indictment is presented in the superior court, the prosecution must disclose to the defendant a copy of every statement or deposition it has obtained, the names and addresses of any witnesses who may be able to give relevant evidence, a copy of the criminal history of the defendant, and copies or details of other relevant documents. The DPP will be responsible for providing disclosure at that stage. That step is intended to ensure that the obligation imposed on the prosecution to provide full disclosure is ongoing. The Bill provides that a court may order that a particular requirement for disclosure by the prosecution in the second or third stages may be dispensed with. The Attorney General outlined in his second reading speech the circumstances under which that would occur.

There is an obligation on the defence to provide limited disclosure. At least 10 days before the commencement of the trial, the defendant must disclose to the prosecution a copy of every statement or report of any expert witness who may give relevant evidence at the trial. In the absence of such a statement or report from an expert witness, the defendant must give notice of the name and address of any expert witness who may give relevant evidence at the trial, and any factual elements of the offence upon which it may be contended that guilt may not be proved. These will all be of benefit to the process involved in jury trials. The defendant must also disclose any objection, and the grounds for objection, to any documents and statements disclosed by the prosecution, and, as is already required under the code, a notice of alibi evidence. Many of these matters will be able to be argued before trial. Many could be raised at a pre-trial hearing. I cannot remember whether that is the correct term, but before a trial commences the counsel usually meet to discuss any contentious issues, which the court usually tries to settle so that the flow of the jury trial is not interrupted. I hope that this will assist in that process.

Part of the Bill deals with failure to ensure compliance with disclosure requirements and details the sanctions that can be imposed. I am not clear about those obligations. It is strange that what appear to be fresh provisions have been inserted in the Bill. I ask the Attorney General to tell me whether that is the case. There are new contempt provisions in the Bill. There do not appear to be any real sanctions for failure to comply with disclosure obligations. The only sanction appears to be the ability to make adverse comments to the jury. I will probably find out more about that during the consideration in detail stage.

Early and ongoing disclosure is central to the proposed system. Full disclosure by the police, the DPP and the defendant is envisaged. It is envisaged that compliance with the new prosecution disclosure requirements will be enforced by protocols between the DPP and police. I have not yet seen those protocols. Perhaps the Attorney General could explain what those protocols contain. I ask whether I can be given a copy of those protocols. I know that the DPP guidelines require that the police sign off on evidence given to the DPP so that he can make sure that he has all the relevant evidence.

I congratulate Hon Peter Foss and the former coalition Government for this package of amendments. It gave the Law Reform Commission and the people of Western Australia the opportunity to carry out a complete review of the criminal and civil justice system. It was time for that; it was needed. The report is comprehensive. I am more than pleased that this Government will use the initiative of the coalition Government as a blueprint for reform in this State. I commend this Bill to the House.

MR QUIGLEY (Innaloo) [11.17 am]: I listened to the dissertation on the Bill by the member for Nedlands and her comments on how it will work. She made some comments about the previous Government that I regard as being dizzy, silly blonde moments - those things that bring blondes into disrepute. She said that in 1997, the former Attorney General commissioned the Law Reform Commission to review the civil and criminal justice procedure, and that the commission presented its report at the end of 1999. Thereafter, a former Liberal Government, paralysed with inertia and bereft of ideas, sat on it for nearly 18 months.

Point of Order

Ms SUE WALKER: I did not make the comments about the former Attorney General that have been attributed to me by the member for Innaloo. I quoted from the foreword to that report, which was written by the Chairman of the Law Reform Commission.

Ms MacTiernan interjected.

Ms SUE WALKER: Let us get it right. The member for Innaloo attributed comments to me personally when I had quoted from the report. I quoted the chairman, Wayne Martin, QC.

The ACTING SPEAKER (Ms Hodson-Thomas): There is no point of order.

Debate Resumed

Mr QUIGLEY: That was another dizzy blonde moment. I did not say that either. I said that the member for Nedlands was dizzy and silly because she attributed credit for the introduction of this legislation to the former Attorney General when in fact it was introduced by someone to whom I referred in a *Sunday Times* article as a person who would be noted as a good, reforming Attorney General. He is not my factional colleague, so I am not sucking up to him. I said it was a dizzy proposition that the Law Reform Commission returned its report at the end of 1999 and a former non-reformist Liberal Government, bereft of ideas and absolutely inert, did nothing about it but let it gather dust. In less time than that Government was in power, this Government has run with the report and constructed legislation. It has dealt with the interest groups and has introduced legislation into the House in less time than the time it spent gathering dust on the former Attorney General's floor. It is an entirely dizzy proposition to give credit to the former Attorney General.

One of the reasons I joined the Australian Labor Party is that during my years of practice, especially my last years, I had casual contact with the now Attorney General and the now Premier of Western Australia. It struck me three years ago that they had an opposition team intent on reforming the processes in Western Australia. They were faced with an inert Government. The former Government had received a report from the Environmental Protection Authority that it could not sustain logging in the jarrah forests and the Government did not act on it. It received a report from the Law Reform Commission that the processes of criminal justice needed drastic reform and it did not act on it. It is the reforming Attorney General who has brought this legislation forward, and the member for Nedlands has congratulated him on the content of the legislation.

The member for Nedlands referred to a meeting she had last night with the Director of Public Prosecutions and Mr Tom Percy, QC, the editor of *WACLAN*, whom she described as being dark on me. That is no news to me. He is a scared little Liberal. At a function of the Criminal Lawyers Association of Western Australia he sought, trembling with a glass in his hand, to berate and embarrass me about the fact that I had chosen to join the great reforming party, the Australian Labor Party. That he remains dark proves he is consistent. The Chamber should know where he is coming from: he is a Liberal who is too scared to do what I have done; that is, throw away the comfortable protection of the Bar and come into this place and have his say. Instead he has the dizzy blonde from Nedlands carry a message into this Chamber on his behalf. I say to him: what a wimp! I am happy to accept the challenge of the member for Nedlands about my -

Withdrawal of Remark

Mr PENDAL: I seek the guidance of the Chair about whether it is appropriate to refer to a member of this place - in this case, the member for Nedlands - as a "dizzy blonde". That is a reflection on a member. We are required to refer to members by their electorates. Any name or description that is regarded as offensive or unparliamentary should be withdrawn.

Mr LOGAN: That is not what the member for South Perth said about the Minister for Planning and Infrastructure.

Mr PENDAL: Why did the member for Cockburn not take a point of order?

The ACTING SPEAKER (Ms Hodson-Thomas): Order, members! I am on my feet! I have listened to the member for Innaloo. As a woman, I take offence to the way in which he referred to the member for Nedlands. I do not want to repeat it because I do not want to give any credence to it. I would prefer the member for Innaloo to refer to the member as the member for Nedlands.

Debate Resumed

Mr QUIGLEY: I accept your ruling, Madam Acting Speaker. I was referring only to the argument, not to the member, who is a professional colleague of mine. I am referring to and relating the argument she put forward, rather than referring to the member, for whom I have respect. The argument put forward by the member for Nedlands is misleading and fallacious in its attempt to falsely claim credit for the former Attorney General, Hon Peter Foss.

I move now to the subject of the preliminary hearing and the subject of the legislation before this Chamber. I have been involved in some celebrated preliminary hearings and some big cases. I will refer to those and explain to the Chamber and the people of Western Australia what is happening with the Criminal Lawyers Association of Western Australia, the Law Society of Western Australia and the Western Australian Bar Association, all of whom oppose this legislation. I say at the outset that these associations comprise my professional colleagues. I do not accept, as the member for Nedlands suggests, that this argument may in some way be economically driven. I assure the House that I suspect that none of the lawyers who elect preliminary hearings make money from them. That is not the point and it has not been my experience. Lawyers elect preliminary hearings for a number of reasons. One is that the brief they receive from the prosecution is insufficient. For example, in a sexual assault case a victim may have been interviewed by police at her house or by detectives at a sexual assault referral centre, yet defence lawyers receive only the final statement she made a week later at a police station. There is no way of testing the consistency of the victim's allegation; therefore, lawyers elect a preliminary hearing to trawl for that information. That is one reason, but there are other reasons that are less substantive; in some cases a lack of preparation by lawyers due to overwork. That provides a lawyer electing a preliminary hearing with a chance to rehearse the cross-examination of witnesses. Another concern of the Criminal Lawyers Association is that any opportunity to attack a prosecution case should be preserved. I have been a member of the legal profession and I am now a member of the parliamentary profession. I have come upon a new responsibility that criminal lawyers do not have. Their responsibility is singular: the protection of the accused on the accused's instructions. No further considerations enter the minds of criminal lawyers. They become focused on one issue and one issue only; that is, the use of every opportunity to attack the prosecution case and to protect their client, the accused.

However, having entered the parliamentary profession, I believe there is a greater interest that I must take into account; that is, the public interest which includes, as the member for Nedlands correctly pointed out, the interests of the victims of crime and deficiencies in the justice system. I ran a personal test by the Bill because I was asked whether I would fully participate in the handling of this legislation before the House. I want to say on the record, so that my colleagues who read the transcript will understand, that it is not Quigley standing in this place and running this argument bound by Labor Party caucus or a duty to Parliament to run the argument in the Chamber. I believe that preliminary hearings were necessary when police did not give all of the evidence to an accused person which resulted in lawyers issuing summonses to force the production of evidence. That process had to be available to some cases. I checked the legislation against the preliminary hearings in which I have participated, and in those cases there would have been no different outcome. I refer, for example, to the Anti-Corruption Commission case of Ibbotson, Grieve and others. That was a prosecution of an assistant commissioner of police and several other police officers on the evidence of a couple of brothers called Mylonas and their associates. A preliminary hearing was conducted in the Perth Court of Petty Sessions. Those police officers were not committed for trial. However, it was not the preliminary hearing per se that saved them from being committed for trial but the administrative action of the Director of Public Prosecutions, who intervened halfway through the preliminary hearing to stop it. He did that because during the preliminary hearing I had issued a dozen or more witness summonses to get the documents from the prosecution that I would have got as a statutory right under this legislation. Those were documents that the investigating authority, the Anti-Corruption Commission, did not want the accused to see by any measure of imagination, and it engaged Mr Gilmour, QC to say that those documents had to remain secret. Once the court had ruled on the production of those documents and their content had been viewed by the DPP, the DPP cancelled the preliminary hearing. That is a classic case, of a most controversial nature, in which the result under this Bill would have been no different from the result under the current legislation, because under this Bill all those documents would have had to have been delivered months or weeks in advance of the committal mention date, and I would have had all those documents to be able to say to the Director of Public Prosecutions, "The Mylonas brothers have lied to the ACC, and here is where it can be found", and the DPP would have said, "They have no credibility. We have to stop the prosecution." All of that would have happened without the accused having to incur any expenditure. In this case the expenditure was incurred by the Police Union (WA), and it cost it a lot of money, as the member for Nedlands rightly predicted.

I am fortunate to have as a very dear friend a fine man whose honesty and integrity at law is beyond question. I am very blessed in life to have him as my mentor. That man is Mr Brian Singleton, QC. Brian Singleton is a fantastic person. It is interesting that he was subjected to a charge following the Connell trial. He chose to have a trial by judge alone, and not only did the trial judge, Mr Justice Gunning, acquit him, but also he said of my dear friend that he was absolutely convinced that he was innocent of any of the allegations that had been brought against him. It is interesting also that Mr Singleton did not elect to have a preliminary hearing, because he did not want to give the prosecution a practice run. The Criminal Lawyers Association of Western Australia has suggested that preliminary hearings are a necessary part of the process and must be retained. However, when the

crème de la crème of criminal lawyers is himself subject to the process, he bypasses the preliminary hearing. As for the necessity to have a preliminary hearing, the most experienced and successful criminal lawyers in town - although I put myself just below them, in humbleness - are Ron Cannon and Michael Bowden -

Ms Sue Walker: Your colleagues are embarrassed!

Mr QUIGLEY: No. Cannon and Bowden, who do more criminal trial work than any other lawyers in the Criminal Lawyers Association of Western Australia, as a matter of policy do not elect to go to preliminary hearings, because they realise the inherent danger for the accused in giving the prosecution a practice run. The reputation of Cannon Bowden and Co is beyond question. Around this city the name Cannon Bowden and Co is synonymous with successful criminal defence, yet that practice never has preliminary hearings. We have a trifecta of opponents to this Bill. It should have been a quadrella, but one is missing; namely, the Legal Aid Commission. The Bar Association of Western Australia opposes it, the Law Society of Western Australia opposes it and the Criminal Lawyers Association of Western Australia opposes it. That is because they are focused on the interests of their clients and believe the current system must be preserved forever.

Mr Pendal: Is that not what they should be focused on?

Mr QUIGLEY: Yes. I will come to that. It is interesting that the Legal Aid Commission does not oppose it. This Bill came out of a national conference involving Directors of Public Prosecutions and directors of the Legal Aid Commission. People who are poor never get a preliminary hearing, because the Legal Aid Commission does not have the resources to fund preliminary hearings. Therefore, the vast majority of people who are charged with offences receive inadequate briefs.

Mr Pendal: Should we not support it the other way?

Mr QUIGLEY: The Legal Aid Commission is supporting this process of discovery. I was asked by way of interjection should we not support it the other way by adding discovery to the preliminary hearing process.

Mr Pendal: No. I meant should we not add resources to the Legal Aid Commission to allow it to access committal hearings.

Mr QUIGLEY: The expenditure goes on and on. As Wayne Martin, QC pointed out in his report, what is the good of our having a Rolls Royce if we do not have the money to put petrol in the tank? It is all very well to have an academically constructed system, but it must be effective and efficient. It is important that the defence be informed as early as possible of the witness statements that the police have taken early in the piece. The main purpose of a preliminary hearing these days is as a discovery process. Many practitioners use a preliminary hearing as a dress rehearsal for the trial. However, that is at their client's expense. The real test is whether the proposed reforms will deny any citizen of Western Australia a fair chance of acquittal. That is one side of the ledger. I have run this legislation over all of the cases in which I have been successful. Nothing in these reforms would in any way have detracted from the ability of any of my clients to achieve success in court.

Ms Sue Walker interjected.

Mr QUIGLEY: I not talking about the defeats and the number of cases that I lost because the client was found guilty. I am talking about an innocent person losing his or her chance of acquittal. Under these reforms, no innocent person will lose or be denied his or her chance of acquittal. Indeed, the chance of acquittal will be enhanced once the profession gets its head around and comes to terms with the new rules. The member for Nedlands says that a regime for discovery already exists and is to be found in the Director of Public Prosecutions' guidelines. However, as the Criminal Lawyers Association says, those guidelines are not working because they are not a statutory regime but guidelines published by the DPP's office about what he intends to achieve as part of his practice.

Ms Sue Walker: That is to his credit.

Mr QUIGLEY: I am not saying it is not to his credit. What the Attorney General is providing in this legislation is a statutory regime that places an onus upon the police to commence the discovery process early in the piece. It also provides a penalty for non-compliance.

[Leave granted for the member's time to be extended.]

Mr QUIGLEY: The voluntary guidelines of the Director of Public Prosecutions were not being followed in all cases, as the Criminal Lawyers Association observed. There were no penalties or adverse outcomes for prosecutors or investigators who did not comply with them. Now I see this happening in the trial process. If at the first stage of discovery the police failed to make full discovery, as required by the legislation, prior to the committal mention date and then were cross-examined at the trial on that point, defence counsel would be able to make some very scathing comments about the prosecution's failure to disclose information. That would be very

telling. On the other side of the penny, a preliminary hearing by no means guarantees disclosure. It is all up to the performance of the profession.

Colleen Egan, a journalist with *The Australian,* asked me to review an old murder trial in which a preliminary hearing and a trial were conducted and a conviction was recorded without any forensic evidence. The case turned upon the confession of a chap by the name of Mallard. Many other people have been concerned about this issue for a number of years. What struck me when I read about this case was that the process totally failed the accused. Although a preliminary hearing was held, at the end of the hearing the prosecution still had not made full discovery to the defence of all the materials, including the witness statements and the names and addresses of witnesses, that the investigating officers and the teams for the prosecution had gathered during their investigation of the offence. That case left me wondering. It involved a preliminary hearing, counsel represented the accused and it went to a murder trial. However, had the case been heard after this Bill was enacted, the process would have been different because the accused person would have been given full discovery.

I applaud Cabinet's decision to provide that measure to the people of Western Australia. All the people who are held in remand awaiting legal aid will now receive the investigator's entire file within a week or two of their incarceration. They will then be in a proper position to prepare for their defence and to instruct counsel.

The procedures of discovery are very important. The member for Nedlands referred to the section in the legislation that deals with that requirement. Criminal lawyers have raised that issue with her and me. The legislation requires full discovery of elementary facts no later than 14 days prior to the trial for an accused person. That means facts that are elements of a defence. Although fights have not occurred at Scarborough since I became a member, I will give members a hypothetical case of two men who have a fight at the Herdsman Lake Tavern. What are the elemental facts in a case in which one man punches another man in the face while he has a glass in his hand, and thereby causes unlawful wounding? The facts that comprise the element of the offence are that the accused person did the act, the victim was wounded and that it happened in unlawful circumstances. The facts that the incident occurred at the Herdsman Lake Tavern and that the accused had drunk a few beers at the Wembley footy club beforehand are not elements of the offence; they are incidental facts. In the case of an unlawful wounding, for example, it is relevant to show that an element of the offence was that Bob Smith was charged with causing unlawful wounding. Mr Smith would say, "It was not I," or, "I didn't do the act that caused the wounding". His whole defence would not be elementary evidence, for example, if he claimed that he was not at the tavern or if he denied that the wounding was unlawful. That is all he would have to say. At least that would give the court and the prosecution service the ability to focus on the guts of the trial. They would then be able to get on with the business and not worry about the irrelevant issues that may or may not arise in the trial. The legislation codifies practice.

Most senior lawyers who are experienced in the field will want to make early admissions, as I always did. A lawyer who dealt with a sexual assault case, on the first day of the trial would say, "Your Honour, pursuant to the Evidence Act I wish to make these formal submissions: firstly, the accused had sex with Mary, the named victim; secondly, it happened on that date; and, thirdly, if there was a lack of consent at the time and the accused honestly and reasonably believed the defendant was consenting, we deny the charge of lack of consent." The trial would be narrowed to one issue. I have read in *The West Australian* that 4 500 lawyers practise in Western Australia and another 2 500 students are studying law. A lot of people are being defended by people who are not used to, or across, the general way things are done; that is, that admissions are made early in the trial, and it is all left open. As the member for Nedlands said, the prosecutor might go into court and wonder where the case will break out. All the while the defence lawyer says he is there for only one issue but he does not tell the prosecution what that is. That is a waste of resources. The defence should have no fear that this legislation is going too far or that it is being required to divulge its hand; it is not.

In summary, I have participated in many preliminary hearings. By bringing to bear all my experience in those preliminary hearings, I believe that this new legislation will not bring about a different outcome or in any way endanger my clients. I participated in so many preliminary hearings because I was perhaps the only practitioner in town who had a client who could fund them. When a policeman was charged with an offence, the Police Union (WA) could advance the person funds for the preliminary hearing. That is a unique situation. Most Western Australians cannot afford a preliminary hearing plus a trial because it would send them broke. A very important aspect of this new regime is that it will deliver - this is the balancing act - a better system to all accused people. That is why I strongly commend it.

It is a credit to this Government and the Attorney General that the Bill is being introduced. The fact that a person is losing a chance to attack the prosecution is not a case for saying that an unfair regime is being introduced in circumstances whereby the preliminary hearing - I concur with the member for Nedlands - is not a judicial proceeding; it is a quasi-judicial proceeding. The preliminary hearing is an inquiry to find out whether

there is sufficient evidence for a case to go to trial. In years gone by when policemen and other people in the justice system were less educated, it was thought necessary to have a magistrate check that person's work. However, these days in all the big cases in which I have been involved and have been successful in a preliminary hearing, it is not because a magistrate stopped the case, but because the Director of Public Prosecutions interceded and called a halt to the proceedings. The DPP will be able to do that under the new legislation.

MR PENDAL (South Perth) [11.49 am]: I oppose the Bill before the House, not in its entirety but, specifically, the pre-trial procedures referred to in the short title, which have received substantial comment from members so far.

I am not a lawyer. On occasions like this I am pleased that I am not. The remarks and advocacy I have heard during the last three speeches lead me to believe that it is almost as though we have been attending some public seminar of prosecutors. Some members who have taken part in the debate might be affronted and say they have made their reputations as defence lawyers. However, when someone is capable of having made a lifetime reputation from being a defence lawyer and then says some of the things that have been said during this debate, it would not take a great shift in mind-set for that person to cross over and become a great prosecutor. I am not a lawyer, as I have said, but I saw the law working at close range during my years as a journalist when I covered the courts in this State, from the Court of Petty Sessions through to the Supreme Court. What we are about to do today, certainly not with my assistance, is a bad thing.

Where are all the civil libertarians, particularly in the Labor Party? How is it that the scarce resources of the State have now become pre-eminent in debates of this kind? How is it that reports from the Law Reform Commission are supported by people in this place who would otherwise want to vaunt their civil liberty stripes? How is it that all of a sudden arguments that are, and go to, the heart of justice - we have not heard much of that word this morning - in Western Australia, being reduced to a question of resources? I refer to the arguments in both the Attorney General's second reading speech and the subsequent speeches. I suppose we could use that argument right across the board in public spending in Western Australia, and point to many things done in the medical, hospital and education systems that should have as their driving force a medical or an education imperative. However, would we not then be criticised for reducing those to mere matters of money and resources? On that ground alone, the comments I have heard during the debate have hardly been edifying. When the might of the State decides it will prosecute a citizen and take him or her to a court of law, I would have thought that we, in this Parliament, would want to do everything possible to build into the system procedures that will favour, if anyone, the smallness of the individual against the wealth and the power of the State; but, no, today we are about to replicate what we did last year in the so-called bikies legislation under this Government and what we did the year before under the Court Government with legislation on the seizure of assets. I will briefly touch on those two issues as part of this mind-set that we are trying to make everything easier for the Crown and the Director of Public Prosecutions.

Members on the government side ought to be better able than members on this side of the House to recognise the civil liberty arguments. They have turned into the legal-economic rationalists, because their arguments are essentially based on getting a better spin for the taxpayers' dollar. I happen to think that is a secondary consideration. The Attorney General has spoken about the archaic processes. I do not think they are archaic; they are very old, but that might mean that they are also well entrenched for very good reasons. Over the centuries those processes have favoured and entrenched at law and in legal practice the rights of people who are accused and taken before a tribunal by what I described earlier as the weight, the power and the might of the State. Therefore, we should be spending our time on legislation in this House perhaps heading in the other direction.

I get the impression that we are looking after the interests of "the club". Who makes up "the club"? There are the prosecutors; then, appallingly, defence lawyers, some of whom talk as though they are prosecutors; the legal administrators; and the people who run the lower courts and the superior courts. There is no good ground for this Parliament today to be giving greater comfort to the members of that club. Perhaps we should be asking those people to go back to square one and give us a few clues about how we may swing things back in favour of the smaller defendant.

The member for Innaloo made a good speech, as he usually does, and he made mention of the Legal Aid Commission. My interjection was designed to get him to tell me how his solution for that problem would help. Surely the solution would be to make sure that accused people have right of access to advocacy at law, and to not accept it as inevitable that thousands of people will go without legal aid and, therefore, without proper representation when they go to court. Little by little, in the space of less than three years, we are passing legislation that would have been anathema to members opposite; those members who mostly have a view that the

might of the State should always be carefully weighed up against the difficulties and the deficiencies that are faced by the accused.

By way of a further example, I happened to be in South Africa when there was publicity about the Attorney General and the DPP and the seized motorbike. I only learnt about it when I got back, and I took particular interest in that matter because my constituent, who is the mother of the accused, paid for that motorcycle. Since December last year I have been in the process of doing my best to persuade the Attorney General, who has all the might of the State at his disposal, that the Crown does not have the moral or legal right to take away $20 000 worth of investment that came from the mother who knew nothing of the crime. My reason for mentioning this matter during this debate is twofold: first, it is part of the incremental creep towards limiting the rights of people and heaping those rights onto the State and, second, the conduct of the DPP in that issue alone.

I was a member of Parliament in the other place eight or 10 years ago when the legislation establishing an independent Director of Public Prosecutions was passed. One of the things the then Government went out of its way to do was to give the Director of Public Prosecutions a real sense of being at an arm's length from the Attorney General of the day. All of that was destroyed in the course of a stunt in front of Parliament House last month. I can understand that the Attorney General was part of this stunt, because that is part of the territory of members of Parliament. It is sometimes necessary to make a point. My real concern here is not that the Attorney General was there looking like some recycled bodgie from 40 years ago, but that the Director of Public Prosecutions was acting in a highly unprofessional way, and that has compromised his position.

Mr McGinty: You are just an old conservative fuddy-duddy!

Mr PENDAL: It is a funny thing. I have found that the old conservatives tend to end up being a bit more radical than they used to be, and the old radicals turn into the Tory club. That is the very point I am trying to make. I will read a pivotal sentence from the second reading speech made by the Attorney General of the day, when the Director of Public Prosecutions Bill was introduced in 1991 -

> A significant advantage of the establishment of the office of the director is that the legislation will make it absolutely clear that the director will act with complete independence from the Attorney General and the Government of the day.

I repeat: the Director of Public Prosecutions blew that out the window by coming up here and sitting on the back of a motorcycle, and going in for a bit of cheap publicity on the grounds that he is the officer designated by this Parliament as the person who administers that Act. I intend to come back to this during the budget debate, because it was a rotten decision, and bad at law. My reason for raising it today is to emphasise the point that, incrementally, this legislation on pre-trial procedures, in the same way as the bikie laws last year and the criminal property confiscation legislation the year before, is tilting the balance more and more in favour of the powerful State against the individual. Because I have now seen one of the consequences of that, as I outlined earlier, I consider this a very serious turn of events.

I was really surprised to hear the member for Nedlands, whose contributions I really enjoy, remark that preliminary hearings, or committal hearings, are sometimes used by defence lawyers to badger witnesses. That statement begs several questions. What is the judge doing? It is not acceptable to badger witnesses. Do not throw the baby out with the bath water. Do not discard the pre-trial system because a defence lawyer uses it to allegedly badger a witness. Perhaps legislation should be brought in to instruct judges on what to do when witnesses are badgered - those provisions are already there in law - or perhaps in some way the Government should express concern to the judiciary about the amount of badgering going on. It seems an odd thing for someone trained at law to say that sometimes those hearings are used by defence lawyers to badger witnesses. We did not hear anything about the prosecution. Of course, prosecuting counsel, Director of Public Prosecutions lawyers, or the Crown Law people would never have been guilty of badgering! The member for Nedlands, who in a past life was a prosecuting counsel, would not, I hope, have been guilty of any badgering of witnesses. It was not a positive contribution to make that remark in a debate like this.

Like other members, I have had a variety of approaches from people, one of whom is Ross Williamson, a barrister and solicitor in Perth, who has been well known to me for many years. I will read a couple of his remarks. I suspect he may be a bit like me, a voice in the wilderness. That does not really make any difference, because the arguments he puts forward as someone with a lifetime of experience and a good reputation at the bar should be listened to, particularly in the light of some of the remarks I have heard today from a procession of would-be prosecuting attorneys. Mr Williamson responded to Hon Peter Foss in his role as shadow Attorney General, and in doing so gave a very succinct and biting commentary. I presume that, as the shadow Attorney General, Hon Peter Foss is supporting what the Government is doing. I regret to hear that he has joined the

prosecuting brigade as well. In the course of Mr Williamson's response to Hon Peter Foss, a number of important things were said. For one of his opening gambits, Mr Williams writes -

> Still, the important thing is that, at the end of the day, you agree that preliminary hearings are now "a protection process for accuseds".

Mr Williamson writes this with just a glimmer of hope. At least he has conceded that. He continues -

> The question then becomes 'why remove this protection?'.

Hon Peter Foss, as the shadow Attorney General, and the Attorney General in the previous Government, is conceding, a little bit belatedly and unwillingly, that preliminary hearings or committals are a protection process for the accused. It does beg the question: if protection for the accused exists under our system, why are we sitting in this Chamber getting rid of it? Mr Williamson drew my attention to something contained in a High Court judgment that puts a little more balance into the equation.

[Leave granted for the member's time to be extended.]

Mr PENDAL: It puts a little more balance into the arguments the House has heard so far from all the prosecutors. Mr Williamson quotes various High Court justices as follows -

> [preliminary hearings] "constitute an important element in the protection which the criminal process gives to an accused person". [In depriving an accused of the benefit a committal proceeding they said] an accused is denied (1) knowledge of what the Crown witnesses will say on oath (2) the opportunity of cross examining them (3) the opportunity of calling evidence in rebuttal and (4) the possibility that the magistrate will hold that there is no prima facie case or that the evidence is insufficient to put him on trial or that there is no strong or probable presumption of guilt". [To deprive an accused of those advantages is, their Honours said] "A serious departure from the ordinary course of criminal justice"

I know some reference is made there to the process of discovery and I will read something into the record about that in a few minutes. However, that was their view and I will repeat it in summary -

> [preliminary hearings] "constitute an important element in the protection which the criminal process gives to an accused person".

We will be undoing that process and getting rid of it. We will do today what we did last year and the year before with those Bills to which I have already referred. We are not taking away very much, just a bit; not that anyone will notice! I do not want to be overdramatic, but members should be aware of what was done by the fascists in the 1920s, the Nazis in the 1930s and the Stalinists. None of those people was successful at one fell swoop, and yet, incrementally, we are being asked to do these sorts of things here, which I find offensive.

Finally, I will read a couple of commentaries on the matter of discovery from a real life practising barrister and solicitor, not someone who sits around going to conferences and seminars all day long as a way of earning some sort of living. It is only one paragraph, but it is worth reading into the record because he is answering the assertion that preliminary or committal hearings are unnecessary. Mr Williamson said -

> Also, my years of experience in the criminal courts have shown me that the reason for court delays -

Bearing in mind that we have had a bit of propaganda about why we have court delays -

> has nothing to do with 'unnecessary' preliminary hearings but has everything to do with a myriad of other factors, of which a lack of courtrooms to accommodate trials, the DPP pursuing hopeless cases and running legitimate cases unprofessionally are significant factors.

They are serious criticisms, but they were not made gratuitously or lightly or by someone trying to demean the process. They were made by someone who is trying to draw attention to the fact that today we have been hoodwinked into believing that the reason we have these unnecessary delays in preliminary and committal hearings is that the dreadful accused want to have their cases heard in a preliminary fashion. That is Mr Williamson's answer to that matter.

I will touch on the process of discovery. Here Mr Williamson replies to Hon Peter Foss in the following terms -

> You say -

Meaning Mr Foss -

> "the only reason I can see for retaining preliminary hearings at the option of the accused is to ensure proper process of discovery".

Mr Williamson then says -

> Preliminary hearings have nothing to do with the proper process of discovery.

I will repeat that -

> Preliminary hearings have nothing to do with the proper process of discovery. It is trite law to say that the prosecution now has, and always has had, a continuing and onerous obligation to give to the defence any documents, statements or information which may be relevant to the defence.

Mr Quigley: No, they do not.

Mr PENDAL: The member who has just interjected can sit there and say, "No, they do not." It is the belief of Mr Williamson, who is equally experienced at the bar and was in here fighting for the rights of the accused - not the rights of the State - that a comment like that made by the member for Innaloo is wrong.

Mr Williamson goes on to say -

> It could hardly be otherwise in a country like Australia: the discharge of such an obligation is an obvious part of the job a fair prosecutor. No prosecutor would admit to deliberately failing to give to the defence anything he or she has which might be of assistance to the defence. That would be culling the evidence to get a conviction. The law has always been that the prosecutor must present to court all the relevant evidence.

Finally he says -

> So when the government touts the fact that the bill provides for an obligation of discovery upon the prosecution -

He is now talking about this bit of nonsense that we have in front of us -

> and pretends that it is doing something new . . .

Mr Williamson says, and I will change his word here if he does not mind, that when the Government does that, it is being mendacious. I think members get the drift. He is saying that it is not telling the truth, but he is a little more direct. I agree with his written word, but I am not allowed to read it into the record because of the standing orders.

In summary, I am stunned that this sort of stuff is being brought in by a Labor Government that historically has been on the side of politics that is far more interested in issues of human and civil rights than are conservative Governments. Yet, it all seems to be part of the same little package deal and populist sort of politics. There is no principle in this legislation. There was none in the anti-bikies legislation last year that was allegedly brought to this House to get a conviction on the murder of Don Hancock. In the meantime, we have found that the existing law was adequate to the task, at least for charging a person with that offence. Of course, that person is innocent until the process of the law proves otherwise. However, the point was made that an arrest was possible under orthodox, old-fashioned law that is adequate to the task. The same situation occurred in 2000 when the Court Government introduced a dreadful piece of legislation that is now ensnaring people whose worst offence has been to return their library books late. In other words, the legislation is missing the target.

I do not like what I see in all of this. I do not like Parliament going down the path of making things easier for the Director of Public Prosecutions. The Director of Public Prosecutions - if he is doing his job properly - has a difficult job to do, which we all know. I have no sympathy for those people who end up on the wrong side of the law and find themselves paying serious penalties, such as the son of a mother whose case I have been trying to represent. The son is in the right spot. However, the law we passed has meant that the mother has been deprived of $19 000 that she gave to her son to buy a motorbike and, a couple of years later, we have the Attorney General sitting on the back of it looking pretty ridiculous and, more seriously, the DPP looking as though he was compromised by that act in itself. This is a bad bit of law. Not all of it is bad, as some of its provisions deserve to be passed. However, for these sorts of things to be coming from people who say they are the guardians and advocates of civil rights is a piece of arrant hypocrisy. I hope that somewhere along the line we will see an end to it. I rather suspect we will not. I have had only a quick look at the increased powers we are about to heap on the royal commission that will be dealt with next week, but I am not allowed to refer to that. However, it does not give one any great hope that this Government will stop empowering the State at the expense of the individual. For those reasons, I intend to oppose the Bill.

DR WOOLLARD (Alfred Cove) [12.18 pm]: I stand because I am concerned that this Bill's aim is to give effect to the recommendations of the Law Reform Commission to abolish preliminary hearings and replace them with a regime of disclosure. The preliminary hearing is a fundamental safeguard in our criminal justice system. It is a safeguard that has been developed to protect the innocent. My advice from legal practitioners is that if it is removed, the innocent will be at risk and the inevitable result will be the conviction of the innocent.

The member for South Perth quoted the High Court's Chief Justice Gibbs and Justice Mason in the case of Barton v The Queen. In their summary, their Honours concluded that committal proceedings, or preliminary hearings, constitute such an important element in the protection of the accused that a trial held without the antecedent committal proceedings, unless justified on strong and powerful grounds, must necessarily be considered unfair.

The DEPUTY SPEAKER: I ask the members to my right to keep their discussion to a minimum or to hold it at the rear of the Chamber, so that Hansard and I can hear the speaker who has the call.

Dr WOOLLARD: Defence lawyers state that innocent people are being charged just about every day for reasons including, but not limited to, errors of judgment, incompetence, lies of civilians and mistaken identity. I have been informed that the abolition of preliminary hearings will increase the cost of justice for both innocent people and taxpayers, because the cost of running an argument before a magistrate is less than the cost of running the same argument in a District or Supreme Court. I urge the Government to reconsider this Bill and not abolish preliminary hearings.

MRS EDWARDES (Kingsley) [12.21 pm]: I wish to bring perhaps a different perspective to the debate on this legislation, particularly in any review and reform of the criminal justice system. Having formerly been an Attorney Generally, I know that one of the pleasures of that position can be taken in the changes that can be put into practice and then watching them work. As with all pieces of legislation, until such time as the process is implemented and there has been time to review that process, we never really know whether it has worked the way we wanted it to work.

I acknowledge the comments of the members for Alfred Cove and South Perth and of the criminal defence lawyers, who have a concern about the abolition of preliminary hearings. Defence lawyers have a very strong role in our criminal justice system, as do the prosecutors. However, the wider community also is a stakeholder in the criminal justice system. The role it plays is often understated. The reference in 1997 by the former Attorney General to the Law Reform Commission was a very important one and produced a valuable and significant report, not unlike that of Justice Murray which was released in the 1980s. That is a valuable reference document, and its recommendations are still to be implemented in their entirety.

The review of the criminal and civil justice systems, which obviously is beyond what is in the Bill before us today, made the recommendation to abolish preliminary hearings. That seems to be the essence of the concern of those who are opposed to the legislation. The commission was very conscious of the fact that if recommendations were to be made about the justice system, it needed the views of those who have first-hand knowledge of the justice system; it knew that their experience and knowledge should be taken into account before any change was recommended. The commission made more than 100 recommendations dealing specifically with criminal matters. They included retaining the right to silence for suspects, but curtailing the protection from comment by the prosecution when the defendant exercises the right to silence at trial by refusing to give evidence; increasing both prosecution and defence disclosure requirements; and encouraging trial by judge alone, but not for serious criminal cases. The latter is an under-utilised process, which I was able to establish; that is, the right to elect to have a trial by judge alone rather than by jury. It has been rarely used in this State. There is a requirement that the Director of Public Prosecutions must agree to the election by the accused. However, it has been exercised only once and that was in the recent murder trial held in Geraldton. Other accused people have requested such an election, but the DPP has not agreed to it. Again, if we are to look at encouraging that, one of the mechanisms that must be looked at is how and upon what basis and criteria the DPP can refuse such an election by the accused.

The commission's recommendations also include holding lawyers accountable for delay and any failure to disclose information, which is part of the Bill before us; abolishing preliminary hearings; and encouraging guideline judgments with prior input from the broader community through submissions from friends of the court. That is a valuable tool for the broader community to understand why decisions have been made, particularly sentencing decisions. If we reflect on media reports, members of the community do not understand the basis upon which court decisions have been made. According to the Law Reform Commission, guideline judgments would involve the broader community. That concept has been trialled elsewhere in the world, particularly in some of the States of the United States. Other commission recommendations include amending the Criminal Code, creating a summary offences Act and developing a comprehensive code of criminal procedure; streamlining criminal court procedures and applying case-management concepts developed for handling civil matters to criminal proceedings; and making the process proportional to the gravity of the offence.

The commission was at pains to point out that although it was very conscious of the cost impact of any of its recommendations, it felt that it was not in a position to cost the impact of its recommendations. It felt that the cost of the improvements to the justice system was beyond the commission's capacity to evaluate. Its task, as it

saw it, was to develop ideas for making the system faster, simpler and easier to understand, while providing fair and just results, and generally to make recommendations to allow the justice system to work better. The umbrella of what we are looking at today in the view of those who support and those who oppose the legislation is the concept of a fair trial. We must keep in mind that, until convicted, the accused always has a presumption of innocence. There are those who are convicted, and there are those who are not convicted and are therefore regarded as the innocent accused. Often, the argument of those who oppose this legislation is that the innocent accused have the most to lose in this process.

There is an argument about the cost of duplication in holding both a preliminary hearing and a trial, if the case were committed to trial, and the legal costs and court resources that are associated with that. Both sides will argue that there is an opportunity for the duplication of cost. If preliminary hearings are to continue, duplication will occur if a trial goes ahead. Defence lawyers will argue that by doing away with preliminary hearings, matters will be taken unnecessarily to trial; therefore, it will cost far more, particularly when a finding that there was no case to answer would have been made at the preliminary hearing. Preliminary hearings provide a pre-trial check for both sides of the adversarial system. I believe that adversarial systems are still of great value around the world. I understand that Russia is considering making changes to its system and is looking at introducing an adversarial system. That system has a lot to commend it.

The obligation to disclose has been referred to during this debate. I readily admit that I did not fully understand the comments of the member for Innaloo on disclosure. This legislation will reinforce the obligation to disclose. It is a valuable tool for the accused. Preliminary hearings have always been regarded as a valuable tool to check out the prosecution case. We must keep that in mind, particularly when talking about the innocent accused. As I earlier pointed out, we are talking about the balance between the rights of the accused and the interests of the wider community. The umbrella concept is that of a fair trial. This is not the first time that this debate has ensued and it will not be the last.

A couple of years ago the former Victorian Attorney General, Jan Wade, made major changes to the criminal justice system in that State, particularly to the processes of criminal trials. Judges, politicians and lawyers attended a conference in 1996 to debate the criminal justice system, and the concept of the fair trial was raised. That is basically what we are talking about today. Whether we support or oppose the legislation, we are essentially talking about ensuring that fair trials will still occur within the criminal justice system. On the agenda of that Victorian conference were issues concerning the adversarial system, the correct balance between the rights of the accused and the interests of the wider community, and how the burgeoning costs of criminal justice could be contained. The then commonwealth Director of Public Prosecutions, Michael Rozenes, was reminded at that conference that although the criminal justice system was important, it must be delivered within the bounds of available public money. The member for South Perth said that the right of the accused should not be tempered by economic rationalism, so he would not necessarily agree with the commonwealth DPP. Michael Rozenes told a Radio National program of 15 October 1996 that -

> Governments are rightly concerned about the cost of justice and access to justice, and will examine expedient measures for achieving value for money if the system does not deliver results at a reasonable cost. In this country and overseas, that process is under way, and we should not be under any mistaken belief -

Those issues were obviously raised at that time -

> that jury trial, the right to silence, and perhaps even such fundamental pillars of the criminal justice system as the presumption of innocence, are sacrosanct.

The Law Reform Commission touched upon a couple of those issues in its recommendations. Michael Rozenes was at pains to emphasise that the accused was not the only stakeholder in the criminal justice system. He continued -

> "The interests of justice are not limited to the interests of the accused, but include the interests of the victims of crime, jurors and the community, in seeing that crime is punished, that the innocent go free, that criminal conduct is deterred and that public funds are expended wisely.

A person would need the wisdom of Solomon to ensure that all those matters were brought together. Michael Rozenes said that the principle at stake was the fair trial. He said that the issue was whether there was scope and will to introduce fair and equitable reforms to address those particular interests. This evident, genuine concern about the potential to take away the rights of the accused must be acknowledged. What must also be acknowledged is the genuine concern that if the criminal justice system is not brought within the bounds of cost, it may not survive as the system that is in place today. Any reforms must ensure that valuable legal and court resources are not consumed in a way that is likely at some future point to impact on the criminal justice system.

Those who oppose this legislation say that that is where we are starting; that is, that we have already started to chop down the rights of the accused, and in that way we are already starting to severely damage the criminal justice system. The opposing argument is that if something is not done now to ensure that those valuable court and legal resources are not wasted, massive change will be needed well into the future. Those changes might well be far worse than any changes that people who oppose this legislation would have supported.

This will be an ongoing debate. It has been an issue for a long time. My belief is that this legislation retains the concept of a fair trial for the accused. The Bill provides that protection. I am sure the Attorney General will monitor whether the changes will reduce some of the costs within the criminal justice system, and will ensure that a review is under way to ensure that those costs are monitored.

[Leave granted for the member's time to be extended.]

Mrs EDWARDES: I bring to the attention of the House something that Attorneys General look forward to at the end of every year; that is, the annual review of the Western Australian court system by Hon David Malcolm, Chief Justice of Western Australia.

Mr McGinty: Have you ever been on the receiving end of a review?

Mrs EDWARDES: Absolutely. Attorneys General look forward with trepidation to what the Chief Justice of Western Australia is likely to say and how much an individual Attorney General or the Government of the day is likely to be hit over the head. The Chief Justice was kind to the current Attorney General in the 2001 annual review of the Western Australian courts.

Mr McGinty: I am glad you thought so.

Mrs EDWARDES: He was very kind to the Attorney General. The Attorney General received only gentle barbs. It was like a slap on the wrist. However, this is the warning. This is the shot across the bow. The Chief Justice raised in the review issues that I faced when I was Attorney General. One important issue that was raised was the efficient use of resources and the efficient operation and administration of the courts in Western Australia. One of the biggest issues was on the agenda when this Government was previously in government; that is, court accommodation. It was to my frustration, and I know to the former Attorney General's frustration, that we were unable to progress that issue further. I believe the issue started because of differing points of view between the respective members of the Supreme, District and Magistrates Courts. They all obviously wanted to ensure that their particular courts would be looked after. However, the crux of the issue would always be the use of the current and existing Supreme Court building in Stirling Gardens, and how that building could be utilised in any future court administration. Although one strong view is that it is a community heritage building to be retained for some purpose, consideration was then given to building on and extending it. That would have meant taking up some of the Supreme Court Gardens, which was viewed with concern by members in the wider community.

For the information of members, because there is often confusion, I advise that the Supreme Court Gardens are closer to the river whereas Stirling Gardens are closer to St Georges Terrace. I strongly believe that members of the wider community would not accept any decision by a Government of any persuasion that takes away some of those parklands and gardens, which they well and truly utilise. Therefore, the space upon which the building could be extended severely limited the number of courts needed to ensure an effective Supreme Court operation, and probably meant that the Supreme Court would continue to operate from two sets of premises. Although I acknowledge the fact that judges have worked extremely well in less than perfect circumstances by working from two premises, we would not want to continue those circumstances in the development of new court accommodation.

Hon Peter Foss, as the Attorney General, took a strong view that if a building of such a heritage nature needed to be used in a way that had a connection with the law, the Supreme Court building would be suitable for the Court of Appeal. Again, it would be a separate division of the Supreme Court. That view was progressed. I am unsure from the annual review of the Chief Justice about the future of the Supreme Court building. I understand some developments are progressing, that the current operation is likely to move to Hay and Irwin Streets and that the new building will commence shortly. The Chief Justice suggested that the return of the Supreme Court to the Supreme Court building is unlikely to happen until 2011 and it is unlikely to become fully operational until 2016. I do not know what the Supreme Court building will be used for, or, if it is to be extended, how that will occur.

We must acknowledge that the Supreme Court building is a beautiful building. It has an attachment that must be dealt with if the Government is serious about restoring and maintaining the heritage nature of the building. That attachment was built with probably little thought of the status of the heritage building in which the Supreme

Court is currently housed. In the ongoing negotiations, discussions were had about cladding it so that it blended in better than it does today. There were also discussions about knocking it down or extending it, and for any extension of the building to be in keeping with the current lines of the building.

I had the pleasure in October 1995 of attending, with Supreme Court judge Mr Justice Murray, a court accommodation conference in San Francisco. It was an interesting and extensive conference about establishing new court buildings, ways to manage and develop them and ensuring that existing court buildings were workable operations, particularly those of a heritage nature. We were able to look at a number of buildings. However, members should bear in mind that the technology of today involving computers, video links and the like are such that all new court buildings, whether they are extensions or new, must take into account very much the increasing use and level of technology. That will always be a difficult task in a heritage building. I was interested to read the comments of the Chief Justice on solving the issue of the court's accommodation. If the Attorney has time in his response to the second reading debate, I ask him to bring us up to date about when it will occur. I am unsure whether it was the Chief Justice's wish list on timing or whether it was a commitment by the Government about where it is going. However, it is a serious issue that we, in opposition, and the Government acknowledge. I wish the Government all the best in being able to provide a solution to those accommodation problems and ensuring that there is consensus to the greatest extent possible among the respective members of the judiciary.

Another issue I raise in coming to a conclusion is a reference in the annual review to the number of preliminary hearings. The number of preliminary hearings in the Court of Petty Sessions in 2000-01 was less than the figure recorded in 1999-2000, although the number of criminal charges had increased. There were 636 preliminary hearings in 1999-2000 and 485 in 2000-01; a drop of 23.74 per cent. I cannot indicate the reason for such a huge reduction in preliminary hearings in one year, particularly given that the number of criminal charges had increased by six per cent in the same period. It may well be that the fast-track system is proving its worth and efficiency, in that the accused have elected to go straight to trial rather than have a preliminary hearing. There is no indication from the Chief Justice's annual review of the reason for that reduction.

This legislation before us, as I said earlier, is about reviewing the criminal justice system and reform. Some of the reforms that could occur in the administration and operation of the courts are not necessarily reforms that must come to the House. I said that court accommodation and budget resources can also improve the efficiency in the running of a case. However, there is also a committee of both the Supreme and District Courts that deals with reviews of criminal practice and procedures. That committee in its 2001 annual review made some important and effective recommendations, some of which will require changes to regulation and the like, and others of which can be implemented in practice. I commend the work of the courts and the work that the Attorney General is doing to improve the system.

Debate interrupted, pursuant to standing orders.

[Continued on page 10206.]