

Mr Colin Barnett; Ms Margaret Quirk; Mrs Cheryl Edwardes; Mr Phillip Pendal; Mr John Hyde; Mr Max Trenorden; Mr Rob Johnson; Speaker; Mr Tony McRae; Mr Jeremy Edwards; Ms Sue Walker; Mr Paul Omodei; Mr Matt Birney; Mr Larry Graham; Dr Janet Woollard; Mr Jim McGinty

TERRORISM (COMMONWEALTH POWERS) BILL 2002

Second Reading

Resumed from 26 November.

MR C.J. BARNETT (Cottesloe - Leader of the Opposition) [7.03 pm]: First, I wonder who is handling this Bill. The Premier introduced the Bill with great fanfare, but he is not here now.

Ms M.M. Quirk: The very capable Attorney General is handling it.

Mr C.J. BARNETT: Okay. I was just curious, because the Premier found time to put out a press release to announce that this Bill was his Government's response to terrorism, that he considered it to be a top priority and that he would progress the legislation. I thought that the Premier would at least turn up for more than his two and a half page speech. Perhaps that reflects something about the way in which this Government is treating this issue.

Mr J.A. McGinty: Get on with it; deal with the issues.

Mr C.J. BARNETT: I have been speaking for less than one minute.

Mr J.A. McGinty: And you already have the grumps.

Mr C.J. BARNETT: I just wanted to place on record that the Premier, who put out a press release on the priority of this legislation, has not even bothered to turn up for the start of the debate. I do not doubt the competence of the Attorney General to handle the legislation. However, it needs to be recorded in *Hansard* that, in reality, all the Premier was interested in was a press release, rather than seriously attending to the passage of this legislation. Having said that, I indicate that the Opposition will support this legislation and its passage through the Parliament today. I hope that we can deal with it in an efficient way.

I will trace some aspects of the broad issue of terrorism. I will not spend a lot of time on the detailed content of the Bill, because other members of this House are more capable of doing that than I. I will paint the wider picture of this issue.

The attacks which took place in the United States on 11 September 2001 at the World Trade Center and the Pentagon in Washington resulted in the loss of some 2 795 lives, including the lives of a number of Australians. That was a shock to the world. It was certainly the largest act of what is now seen as an act of war on United States home soil. Although a significant number of Australians were killed in that atrocity, it was still distant to us. It was one year, one month and one day later that the bombing of the Sari Club took place in Bali. One hundred and eighty people died, 75 of whom were Australians, including a number of Western Australians. That finally brought home to Australians, and particularly Western Australians, an act of terrorism and Australia's vulnerability. Bali is so close to Western Australia that many Western Australians regard Bali as a natural, regular annual holiday destination. Many people in this State are as familiar, if not more familiar, with Bali than with Rottnest Island. We have now been confronted, almost in our own backyard, with the reality of terrorism. We can no longer consider ourselves to be immune. Indeed, although we thought that Australia's isolation provided some protection, and that perhaps the isolation of Western Australia provided even greater protection, that sense of security has now been shattered. It may well be the case that our isolation now makes us more vulnerable. We may well be considered to be somewhat of a soft target for terrorism.

I am amazed at the lack of interest in this issue by government members. In fact, I am amazed that so few members are actually interested in this legislation. Perhaps that is an observation on this Parliament.

The Commonwealth Government moved quickly to react to the situation, and particularly to the situation in Bali. It acted to defend Australians and Australian interests against such devastating events. A package of specific counter-terrorism legislation was passed by the federal Government in early 2002, before the Bali situation. This year \$1.3 billion over five years was committed in the commonwealth budget to improve Australia's counter-terrorism capability and provide a general upgrade of national security. This particular Bill arose out of a leaders summit on terrorism and multijurisdictional crime, which was conducted on 5 April 2002 and attended by the Prime Minister and all Premiers and Chief Ministers. The Terrorism (Commonwealth Powers) Bill 2002 is part of a cooperative effort against terrorism in Australia and will allow the Commonwealth to take strategic control of terrorism management within Australia. The Bill is designed to close certain loopholes between state and commonwealth laws, and, therefore, is aimed at prosecuting terrorists and potential terrorists. It refers relevant state powers to the Commonwealth to ensure that there are no unforeseen gaps in the Commonwealth's power to prosecute terrorists.

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This Bill forms the second part of three pieces of legislation involved in the state reference of powers over terrorism to the Commonwealth. I understand that details of this Bill were completed only a few weeks ago at the 8 November meeting of the Standing Committee of Attorneys General.

The first part of these legislative reforms or amendments was to the Criminal Code Act 1995 and was in the form of the Security Legislation Amendment (Terrorism) Bill 2002, which was introduced into federal Parliament on 12 March 2002 and passed on 27 June 2002. This legislation, among other things, created a new general offence of terrorism and an offence related to preparing for or planning a terrorist act. It replaced the existing treason offence in the Crimes Act 1914 with a modernised offence in the Criminal Code Act, and inserted a regime making it an offence for a person to assist terrorist organisations in a range of ways.

The third piece of legislation, the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill, will be enacted by the federal Parliament following the state referral of power in the Bill before us. All the changes in the three legislative packages were flagged by the commonwealth Attorney General on 7 April 2002. It was a timely response to the events in the United States of 11 September 2001. The response followed the leaders summit, to which I referred earlier.

The Premier in his second reading speech referred to the Terrorism (Commonwealth Powers) Bill 2002 as a major aspect of the preparedness of this State and Australia to deal with terrorism. It is important legislation, but it is essentially commonwealth legislation drafted and introduced throughout the States. An attempt was made by the Premier to guild the lily there. The legislation is structured in the normal way, and sets out the matters referred to the Commonwealth and, as it stands, enables the State to terminate references by proclamation of the Governor.

The schedule contains the text of the proposed commonwealth legislation to be enacted in pursuance of the reference of power to be made by the States. As I have said, the Liberal Opposition supports the legislation and the referral of powers necessary to give the Commonwealth the jurisdiction it requires to deal with terrorist acts and potential terrorist acts. All Australians and all Western Australians would endorse that support.

A key aspect of preventing and combating terrorism is the ability of agencies, such as the Australian Security Intelligence Organisation and the police, to obtain early access to information. This will require increased investigative and analytical resources, as well as a better tactical response capability for the States' police services. The tactical response group and the state protection unit exist within the WA Police Service. It is important to recognise that the TRG is primarily an operational support unit. It is called on during incidents, such as civil disorder situations, to support routine policing. It can also play a counter-terrorism and major assault role. The state protection unit, as the name suggests, plays a role in the protection of consulates and individual persons. I am sure ministers past and present would be aware of that role. It also liaises with the Australian Defence Force in the protection of key installations and sensitive locations.

Western Australia also has a state operations coordination group, which coordinates emergency responses by government agencies, as well as a critical infrastructure group, which is currently reviewing security arrangements for energy, water and transport installations. These are all existing organisations that are effective and well resourced in Western Australia. They have dealt with the requirements of this State up until now, but the now has changed. I put it to the House: although the tactical response group, the state protective unit and the state operations coordination group all have a role - I respect the people and the tasks they perform - it is now a different world. The world changed on 11 September, and if anyone doubted that, it changed further on 12 October with the Bali terror attacks. Those different groups within the State dealt with the situation and requirements prior to the outbreak of terrorism on an international scale. Although this response may have been adequate until 11 September or 12 October, it is not adequate into the future.

Let us look at how the other States have reacted. I have outlined how the Commonwealth reacted quickly in the early part of this year, including an enormous increase in funding for various activities. On 13 October, the Premier of New South Wales, Hon Bob Carr, announced the formation of a counter-terrorist command unit comprising 70 civilian and police specialists with access to "sophisticated and highly specialised equipment". The \$17 million a year elite unit was to include a specialised helicopter, bomb disposal experts and tactical response officers. Intelligence gathering was to form another major part of the new unit. New South Wales also recently established a cabinet subcommittee on terrorism. The action was a serious response to the threat of terrorism in New South Wales. It is significant to recall that in 2000, New South Wales, and Sydney in particular, staged an Olympic Games. They had inevitably geared up their capacity to deal with terrorist acts. They geared up for the Olympics, and still found it appropriate to set up a specialist counter-terrorism organisation. On 3 November the Premier of Victoria, Hon Stephen Bracks, announced a \$37.4 million funding package to boost Victoria's anti-terrorism capability. This included a new risk assessment and counter-terrorism

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organisation group within the Victorian Police Force. Both New South Wales and Victoria acted decidedly after the events in Bali. It was significant, and I commend them for doing so. Community and bipartisan political support was provided in both New South Wales and Victoria.

I now draw to the attention of the House the fact that the Indonesian religious figure Abu Bakar Bashir, who is the alleged spiritual leader of the Jemaah Islamiyah organisation and is currently under effective arrest and investigation in Indonesia, visited this country on a number of occasions. On those occasions, he visited the cities of Melbourne, Sydney and Perth. He did not visit other cities, such as Hobart or Adelaide. I do not draw an overt association, but it is interesting that some of the recent commonwealth counter-terrorist activity raids have occurred in Perth. I take that no further, but an association is clear.

If it is good enough for New South Wales and Victoria, and Melbourne and Sydney, to act, why is it not good enough for Perth and Western Australia to react? That is the issue this Parliament should consider. To date, the Western Australian Government has announced no significant initiative to deal with the threat of terrorism in Western Australia. It has cooperated with the Commonwealth - I do not doubt that at all. However, it has not taken the decisive initiatives of New South Wales and Victoria and has not allocated required funding to establish a specialist counter-terrorist activity unit with the ability not only to respond, but also to gather intelligence and data and to provide liaison.

I put it to the House as I put to the Premier publicly last week that the Government would have the Opposition's support to establish a counter-terrorist unit in this State. It should be done. It may not be required forever, but it should be put in place. To illustrate the point, I demonstrate what has happened over the past few days in this State and nationally. On Tuesday of last week, 19 November, the federal Acting Attorney-General, Chris Ellison, announced that the Commonwealth had received credible information of a possible terrorist attack in Australia "over the next couple of months". The Commonwealth made the decision to issue a general public alert. It was not done casually - it was thought through. It was a responsible announcement. It has been a long time since the Commonwealth Government has issued an alert to citizens in this country that there is something to be concerned about; yet it seems not to have been acted on in this State. That warning has triggered something of a review of terrorism procedures across Australia. The defence forces have reacted and security has been upgraded in federal government agencies and buildings and in some state government agencies and buildings, although primarily the federal agencies have reacted.

The following day, Wednesday 20 November - I imagine in response to that warning by the Commonwealth - the Premier, as is his wont in press releases, announced that the state Terrorism (Commonwealth Powers) Bill would be rushed through State Parliament before the end of this year. He gave the impression that it was somehow his initiative in response to the threat. I do not take any credit away from him, but it was an initiative driven by the Commonwealth with which the State cooperated, as it should and as have other States. It was no great new initiative of this State. It was not the sort of initiative that Premiers Carr and Bracks implemented. Indeed, I note that in the press release issued by the Premier on 20 November, no mention was made of any special unit being established within Western Australia. It was not referred to.

As I said, the Bill is mirror legislation. It arose out of agreement between the state, territory and commonwealth heads at the leaders summit on terrorism and multijurisdictional crime held on 5 April. The details of the Bill were finalised at the 8 November meeting of Attorneys General. In New South Wales, the equivalent Bill was introduced on 13 November, and in South Australia it was introduced on 22 November. All States are proceeding according to their legislative timetables. It is not a great, new Premier Gallop initiative. Over the past six months it has been agreed to by the Commonwealth and the States in a sensible way and progressively implemented across Australia. However, the Premier issued a press release suggesting that this is his response. This issue is so important that it requires a greater degree of integrity than that.

On the same day, I issued a press release. It was the first time I had made a public comment on the issue of terrorism, apart from offering sympathy following the Bali bombing. I have refrained for six weeks from commenting on this issue. What did I do? I released a statement making the case that this State should create a dedicated counter-terrorism unit within the Western Australia Police Service along the lines of that in New South Wales and Victoria. Furthermore, I offered the Premier bipartisan support on the issue. In other words, I would not criticise the Government if it created a budget problem. What was the Premier's response? He immediately accused me of trying to politicise this issue and he criticised me and the Opposition for raising the need for a counter-terrorism unit.

It was significant that, on the same day, Bruce Brennan, Deputy Police Commissioner in Charge of Operations, said on ABC radio that police resources were stretched by the current terrorist threat. He said that there was no doubt that the threat did stretch our resources. On that same day, the police said publicly that they were

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stretched, because this issue was putting extra demands on it. Of course it places extra demands on the Police Service. On Tuesday the warning came from the Commonwealth and on Wednesday the Premier responded that the Government would introduce legislation, which was already in train here and had been introduced in New South Wales. On the same day, the police said that it was stretched for resources because of the impact of terrorism, the Opposition dared to offer bipartisan support for the establishment of a counter-terrorism unit and the Premier accused us of politicising the issue. That is not a good enough response from a Premier of this State.

The electronic media duly reported the issue. On Thursday morning it was fascinating; we awoke to see an article in *The West Australian* headed "Police terror unit for Western Australia". I wondered about that because the Premier had released a press statement on Wednesday, the day before. I re-read it and it made no mention of a counter-terrorism unit. The radio and electronic media had reported that legislation was to be passed in this Parliament, but they had not reported on a counter-terrorism unit. Miraculously, between the seven o'clock news the night before and the publication of *The West Australian*, a police counter-terrorism unit had suddenly been established for Western Australia. Only hours before, when the Opposition raised it, the Premier criticised us for playing politics with the issue. Where did it come from? How could a counter-terrorism unit arrive some time between the seven o'clock news on ABC radio and publication of *The West Australian* newspaper? I can only conclude that it was sheer magic!

The article that appeared in *The West Australian* revealed that a specialist counter-terrorism police unit would be established in Perth. It sounded as though we were getting some action. The article quoted the Premier but provided no detail of the size of the unit or the level of funding it would receive. No mention was made in the article of the Opposition's call for such a unit to be established; albeit, I admit that we can make a comment and it is not always reported. The Opposition's call was not reported but suddenly the Premier announced the establishment of a new unit - something he had not included in his press release the day before and that no other media outlet had seemed to notice. It must have happened miraculously; it is amazing. Perhaps a late-night call was made to *The West Australian*. That could well have happened. Perhaps there was policy making on the run on such an important issue. Indeed, was it a media announcement? Was it a media call to *The West Australian*? Was that where the counter-terrorism unit came from? It did not come from the Premier's announcement.

Later on Thursday the Premier issued another media statement announcing that the Western Australia Police Service was moving to strengthen its counter-terrorism capabilities with the creation of a specialist investigative and intelligence-gathering unit. Again, no mention was made of funding or resources. On the Wednesday the Premier criticised the Opposition for raising the issue. *The West Australian* miraculously reported something on the Thursday morning that had not been announced, and then the Premier issued a press release saying the same thing. Surely, on an issue such as this in a bipartisan world, the Premier would have had the grace to acknowledge that the Opposition had raised the idea. He might have been credible enough to say that the Government had thought about it and would take up the suggestion and consider it. However, no; it was not about that. It was about publicity and media opportunity. When questioned about this new unit on Thursday, Police Commissioner Barry Matthews - of course he would be questioned - said on ABC radio that the new unit would consist of two analysts based at Australian Federal Police Headquarters in Canberra. That was it. What an extraordinary story! The unit, of which confirmation miraculously appeared overnight followed by another press release by the Premier that contradicted what he said the day before, will consist of two analysts who will not be based in Western Australia. They will be attached to the Australian Federal Police in Canberra. When we asked about that in Parliament this week, the Minister for Police and Emergency Services said that that was wrong; the unit would be based in Perth with the Australian Federal Police. Either way: two analysts - big deal! Is that the contribution of this State to counter-terrorism? Is the State assigning two existing officers to work with the Australian Federal Police either in Canberra or here? That also is not good enough.

This Government has not done enough on this issue. I repeat the offer I made last week. If it is good enough for Victoria and New South Wales to react to September 11 and the Bali bombing by creating, at significant public expense, specialist intelligence-gathering counter-terrorist units within their States, it is good enough for Western Australia to do something similar. It is not good enough for the Premier and his media officer to put out press releases in place of action. I repeat our offer of bipartisan support for such a unit. I do so because the people of this State deserve that protection. They deserve to have all that can possibly be done to achieve that. This is not about Labor versus Liberal. This is about this Parliament acting. I remind the House that we are here as members of Parliament. We have a duty to represent our constituents and to enact laws for the protection and welfare of the people of this State. Members opposite have an offer of bipartisan political support to do something. I hope that such a terrorist unit would not be needed for many years and could ultimately be disbanded. My suspicion is that it would be around for some time. They will not do it tonight, but I implore members on all sides of this House to think about this issue and come back with a commitment of people, money

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and equipment for a specialist counter-terrorist unit within Western Australia for as long as it is required. Let us forget the notion that we should not do it because it was not a particular person's idea, the Premier did not have the idea quick enough or someone put out a press release that contradicted another one. Let us for once act in the interests of the people of this State. We need to act. We should act as parties within this Chamber and as individual members of Parliament. Our failure to act in that way would be reprehensible.

I will not say any more about the legislation. There will be time to do that during the consideration in detail stage. I finish with two observations. First, this Bill is about cooperative arrangements between the Commonwealth and the States. It is about a referral of powers. We will all agree to that. It is easy to do. However, more is required. I remind members that the Australian Crime Commission will come into being on 1 January. The Commonwealth has accepted responsibility, as it should, for expanding its surveillance, information and response capabilities. It is doing that in a cooperative way with the States. For the Commonwealth and this commonwealth-state approach to succeed, it is absolutely essential that the States reciprocate with a similar expansion of resources, capacity and equipment. It is the view of the Commonwealth that the State that has to this point done it best is New South Wales. It has reacted best. It reacted first and in the most competent way. Western Australia cannot complement the efforts of the Commonwealth in its counter-terrorism activity if it does not increase its capabilities through a counter-terrorist unit, in whatever form it might take. It is not good enough to say that existing organisations such as the tactical response group can fill the void. They cannot. They already have responsibilities. Yes, the tactical response group could help in a crisis, but it already has a role. If this Parliament and this Government are sincere about referring powers and having a genuine legislative and investigative cooperative arrangement between the Commonwealth and the States for surveillance, information and response, we must accept our share of the responsibility, as New South Wales and Victoria have done. It is not up to us to be the bludgers in the system. I remind the House that the spiritual leader Bakar visited Sydney, Melbourne and Perth. We should act in the same way as New South Wales and Victoria have acted. It will be on the heads of every member of this House if we fail to do so. I am not being political, but I make the observation that the response of this Government has been to put out media releases and to try to put a spin on the issue. When this legislation was announced by the Premier, it was suggested the following day that there would be a counter-terrorist unit of some sort. We investigated that and found that it would comprise two existing analysts who will be assigned to work with the Australian Federal Police probably in Canberra but maybe in Perth. Even that is confused. That is an inadequate response. It does not serve us well. Only two officers will be assigned to the Australian Federal Police. The people of this State need and deserve more than that.

I conclude by paying credit to the Prime Minister of this country, John Howard. I pay credit for the way in which he has handled the after-events of September 11 and in particular the bombing in Bali. I pay credit to him for his response as Prime Minister in working with the defence and security agencies and the States and Territories on legislative requirements. I pay tribute to him for the immediate announcement of \$1.3 billion in expenditure in this area. I also pay tribute to him for the very fine way in which he led the Australian people during that period; for the very fine way he provided leadership and demonstrated to the Australian people that there are some issues above politics. He demonstrated to the Australian people that our national, personal and community security is more important than petty parliamentary or political disputes. That bomb attack in Bali was aimed at Australia. People might dispute that, but it was aimed at young Australians. It was aimed to hurt us as much as it could, and it succeeded. It hit young Australians holidaying and enjoying themselves. The Prime Minister reacted to that. He provided comfort and confidence to the Australian people and sympathy and support to those who needed it. The way in which he treated this as a bipartisan matter was exemplary. I also pay credit to Hon Simon Crean, the leader of the federal Opposition, because he also demonstrated a fine level of bipartisanship and behaved with absolute dignity. It was a source of comfort and probably pride to many Australians that the Prime Minister and the Leader of the Opposition acted together in every respect. That was important, and I pay credit to both those men.

Mr R.F. Johnson: Protection for the Premier seems to have been beefed up, but he has not increased protection for other Western Australians. I agree with what you are saying. Far more officers should be dedicated to intelligence and surveillance and the protection of Western Australians. I do not believe that is happening.

Mr C.J. BARNETT: I conclude my comments with that. I repeat that we support this legislation. It will pass through this Parliament tonight. If it was good enough for the Premier to say that this is a top priority and to introduce the Bill, surely it would have been good enough for him to be here to hear the response of the Opposition, particularly the opposition leader. However, he chose not to. Unfortunately, that is a shallow response. I implore the Attorney General - I think he was listening to at least part of my speech - as the chief law officer in this State to go back to Cabinet and raise the issue of a properly funded and resourced counter-terrorist unit. I ask him to seek professional advice, look at the New South Wales and Victorian models and establish

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such a unit. The Government might need it for a year; it might need it for five or 10 years. It will have our support in the establishment and funding of such a unit. If the Attorney General does nothing else, I urge him to go to Cabinet and raise the issue. If the Attorney General does that, he will be acting above party politics, above parliamentary tactics and above media spin and press releases. He will be doing something for the good of the people and he will have my support and the support of members on this side of the House.

MS M.M. QUIRK (Girrawheen) [7.39 pm]: I will trespass on the House's time for a short time only because, as the Leader of the Opposition said, it is imperative that this Bill have speedy passage through the House and the Legislative Council. For the sake of expediency I will make a few comments now rather than at the consideration in detail stage.

First, I want to refer to the definition of terrorism in the legislation. This has been enhanced by the efforts of my federal colleagues to find a workable definition. Earlier versions of the federal legislation contained too broad a definition of terrorism. Some organisations with which I have been involved, and anyone who is politically active, might well have fallen under the umbrella of that earlier definition of terrorism. That definition in this legislation, however, will be much more workable and will serve to focus our attention on real threats and not on people who legitimately advocate political change. I compliment the draftsman, and I compliment my federal colleagues, who faced some political pressure to pass the initial legislation unscathed. I have read some of the debates in federal Parliament on this legislation and I believe my federal colleagues helped to achieve a much better legislative scheme than that which was initially proposed.

As the Leader of the Opposition correctly said, this is a federal and state cooperative scheme. Unlike some previous cooperative schemes, this legislation has a level of simplicity that is to be commended. I commend the draftsman responsible for that simplicity, as it means there will be less likelihood of technical difficulties with the legislation. People will be less able, for example, to challenge actions taken under the legislation on a constitutional technicality; I commend the draftsman for that. This federal and state cooperative scheme could be a model for subsequent schemes in a range of areas.

I know a little about this area because for years my federal colleagues have attempted to improve the regime of the National Crime Authority. There are innumerable constitutional difficulties with this type of legislation, such as how to found the head of power and so forth. In my humble opinion this legislation is a very effective way of giving the Commonwealth unambiguous power founded on constitutional powers, such as telecommunications, postal and external affairs bases and other bases under section 51 of the Constitution of the Commonwealth so that the Commonwealth has absolutely no doubt that it has sufficient power to coordinate decisive investigation of and take action on any threats of terrorism.

Mr M.J. Birney: You complimented the draftsman earlier on. I am not sure whether the same draftsman wrote the second reading speech for this Bill, but I have never seen a more badly worded second reading speech. I had to read it five times.

Mr J.A. McGinty: Draftspeople do not write speeches; they draft Bills.

Mr M.J. Birney: I am simply making a point about the second reading speech; it was absolutely terrible.

Ms M.M. QUIRK: With respect, member for Kalgoorlie, one need resort to the second reading speech only if the meaning of the legislation is unclear. The legislation is not only clear but also workable. To the extent that it is possible with constitutional matters, it is as bulletproof as it can be. The legislation is, in fact, a good, thorough and workmanlike attempt to overcome real problems that we have in the federation with cooperative schemes.

The creation of offences under the legislation reflects varying degrees of people's involvement in terrorism, including those on the periphery such as money launderers, facilitators and trainers. As we have seen in recent months and years, the legislation is an accurate reflection of the way in which such organisations work. The legislation reflects very well real-life situations in which there are different levels of involvement and effectively provides different levels of penalty. It is also appropriate to give the finder of fact the choice of bringing in an alternative verdict if it finds that someone had a lower level of involvement or knowledge than initially alleged. It provides a capacity to secure the conviction of a person who was reckless in his or her nexus with terrorism even if actual knowledge cannot be established.

I now talk briefly about resources. Frankly, if any of us knew of the response to a threat that we could expect from the police and intelligence agencies, I would say those agencies were not doing their job well. Part of the modus operandi of investigators in intelligence organisations is to not let suspects and targets know what resources or law enforcement capabilities they deploy. The Leader of the Opposition believes that the response by those agencies is inadequate. I would say that we do not know in detail what police and intelligence agencies are doing, and that is the way it should be.

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I will give an example. Some years ago it was felt in the criminal community that calls on digital mobile phones could not be intercepted. In fact, law enforcement had the capability to intercept mobile phone calls about five or six years before it was generally known that the capability existed. That is a perfect example of why law enforcement does not telegraph or signal its capabilities. Similarly with this legislation, the indication that there are two intelligence analysts in Western Australia does not necessarily mean that that is the only level of work being undertaken. The Leader of the Opposition can be confident that what needs to be done in Western Australia is being done.

Mr R.F. Johnson: Do you know something we don't know?

Ms M.M. QUIRK: No. I am saying that law enforcement would be ineffective if the member for Hillarys and the general public knew exactly the capabilities of law enforcement, the numbers of staff and how they were deployed. My whole point is summed up in the notion "need to know".

Mr R.F. Johnson: But if you tell the public there are two or, at most, four officers dedicated to counter-terrorism - that is what has been said - you are leaving the gate wide open for an attack on us. I would sooner hear the Premier exaggerate, if anything, the number of people dealing with it.

Ms M.M. QUIRK: What I was about to say, member for Hillarys, was that these people are dedicated to complement existing resources, and it is not appropriate to disclose the exact details of those resources.

I will give another example from my personal experience, as opposed to a fanciful, hypothetical example. The National Crime Authority had about 300 staff working in its organisation at one stage. The Sydney office of the National Crime Authority had about 150 staff while Perth's office had only 20. The allocation of resources was based on an assessment made by intelligence and investigative personnel about the locations and levels of risk. They perceived that the major level of risk was on the eastern seaboard. The majority of serious organised criminal activity was occurring between Queensland, New South Wales and Victoria; therefore, it was not unreasonable to deploy most of the resources there. We in Western Australia effectively complemented that and fed to the eastern States' investigators intelligence relating to Western Australia. I know of a specific example of strong links with organised criminals and their activities in Western Australia which arose in the course of an investigation in New South Wales. We were able to feed to the investigators in New South Wales, who were investigating criminals in Western Australia, the nuances and additional intelligence that they needed about criminal associates in this State that were not generally known to them.

An investigation can be resourced properly by looking at where the risk is and where the gaps are. The additional resources in this State will complement an overall national strategy. We are not qualified intelligence analysts and we do not have access to the latest information; we rely on what we see on CNN and other media to assess the issue. I am confident that the federal authorities - the Australian Federal Police and the Australian Security Intelligence Organisation - can work effectively to assess the risk and say what they need from us in this regard. I wanted to say something about resources, not because I have any particular inside knowledge, but because of what I know from what I think is an analogous situation; that is, the investigation of serious organised crime. How these resources are deployed shall not necessarily be telegraphed to the targets of investigation. In any event, I consider that senior analysts and intelligence personnel would make a realistic and professional risk assessment. I trust that what has been done in this State accords with that assessment.

I commend the passage of this Bill. In years to come it may well be a model of cooperative state arrangements. From a constitutional perspective, it has a compelling simplicity that I hope will mean that no major technicalities will be discovered after a suspect has come before the courts. I commend the considerable work that has been done at a federal level by not only the Government but also my federal colleagues to ensure that we have a Bill that covers all the contingencies without necessarily diminishing the civil liberties of the broader community.

MRS C.L. EDWARDES (Kingsley) [7.53 pm]: War has come to Kingsley. That statement was made to me by one of my constituents who was a member of the Kingsley Amateur Football Club. That statement probably reflects the view of most people who have family and/or friends who have been directly affected by the Bali tragedy. It probably also reflects the view of the wider community and the concern in the community about acts of terrorism. Terrorism has affected the holiday plans of many people, particularly in the lead-up to the Christmas period. Many people had planned to travel to South East Asia and to Bali and other places in Indonesia. I know of one young lady who had organised her wedding in Bali. Of course those arrangements have now had to be changed. The impact of 12 October has been wide. The impact of terrorism is much wider, because we now have a concern that terrorism events may occur on Australian soil. Although some people who have been interviewed have said that those acts will be not against Australians but against foreign interests, such as American interests, on Australian soil, that is not good enough and it is certainly not something that

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Australians will accept. Australians want to be reassured that in the event that there is any terrorism activity, laws are in place under which the federal Government and the State Governments can act. They want their federal and state Governments to work cooperatively to ensure that there is no gap in our laws and action can be taken successfully against any form of terrorist act.

This Bill is a referral of powers. It is a restrictive referral of powers, because it is not a referral of our criminal law to the Commonwealth but is a referral of powers that relate specifically to the offences that are referred to in schedule 1. Schedule 1 refers to specific offences that are terrorist acts, such as providing or receiving training connected with terrorist acts, or supporting or financing a terrorist organisation. These new offences of acts of terrorism have been enacted by the Commonwealth. Under the Constitution the Commonwealth does not have a specific power to enact terrorism laws; nor does it have a specific power to enact criminal laws. It does, however, have the ability to enact legislation, as it has done, through a variety of heads of power under the Constitution, as well as through a variety of treaties in which it has engaged. This referral of power relates specifically to the offences that are outlined in schedule 1 to ensure that there is no gap in any action that can be taken by the Commonwealth against any act of terrorism. I do not believe anyone could say that this legislation is not necessary. I do not think anyone would feel very comfortable if there were an investigation and a criminal charge was laid but all of a sudden someone took the point that it was a state offence and the Commonwealth did not have the appropriate power to lay that charge. This Bill is, therefore, a safeguard.

A further safeguard is contained in clauses 100.6 and 100.7 of schedule 1 of the Bill. Normally if the State refers powers to the Commonwealth, by virtue of section 109 of the Constitution if there is an inconsistency between the commonwealth law and the state law, the commonwealth law will prevail. Clauses 100.6 and 100.7 are a savings provision to ensure that our state laws remain intact. That is very important not only for States' rights but also to ensure that there are no gaps.

Clause 5 of the Bill is a termination clause and provides that the Governor may, by proclamation, terminate this legislation or referral of power. That is primarily because if we did not have such a protective clause in the Bill, the Commonwealth could always argue at some future time that we had referred those powers absolutely. The Opposition has circulated a proposed amendment to clause 5 of the Bill. The reason for the amendment is that this Parliament is referring powers to the Commonwealth, and any change to the referral of those powers to the Commonwealth should be carried out by this Parliament. Although I recognise the reason for a termination clause to ensure that there is no absolute referral of power to the Commonwealth, it is not good law or good parliamentary practice to allow the Executive, through the Governor, by proclamation to revoke this law. Therefore, I propose an amendment that proclamation under clause 5 can be enacted only if a resolution has been carried by both Houses of this Parliament. Again, the supremacy of the Parliament in law making will be resumed over that of the Executive. Although that might be a change to the uniformity of the legislation that has been introduced in New South Wales, South Australia and the other States, it will not change our status as a state-referring power under the legislation.

As a Parliament, we have the right and the privilege to enact this legislation. It does not and should not change the Commonwealth's position on uniformity. Each State has a right and a privilege to determine for itself how it will terminate any of those referral powers. I understand that the Commonwealth was concerned - the Commonwealth is always concerned about the referral of powers to the States - that there would be a termination clause in the legislation. This probably will enhance the Commonwealth's position in that it might make it tougher for any State to terminate its legislation. It may well be that the other States will see our amendment and propose similar amendments, as no legislation has yet passed through any Parliament. Through discussions with the Attorney General, I understand that he will accept the amendment -

Mr J.A. McGinty: I think the way to describe it is by saying that you beat me into submission.

Mrs C.L. EDWARDES: The Attorney General is responsive to the needs of the Parliament. He has indicated that he will accept the amendment.

I commend this legislation. The Opposition supports it. It is absolutely imperative that members of the community who feel that terrorism has come to their front door, and indeed into their lounge rooms and their very souls, can have confidence that action will be taken against any act of terrorism, wherever it may occur. For those living in Australia, it is nice to see cooperation between the federal Government and the States to deal with such legislation to ensure that action will be taken against acts of terrorism and that no terrorist will escape the wrath of Australian, and indeed Western Australian, legislation.

MR P.G. PENDAL (South Perth) [8.02 pm]: Like other members, I support the legislation. I welcome it for all the reasons that the Premier indicated in his second reading speech and that previous speakers indicated in their

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contributions to the second reading debate. I am also encouraged by the remarks of the member for Kingsley and by earlier assurances that we are not dealing with an absolute referral to the Commonwealth. I have no difficulty with the notion of referring powers in this field, given the gravity of the international situation that we are facing. However, I have some concerns, and those concerns have been expressed in an amendment that I have circulated in my name, which effectively seeks the deletion of clause 5. I will go into that in a broad way in a few moments and then commend it to members in the consideration in detail stage.

I have said that I welcome the fact that this is not an absolute referral. It is done under that section of the Commonwealth Constitution that invites and allows the Parliaments of the States and Territories to act in the way that we are about to. However, there are a couple of concerns that the House should express and, in doing so, hopefully it will support the amendment to clause 5 when I move it.

There are three parts to my concern. I do not know how many members are familiar with the notion of Henry VIII clauses, but that is what clause 5 of this Bill is. For those who are not familiar with such a clause, not that long ago - three or four years ago - the Standing Committee on Uniform Legislation and Intergovernmental Agreements, of which you, Mr Speaker, were a distinguished member, inquired into Henry VIII clauses. Henry VIII clauses allow the Parliament to transfer its legislative authority to someone outside the Parliament. That is what clause 5 will do. Without going into the detail, I refer members to clause 5, which relates to the termination of references to the Commonwealth. Subclause (1) states -

The Governor may . . . by proclamation, fix a day as the day on which the references are to terminate.

Subclause (3) gives the Governor the power to revoke, by proclamation, a proclamation published under subclause (1), to which I have just referred. Effectively we are counting the Parliament out of this equation. This is not a party political argument. Every member of the House should be concerned that if this clause is passed in its present state, we will give the Governor the power to deal with the revocation of any reference we give to the Commonwealth. I say that that is wrong as a matter of principle. Over the years we have all learnt to bemoan the level to which we have opted out of the legislative process and have enriched the Executive - not only in this Parliament but also in every Parliament in Australia and probably every Parliament in the Westminster system. Make no mistake about it, clause 5 as it is currently constructed will add to the power of the Executive of the day.

The Governor is mentioned. First, I find it an oddity that this legislation has been sponsored by a Labor Government, which, in the main, is of a republican inclination. Yet we are loading the powers of the Governor - that is, the representative of Her Majesty - to do what rightly is the role of the Parliament. I oppose that and I will suggest - indeed I have circulated - an amendment to indicate to members that there is another way around that. Essentially, I am saying that any legislation of this kind should come back to this House. I do not need to tell you, Mr Speaker, that the Parliament, not an extension of the Parliament, is the legislator. We know that, under our system, the Governor, and the Queen, are one-third of the Parliament. The Parliament is made up of three components: the Queen, this House and the other House. It seems to me to be an affront to the notion of elected representatives that we would off-load our responsibilities for changing the law from this Parliament to, in this case, the Governor. However, that is what clause 5 will do and that is what a Henry VIII clause does. We should delete clause 5. Its deletion would in no way affect the strength of what the Gallop Government and the Attorney General are seeking to do. However, it would do it in a way that should appeal to the parliamentarian in everyone here, and not to the Executive Government, which should be anathema to us. Firstly, the amendment I will move will seek to delete clause 5 in its entirety, because it is what is known as a Henry VIII clause. Every person here should find that vaguely if not totally repugnant. Secondly, it is wrong to refer a power without putting a time limit on that referral. There is a good precedent for that within the lifetime of the current Government. I will not say anything more about that at the moment, because I hope that I will not need to go down the path of attempting to twist the arm of the Government to agree to my amendment. At the moment, we will hand over to the Governor of Western Australia the power to revoke and extend. What I have in mind is, firstly, to delete that clause, and, secondly, to put a five-year limit on this reference of power to the Commonwealth. Members may say that the awful spectre of terrorism will last more than five years. That will probably be the case. My amendment will mean that the Government will have to come back within the next five years to extend that referral. Members will be aware that there have been many occasions in which a sunset or review clause has been included in legislation to provide a limit so that the legislation must come back into the Parliament within a specified time. The amendment I have circulated indicates that that time should be five years. The original amendment I drafted suggested three years. There is an argument for seven years because of the nature of the international terrorist movement. Frankly, I do not mind. If the Government felt that it was inclined to support the principle of what I was trying to do, but felt that five years was unrealistic, we should go down the path of amending the amendment. In any event we should in no way refer an open-ended power to the

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Commonwealth, even one as important as the one we are dealing with at the moment. My amendment will also provide some protection to the Commonwealth in the situation that I have outlined. The second part of my amendment reads -

When the reference terminates under subsection (1), the termination does not affect any laws that were made -

Incidentally, that is a reference to commonwealth law -

before that termination but have not come into effect before that termination.

That effectively means that once we have finished with our legislation tonight it might be one, two or even three years before the Commonwealth Parliament gets around to dealing with our referral. In other words, I do not want to put the Commonwealth in a position in which our referral becomes somewhat of a mockery if there is only five minutes left in the ticking of the clock. Therefore, subclause (2) of the amendment is intended to protect not only the integrity of this legislation but also the Commonwealth's position once we have arrived at that point.

Having said that, I will raise one additional point before I resume my seat. I would be interested to hear from the Attorney General on this issue when he deals with the debate, because I notice that under this Bill we actually deal with the general notion of terrorism. I refer to division 101.1 of the schedule, titled "Terrorist acts", on page 14. The schedule then spells out what constitutes an offence in terms of a person providing or receiving training connected with terrorist acts, possessing things connected with terrorist acts, collecting or making documents likely to facilitate terrorist acts, and other things. I am a bit puzzled about whether we are not only referring constitutional powers to the Commonwealth, which we are competent to do, but also creating offences before we refer the power. If we are, that puzzles me. In other words, if we are to refer the power, I would have thought that it would be within the competence of the Commonwealth to create the offences. However, we appear to be pre-empting that, if members can follow what I am saying. I understand why we are referring powers, and I support that, provided that my amendment is dealt with in the affirmative. However, I cannot follow the logic that we will create a range of new offences under the schedule of the Bill and then apparently we will refer those offences to commonwealth law. I know that this next comment might be considered to be racial vilification, but to me that sounds a bit Irish. I am sure that there is a good explanation for it, but -

Mr J.A. McGinty: Can I try as a Scotsman?

Mr P.G. PENDAL: I was not reflecting on the Attorney General. He is far too sensitive about these things. I would be interested, when the Attorney General does respond -

Mr J.A. McGinty: One factor may go some way to answering it. The Commonwealth has already passed the relevant amendments to criminal law to spell out these offences. Normally a reference would be made and then the Commonwealth would legislate. The Commonwealth has already legislated. This is unusual in that it will not create any offences that do not already exist under current commonwealth law. All it does is to prevent someone from saying that there is not sufficient power for the Commonwealth to do that for a particular situation that may arise. It is unusual in that sense. It is already on the statute books of the Commonwealth.

Mrs C.L. Edwardes: Except for the fact that the Commonwealth will re-enact those offences once the States have referred the powers. I understand that it will pick up the States' referral. The offences have been created, the States will refer the power, those particular offences and not the general offences will be incorporated, and then the Commonwealth will re-enact its legislation.

Mr P.G. PENDAL: Who am I, as a mere member of this House, to go against an Attorney General and a former Attorney General? I will ask the question again. I am grateful for the assistance that has been provided, but I still cannot understand why, when we deal with a referral of power, we are talking about the basic law of the nation; that is, the capacity of this Parliament to refer certain powers to the Commonwealth to, in this case, deal with the fear of terrorism. I thought that it would have been sufficient for us to refer the power under that section of the Commonwealth Constitution and by way of this legislation. Why then is it necessary for us to create the offences? We do not need to create the offences. Surely that is for the Commonwealth to do once it receives the power that we will confer on it. It is a rather nice feeling to be giving the Commonwealth some power that it does not have and desperately needs. Apart from that -

Mr M.W. Trenorden: The history is that we never get them back.

Mr P.G. PENDAL: We will get them back. The Leader of the National Party made a good point. He said that the history is that we never get the powers back. If he supports my amendment, we will, because my amendment puts a finite term of five years on the referral of those powers. Therefore, the State would either get back the

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powers in five years and the Commonwealth would drop out, or it would be asked to deal with a renewal. People have said to me in the corridors that we cannot do that because Parliament might be out of session. All that means is that the people who administer these laws will need to do their jobs correctly; that is, they will need to say to the Attorney General of the day that the five-year term placed on the legislation by the Parliament in 2002 is about to expire and that, before the Parliament ended, a Bill should be introduced to extend that power for a further three or five years. The Leader of the National Party made a very good point, but his concern will be dealt with, provided that the House supports my amendment. I finish on one final note. I am still puzzled by this notion that we must create offences and then send them to the Commonwealth within the referral of powers. I would have thought that it would be sufficient for us to refer the powers and for the Commonwealth to do what it wanted with them.

In summary, I enthusiastically support the legislation. However, firstly, I do not like the Henry VIII implications of it; that is, leaving the working of the legislation at the whim of the Governor, which effectively means the Premier of the day. Secondly, my amendment will place a finite term on the referral, but there will be a capacity to extend that if necessary. Thirdly, subclause (2) of my amendment will protect the Commonwealth's position if, for some reason, it is slow off the mark. With those serious qualifications, I support the Bill.

MR J.N. HYDE (Perth) [8.22 pm]: I also very enthusiastically support this Bill. It is important to note that across Western Australia in a variety of constituencies, broad community support exists for the achievements to be made through this legislation. It is important to deal with it as quickly as possible. I support the amendment of the member for Kingsley at this stage. I do not intend to speak to the amendment as we aim to get the legislation through quickly.

Historically, if we were drafting a new Constitution today and outlining the relationship between the States and the Commonwealth, perhaps the powers in question would be allocated to the Commonwealth rather than the States. I am not prone to inserting sunset clauses in legislation, but in the belief that these powers should reside with the Commonwealth, I fully support the legislation and the amendment.

MR M.W. TRENORDEN (Avon - Leader of the National Party) [8.24 pm]: With a great deal of trepidation, I try to get out the words "I support the Bill", but only because I have not supported anything the Attorney General has done this year! Therefore, it is nice to say I support a Bill -

Mr R.F. Johnson: The Premier introduced the Bill.

Mr M.W. TRENORDEN: Yes, but the Attorney General has its carriage. I was being frivolous, and it is good at this time of the year to be a little light-hearted, given we have had a few harsh words in this House over the last few days. Nevertheless, it is not a Bill to be light-hearted about.

I took a step back when the news came out that the first bomb in Bali may have involved a suicide bomber, and that appears clearly to have been the case. This ramps up the situation Western Australia and Australia as a whole will face for some time. The National Party strongly supports the Bill.

I will make a few comments about the speeches preceding mine. The member for South Perth, as always in this House, gave a very considered address concerning the purpose of his amendment. I agree with its sentiment, but I prefer the Liberal Party's amendment, which the National Party will support. I will tell the member for South Perth why.

Sunset clauses in Bills are important, but I believe the member for South Perth's intention is better achieved by the amendment proposed by the member for Kingsley. If one considers the debate in the United States, and to a lesser degree Europe, and the rush to ensure we face the realities of the future, some caution and some considered thought should be involved in the process undertaken. I totally agree with the address of the member for Perth about ensuring these matters are progressed. However, it is still this State's consideration on these Bills. I like the fact that the measure will come back to both Houses of this Parliament to be dissolved.

This measure is about the people of Western Australia and the effects of the Bali bombings more particularly than the effects of September 11. Nevertheless, visions of September 11 are burnt into our brains. I will never forget the day in this place watching that second plane fly into the tower, although the effects of the Bali bombing were closer to home.

Mr A.J. Dean: It made your hair grey.

Mr M.W. TRENORDEN: Yes, it turned my hair grey, but Bali was closer.

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I suspect from the words of the member for Perth that the Attorney General might be considering the amendment put forward by the Liberal Party, which would be a wise decision. Is the Attorney General inclined to accept that amendment?

Mr J.A. McGinty: Yes - the one from the member for Kingsley.

Mr M.W. TRENORDEN: That is to the Attorney's credit.

Mr J.A. McGinty: I'm a soft touch.

Mr M.W. TRENORDEN: People have a go at this place on occasions, but at times like this I am pleased to say I am a member of this Chamber. It is wise and appropriate to give the powers to the Commonwealth, but we should give the last say to the people of Western Australia, not the Government of the day. I suspect that when all this is over, the Attorney General will not be aged 93 sitting in that chair opposite. He will have a life after politics.

Mr L. Graham: He looks it now.

Mr M.W. TRENORDEN: Fair comment. Somebody else will make the decision in the future. It will be appropriate for the matter to come back to both Houses at that stage. I commend the Attorney General for his decision.

MR R.F. JOHNSON (Hillarys) [8.28 pm]: I will be brief in my comments because, as leader of the House for the Opposition, I want to see the Bill pass this House tonight. The sooner it goes from this House to another place, the sooner it will become law. I support the Bill and the excellent amendment proposed by the member for Kingsley which I am pleased the Attorney General has indicated he will accept.

I lived with terrorism for many years. Before I emigrated to this country in February 1988, I lived in London and experienced horrific bombings, particularly those by Irish Republican Army terrorists. When I lived in a suburb in Surrey, I experienced something closer to home. A pub in Surrey - they are not called hotels in England - was blown to smithereens by the IRA. Civilians were killed in that pub, which was targeted because some of the soldiers from a nearby barracks frequented it when they were off duty and not in uniform. The intelligence unit of the Irish Republican Army, which is a terrorist group, found out that those soldiers went to that pub on certain nights of the week when they were off duty. The IRA blew it to smithereens. Not only soldiers but also civilians were taken in that blast. People were taken just like they were in the tragedies of the twin towers and Bali. As were my colleagues on both sides of the House, I was horrified by the twin towers tragedy. I have never seen anything in my life like the demolished twin towers that resulted from two massive acts of terrorism. The awareness of the deaths of thousands of innocent civilians in that disastrous tragedy will remain in my memory until my dying day.

As did my colleague the member for Kingsley, I acknowledge the tragedy that affected many Australians, particularly Western Australians, in the bombing that occurred in Bali, where so many young people who were members of the local Kingsley Football Club were tragically lost. Those young people were killed by a dreadful act of terrorism. They were not guilty of anything whatsoever; they were blameless, innocent young people who were holidaying in Bali as they usually did at the end of the football season. The tragedy for the Kingsley Football Club was not confined just to Kingsley, the home of that football club. Relatives and friends in suburbs close to Kingsley suffered the loss of loved ones. With other local members of Parliament, I attended the special memorial service on the Sunday after the tragedy. Just like the member for Kingsley and I, other local members or their constituents were dreadfully affected by the tragic loss of those young lives. It was a very moving occasion. That also will remain in my memory until my dying day.

I do not want to see acts of that nature committed here in mainland Australia, particularly Western Australia, because it is my home. I have four children and six grandchildren and I hope to have more grandchildren. One of the reasons I came to live in Australia was that I felt it was a safer place than the place I left. London is not a safe place. I do not think it will ever be a safe place. There are more cameras in the streets of London than the capital cities of the United States or anywhere else in the world. They are everywhere - probably two per cent of those cameras cannot be seen. People in England have grown up with terrorism and the experience of bombings and people losing their lives. That is one of the reasons I brought my family to what I believe is a much safer country. I believe this State is the best place on earth to bring up a family.

I support any legislation that can help to counter the possibility of dreadful acts of terrorism occurring in Western Australia in particular and in Australia. I would hate to see any Australians lose their lives through these barbaric acts of terrorism anywhere in Australia, no matter what State it is. We are all Australians; even me. I am an Anglo-Australian, but predominantly Australian. My first love is Australia. I have very few family

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members left in the United Kingdom now. During the 15 years I have lived here I have visited the UK on many occasions. Probably in the first five to 10 years, acts of terrorism occurred in and around London, Birmingham and other capital cities. I would hate to see similar events occur here. Australia is less prone to that type of terrorist activity because it has much stricter border controls, it is an island and it does not have an open-gate policy for people from around the world to come and live here as they wish. We have pretty good immigration laws.

I not only commend the Prime Minister for his actions in introducing this legislation and agreeing with the States to have uniform legislation to cover the whole of Australia but also I compliment Simon Crean and his Labor colleagues for playing their part in this country's anti-terrorism strategies. I equate this Opposition's attitude with that of the Federal Opposition. We will give whole-hearted support to the Government on this issue to ensure that we in Western Australia do our part as a Parliament to try to prevent any terrorist activities occurring here in Western Australia.

I have known people in the UK who have been affected very badly by acts of terrorism that occurred over many years. Many people have lost their lives. The UK obviously has its own anti-terrorism laws. It did not have them to start with but it has no doubt introduced them over the years to combat terrorism, which is predominantly perpetrated there by the IRA. I am sure the UK is in a similar position to that of Australia and will have strengthened its anti-terrorism laws because of the problems it has experienced over many years.

I compliment Minister Ruddock, the federal Minister for Immigration and Multicultural Affairs. He has stood up to a lot of criticism over the years because he has been firm on his policy on illegal immigrants. There is no question in my mind that illegal immigration into this country is a way in which terrorists can try to subvert -

Ms M.M. Quirk: The largest portion of illegal immigrants in this country are British backpackers.

Mr A.D. McRae: You should stick to the Bill rather than stray.

The SPEAKER: Members!

Mr R.F. JOHNSON: That was a puerile interjection. The member was referring to people who overstay their visas; they do not smuggle themselves into this country with forged passports and papers. It has been proved by the Department of Immigration that some of the people who have entered this country illegally have claimed to come from one country when they have come from another country. It is essential that Minister Ruddock maintain strict controls on illegal immigration into this country. We have a wonderful immigration policy. A tremendous number of genuine refugees are allowed to stay here, who do not have to come here illegally. They are nominated by UNICEF and come here legally as refugees. We have an outstanding record of compassion and human rights in that area and long may it continue. What concerns me are the people who come into this country, carrying false passports and papers, with questionable motives. Some would say that the motives of those people are that Australia is a soft touch and if they get temporary protection visas they will be given money, a place to live and all sorts of benefits to which Australians are entitled.

We are naive if we do not think that some will enter this country illegally with bogus names, passports and papers and act in a subversive manner. They are known as sleepers. It happens all over the world. Terrorist groups send sleepers into other countries. It happened in the United Kingdom. The Irish Republican Army sent sleepers into England. They were dormant for a few years until called upon to carry out acts of terrorism. I hope to God that that does not happen in Australia. I again compliment Minister Philip Ruddock for his strong stand on illegal immigrants. Long may he continue to maintain it.

I conclude my remarks by saying that I support this Bill wholeheartedly, as do all opposition members. The sooner we get it into place, the better. My only concern is whether the Premier and the Western Australian Government are allocating enough resources to do justice to the Bill before the House. I have heard that two or four officers will specialise in this area of counter-terrorism and information gathering.

Ms M.M. Quirk: Need to know.

Mr R.F. JOHNSON: The member for Girrawheen keeps saying it is "need to know". Maybe she knows more than I do. I think this Parliament -

Ms S.E. Walker: Maybe she wants you to think that.

Ms M.M. Quirk: It is none of your business.

Mr R.F. JOHNSON: What a disgraceful interjection: it is none of my business to know whether this Government is providing sufficient counter-terrorism resources. The Premier has said that two or maybe four

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officers will be used for intelligence gathering. That is not enough. This is a very serious issue, and we should be resourcing specialised officers within our police department -

Mr N.R. Marlborough interjected.

Mr C.J. Barnett: That was an intelligent interjection from the member for Peel, who is out of his seat.

Mr N.R. Marlborough interjected.

The SPEAKER: Member for Peel, you know it is disorderly to speak when not in your seat. It creates problems for the House.

Mr R.F. JOHNSON: I am not trying to be controversial. However, I would be failing in my duty as a member of this Parliament if I did not air my concern that I do not believe the Premier and the Government are putting enough resources into the very important area of counter-terrorism. It is a genuine concern. There are not enough resources. The Government told us before the election that it would increase the number of officers in the Police Force by 250. At the moment, there are 30 or 40 fewer officers than there were when the Labor Party took government. It will assign two or four of those police officers to the specialised area of counter-terrorism. That is not enough. Somebody might ask what is enough. I do not know, but I do not think that two or four officers is enough for a State the size of Western Australia. It accounts for a third of Australia's land mass. It could easily be infiltrated by terrorists. It has a massive shoreline by which terrorists could enter. We certainly need the assistance of the federal Government, the Australian Security Intelligence Organisation and the Federal Police. Our state police should also play their part. The provision of two or four officers is not enough. I urge the Premier to resist making press statements and trying to put a spin on the story, and to allocate the proper resources to this area of counter-terrorism, particularly information and intelligence gathering. I believe the Western Australian police are capable of doing that; however, more than two or four people are needed. It is no good the member for Girrawheen saying it is being done on a need-to-know basis. I am not asking what work those officers are doing or what intelligence they are gathering. I would prefer the Premier to exaggerate and say that 50 people are working on this. It might be a deterrent to terrorists. To say that two or four people are working in this area is to give those terrorists a green light. That is not a responsible line to take. I would rather he said nothing. I would prefer him to say that the area is properly resourced and that a sufficient number of specialised officers are dealing with the issue. To have only two or four people working on this is abysmal. It causes me concern.

Mr A.D. McRae: In that case, why did you insist on knowing how many were involved?

Mr R.F. JOHNSON: I think I have a right and duty to know because I represent the people in my electorate. The Premier said that two or four specialised officers are working in that area. I need to know whether it is that number or whether it is more. I would sooner that he not tell us exactly how many -

Mr A.D. McRae: Why?

Mr R.F. JOHNSON: I wonder how his brain works sometimes. If the Government told the terrorists that two or maybe four officers are doing this job, it would give them a green light.

Mr L. Graham: How do you know whether it is enough?

Mr R.F. JOHNSON: I do not know what is enough. I know that two or four officers is not enough.

Mr L. Graham: How do you know that?

Mr R.F. JOHNSON: It is definitely not enough for a State the size of Western Australia. I want the Premier to give a commitment that he will provide more resources. He says there will be no extra funding and that these initiatives will be funded from existing allocations. No extra resources whatsoever are going into this very important area. We are debating this as a matter of priority so that we can try to counter terrorist attacks in this country and particularly this State. If we need to do that, there must be a need to put sufficient resources into that area. I regret to say that I do not believe the Premier has demonstrated that the resources, either financial or manpower, are being allocated. I hope that the Premier will put more resources into that area. We could have the best legislation, but unless specialised intelligence officers are working in this area, we are doing a disservice to the people of Western Australia. I hope that will not be the case.

MR A.D. McRAE (Riverton) [8.47 pm]: I add my support to this Bill as it goes through this House. I want to reflect on the feelings in my community. From what people have said tonight, I suspect that those feelings are being experienced throughout the communities of Western Australia. I characterise the feelings and responses to the terrorist attacks in the United States and Indonesia as shock and horror followed by a growing sense of anxiety both on a personal level and about the general wellbeing and security of our community. It has become clear to me after speaking to people in the electorate of Riverton - this has been reflected by the speakers who

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have already given their thoughts on this Bill - that those responses, emotions and thoughts have evolved into a steadfast resolve to not be cowed by the terrorist attacks being perpetrated by insane people within the world today. I join in that community sense of steadfast resolve to not be cowed; to not be reduced to a situation in which fear is our only response. This Bill is an intelligent and right response to what we are presented with; that is, the potential for terrorist acts to occur much closer to home.

Our communities expect this coordinated response of the Territories, States and Commonwealth, and this Bill delivers on that. The member for Hillarys referred to two or four or whatever number of officers being assigned to this work. I do not think that at this stage of the debate on this Bill those numbers are relevant to the action we are taking. This Bill will establish a national coordinated response. It will create a network of intelligence and a network of officers throughout the country. If we accept that Western Australia by and large contributes about 10 per cent to any national effort and on top of that is the layer of commonwealth effort, then we know that at least 20 officers are dedicated to intelligence networks around the country in addition to what the Australian Federal Police, the Australian Security Intelligence Organisation and other security agencies already have in place. For example, I ask members to reflect on the very great outcomes that we have seen from the partnership of the Australian Federal Police and the Indonesian security agencies in pursuit of the criminals and terrorists who perpetrated the Bali outrage. They have systematically hunted down those people and have revealed the network that was involved in that outrage. That was done as a result of a very great partnership between Australian police and security services and our nearest neighbour, which is struggling probably as much as any other country in the world to deal with internal security threats. This legislation is an example of a good partnership and I expect it will contribute to and add to that partnership.

Mr R.F. Johnson: I absolutely and wholeheartedly agree with what you said about the cooperation between the Indonesian police and the Australian Federal Police. My concern is that it is happening after the event. I want to see legislation in Western Australia that would prevent an event such as happened in Bali. My concern is that we do not need resources after the event; we need them before the event to prevent it from happening.

Mr P.B. Watson: You could need both.

Mr A.D. McRAE: That is right. We cannot wind back the clock. Terrorist networks and terrorist activities are at large. We must deal with what will happen in the future. There is no point in saying what we would rather do; we must now deal with the reality of an uncertain world. The way to deal with that uncertainty is to maintain faith in our society and its values of openness and respect for each other. We must maintain our steadfast resolve not to be cowed and not to be turned into a bunch of rumour mongers and myth makers jumping at every shadow.

I had a need to counsel some people who came to my office and who were very anxious about what they had heard second, third or fourth hand about somebody who they thought was connected to a terrorist network in Australia. I passed on that information. However, when they were glaringly and obviously wrong, I counselled people not to jump at shadows. It is necessary for us as elected members to have counselling abilities so that we can make those judgments. I suggest to all members tonight that this Bill will give us the capacity to point to concrete action for a coordinated response to intelligence gathering; that is the right thing to do.

I will conclude by acknowledging two matters: first, division 101 of the Bill provides a very good outline of the acts that constitute terrorism, many being commonsense descriptions of terrorist activities. Once this Bill is communicated to the wider public and society at large, they will feel that there is a good understanding of how to tackle a network of terrorism and that the Bill goes a long way to attacking that network.

Secondly, in August this year the member for Collie and I were in east Java - our sister State. Although I have just remarked on the struggle that the Indonesian Government now has in dealing with a serious internal threat, I must say that the Indonesians I know in Western Australia and those I met in east Java in our sister city of Surabaya overwhelmingly want to increase the level of governance and the rule of law in their communities and want to reach out and continue to create partnerships with us and with other parts of the world. For heaven's sake, for our sake, for our children's sake and indeed for our neighbour's sake, let us not confuse anti-terrorism legislation and a steadfast resolve to fight terrorism wherever we find it with the need for good neighbourliness -

Mr M.J. Birney: Good what?

Mr A.D. McRAE: Neighbourliness. Did the member for Kalgoorlie not hear that? Does he have something in his ear tonight?

Ms S.E. Walker interjected.

Mr A.D. McRAE: Flogged by a limp lettuce.

Mr Colin Barnett; Ms Margaret Quirk; Mrs Cheryl Edwardes; Mr Phillip Pendal; Mr John Hyde; Mr Max Trenorden; Mr Rob Johnson; Speaker; Mr Tony McRae; Mr Jeremy Edwards; Ms Sue Walker; Mr Paul Omodei; Mr Matt Birney; Mr Larry Graham; Dr Janet Woollard; Mr Jim McGinty

The point I want to make is that although I listened to the member for Hillarys and I was drawn into answering an interjection, I thought the tangent on migration by the member for Hillarys' added nothing to this debate. I would counsel against confusing anti-terrorism legislation with a serious and quite different debate about migration, about who can come to this country, about the route by which they come and about the controls we need to put in place for border protection.

Mr R.F. Johnson: I was talking about illegal migration, not migration.

Mr A.D. McRAE: If the member for Hillarys wants to go down that path, he need only ask who the single person was who was detained on suspicion of involvement in a terrorist network, what country that person came from and how that person came to Australia? That person came legally from the British Isles and has resided in Australia for many years. On the face of it, that person did not meet the profile that the member for Hillarys invented as a little aside and as a convenient tangent argument about what we must look out for. Let us be clear about this: terrorism does not fit the orthodox model or pre-conditioned belief held by the member for Hillarys. Terrorism takes all sorts of guises.

I conclude by saying that I support the Bill. I appreciate that the Attorney General has indicated he will accept the amendment from the member for Kingsley, which is a sensible and intelligent contribution to the debate.

MR J.P.D. EDWARDS (Greenough) [8.56 pm]: Mr Speaker, I will make a few brief comments on the Bill because I will be taking your place in a moment, so you will forgive me if I am a couple of minutes late.

It is a sad day that we must bring into the House this Bill. I support it, of course, and I commend the Prime Minister for his strong stand in combating terrorism. As one of my colleagues and Simon Crean, the federal Leader of the Opposition, said - and I am sure this Parliament as a whole would say - we would be very foolish not to support the Bill. Australia has never before had to face the scourge of terrorism. I suppose in many ways, Australians have lost the innocence of their lifestyle after what happened in Bali. It brought terrorism home to us through the loss of friends, relatives and others in that tragedy.

In the United Kingdom and Europe - I intended to say the United States to a lesser degree but I do not mean it to a lesser degree - terrorism has probably been around for a lot longer than it has been in the United States. Europe has lived with terrorism for years. I recall some 20 years ago, when the Irish Republican Army was at its height, being unable to find a litter bin on any railway station in London because the IRA put bombs in them. We in this State do not know what it is like to live with that sort of activity; we take our lifestyle for granted. I believe that is the kind of awareness that the Prime Minister was talking about the other day when he warned us to be more aware. I read with some interest an article in *The Bulletin* on a meeting of security chiefs and various other people at the convention centre in Canberra. Apparently they went into the centre at nine o'clock in the morning when a small red car was parked outside in a no-parking zone. Every one of those people at the convention passed the red car and at 12 o'clock, when they all trooped out again, the red car was still in that no-parking zone but did not have a ticket. That is the sort of awareness that the Prime Minister was probably talking about. We need to be aware of these sorts of things. I am not trying to paint a frightening scenario by saying that, but because of the relaxed and casual lifestyle that we enjoy it is often difficult for us to take note of these things. I am sure that is the sort of issue that the Prime Minister was trying to raise. I am sorry. I am probably digressing from the Bill, but this is all part of what terrorism is all about.

It is important to ensure that whatever deterrent we put forward is strong enough and gives the authorities the muscle they need to deal with terrorism in its worst form. As I have said, God forbid that terrorism should ever come to our shores. However, I am sure the agencies that are involved will be working closely with the defence forces to ensure that terrorism does not come to our shores. I am very conscious of the fact that the area that I come from in the mid west of the State has a vast coastline. We already have problems in that area with people bringing in drugs. We also have people smuggling, but perhaps to a lesser degree now. A year ago, people smuggling was rampant in the north west, but that has now been contained to some degree. It is imperative that we all be aware that terrorism is on our doorstep and that we make every effort to combat it. With those brief words, I support the Bill.

MS S.E. WALKER (Nedlands) [9.01 pm]: I support the Terrorism (Commonwealth Powers) Bill 2002. I have not had the opportunity of considering the two amendments. I was interested to hear what the member for South Perth had to say, and I will come back to that later, because I want to expand on what the member for South Perth said about whether his proposed sunset clause would be affected if a prosecution or investigation was afoot.

I have looked at the second reading speech of the Premier of New South Wales, Mr Carr, and the second reading speech of the Attorney General of this State. However, we do not appear to have heard how this legislation

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came about and how it is part of the federal counter-terrorism policy in response to the events of 11 September and Bali, and I think it is important to record that for Western Australia. The federal counter-terrorism response and policy has been on foot for a considerable time, well before the tragic events of Bali. A raft of federal legislation has been put in place in accordance with an agreement that was reached at the leaders summit on transnational crime and terrorism that was held on 5 April 2002. The summit decided, firstly, that state constitutional references would be sought to support federal terrorism offences and related provisions of national application. It decided, secondly, that the state references would refer the text of the offences, together with a power to amend them once enacted, along the lines of the corporations references. I have been thinking about that too, member for South Perth, and I felt - the Attorney General may be able to fill us in - that it was a way for the Commonwealth to outline for us specifically what it intended to do once it got this power. The leaders summit decided, thirdly, that the referred text would include provisions dealing with consultation/agreement with the States and Territories on future amendment of the federal offences, and roll back of the federal offences to prevent any unintended displacement of state or territory laws to be identified by the States and Territories. It decided, fourthly, that the target date for commencement of the new federal offences would be 31 October 2002. That obviously has not eventuated. A later meeting was held on 24 October, and this Bill is part of that.

The Prime Minister and the state and territory leaders agreed at the transnational crime and terrorism summit that a new national framework was needed to meet the new challenges of combating terrorism and multi-jurisdictional crime. They agreed -

... to take whatever action is necessary to ensure that terrorists can be prosecuted under the criminal law, including a reference of power of specific, jointly agreed legislation, including roll back provisions to ensure that the new Commonwealth law does not override State law where that is not intended and to come into effect by 31 October 2002. The Commonwealth will have power to amend the new Commonwealth legislation in accordance with provisions similar to those which apply under Corporations arrangements. Any amendment based on the referred power will require consultation with and agreement of States and Territories, and this requirement is to be contained in the legislation.

I compliment the Commonwealth Government on its swift action on a range of issues with regard to the terrorism response. The Commonwealth Government introduced a package of Bills in the Commonwealth Parliament that was designed to enhance Australia's capacity to deal with terrorism. This package included the Security Legislation Amendment (Terrorism) Bill 2002 (No 2); the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, known as the ASIO Bill; the Criminal Code Amendment (Suppression of Terrorist Bombings) Amendment Bill 2002, known as the bombings Bill; and the Suppression of the Financing of Terrorism Bill 2002, known as the financing Bill.

Among other things, the Bills create a range of new federal offences. Items 3 and 4 of schedule 1 of the Bill before us, together with items 2 and 3 of schedule 1 of the financing Bill, will insert a new part - part 5.3, terrorism - in chapter 5 of the federal Criminal Code. That code was established by the Criminal Code Act 1995. That new part will create a series of offences with regard to terrorism that will be linked to the commission of a terrorist act. The meaning of that expression is defined and limited to a range of specified actions taken or threatened with the intention of advancing a political, religious or ideological cause and coercing or influencing by intimidation a Government or intimidating the public. A terrorist act apparently will not give rise to an offence unless it occurs in circumstances that bring it within the scope of the commonwealth constitutional powers. The new part sets out particular circumstances, which are clearly within the scope of the commonwealth constitutional powers, in which a terrorist act will give rise to an offence. Item 3 of the bombings Bill will insert a new division 72 - international terrorist activities using explosives or lethal devices - in chapter 4 of the Criminal Code. This is important, because this legislation to which we are to give approval will be part of that code. The purpose of the new division is to create offences relating to terrorist activities using explosive or lethal devices and to give effect to the United Nations Convention on the Suppression of Terrorist Bombings signed in New York on 15 September 1997. Item 3 in schedule 3 of the financing Bill will also insert a new part - offences to give effect to security council decisions. All but the ASIO Bill were passed by the Commonwealth Parliament on 27 June this year. I understand that the ASIO Bill has to be considered further by the Commonwealth Parliament.

The Bills are based on existing commonwealth constitutional power. As the commonwealth Constitution does not give the Commonwealth Parliament power to make laws with respect to terrorism, the Bills rely on a patchwork of powers. The Commonwealth Parliament's legislative power to deal with criminals and criminal activity derives from the Constitution in four ways. First, the Constitution specifically confers legislative powers in respect of such matters on the Commonwealth Parliament in section 51(xxxvii) and section 119. Secondly, the Commonwealth Parliament has plenary powers, including powers with respect to crime and law

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enforcement, with regard to commonwealth places in section 52(i), and with regard to territories in section 122. Thirdly, the other expressed legislative powers of the Commonwealth Parliament, together with both the implied power to enact incidental or ancillary legislation and the expressed grant of incidental power in section 51(xxxvi), provides a basis for the Commonwealth Parliament to create criminal offences in respect of the subject matters of those expressed powers and to provide for their enforcement. Fourthly, the commonwealth power may rely on inherent powers derived from the creation of the Commonwealth as a separate polity and its emergence as an international State to legislate to create criminal offences to protect its own existence and legitimate activities.

I turn now to the legislation before us. The new federal terrorism offences in the Criminal Code to be covered by the reference will be in division 101, which deals with terrorism offences based on terrorist acts; division 102, which deals with terrorist organisations; and division 103, which deals with financing terrorism. The offences under the bombings Bill, which relate to international terrorist activities using explosive or other lethal devices, and the remaining offences in the financing Bill, which relate to security council decisions, give effect to international obligations and are supported by the Commonwealth's external affairs powers. It is therefore not necessary for States to refer power to give these latter offences any broader application.

I will say a little more about the federal Government's role and how it has approached its response to terrorist activities. I will quote from the federal *Hansard* of 24 June 2002 and the comments made by Senator Chris Ellison, which comments provide an outline of the Howard Government's approach to the response to terrorism at that date. He said -

The Howard government is committed to the war against terrorism and to ensuring that we have the best possible tools to fight that war. The Howard government is committed to delivering strong legislation to protect the community against terrorism. It is in this package of proposed legislation that we have the response by this government to meet these threats. This package contains, firstly, the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]; secondly, the Suppression of the Financing of Terrorism Bill 2002; thirdly, the Border Security Legislation Amendment Bill 2002; fourthly, the Telecommunications Interception Legislation Amendment Bill 2002; and, last in the package but not least, the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002.

I raise this matter because it is very important. This is an important time in history. It is a very sad time for many people. It involves a particular moment in history. When dealing with legislation in this Chamber, it is important that we know the background to how it has come about and what has been happening with it. Senator Ellison, the Minister for Justice and Customs in the federal Government, went on to say -

The government has developed a strong and effective package of legislation that will ensure the identification, investigation and prosecution of persons involved in terrorist activities. This package and other measures taken by the government are designed to bolster our armoury in the war against terrorism and to deliver on our commitment to enhance our ability to meet the challenges of the new terrorist environment. In developing this legislation, the government has been conscious of the need to protect our community from the threat of terrorism without unfairly or unnecessarily encroaching on the rights of individuals and the liberties of individuals that are fundamental to our democratic system. We believe that we have got that balance right. The government has given very careful consideration to the formulation of the legislation and the legislation contains significant safeguards. We recognise, of course, that it is unusual legislation. It must be remembered, however, that we are not dealing with ordinary criminal activity. What we are dealing with here is an extraordinary set of events that may be repeated. The government cannot just sit on its hands. It has the responsibility to protect the people of Australia and we take that responsibility very seriously.

I commend the federal Government. I put on record - the Leader of the Opposition also mentioned this in his speech - that the Prime Minister has been very bipartisan towards the federal Leader of the Opposition, Simon Crean. It is appropriate for me to say now how very disappointed - I am speaking from my heart - I am with the Premier of this State. He went right down in my estimation. I can say very comfortably now that on the first sitting day after the Bali bombings, the Premier stood in this Parliament and said -

These events have such a wide-ranging impact on everyone in our community that people are seeking a way to express their sympathy and support. Following a request that I received not long ago, I convened a meeting with you, Mr Speaker, and the President of the Legislative Council.

I truly thought he was about to say "and the Leader of the Opposition". Not one approach has been made to include the Leader of the Opposition in any discussion about this State's preparedness for disaster. Not once has the Premier extended the hand of bipartisan support. I want that to be recorded because it is very poor, and I will

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tell members why I think it is very poor. Regardless of what goes on in this House, the Leader of the Opposition deserves to be shown some respect, and the people of Western Australia would want the Premier to show the Leader of the Opposition that respect. We on this side of the House represent other people in Western Australia.

When I raised the matter of security at Parliament House, which is in my electorate, I asked the Leader of the Opposition whether he had been briefed on security for the Parliament. I do not know whether anyone else on this side of the House has been briefed about the security. However, as a former crown prosecutor, I understand security aspects and people's desire for personal safety. I am alert to being in a position in which people sometimes feel that they are threatened by different things. However, I could not ask the Leader of the Opposition, or anyone else on my side of the House, about security arrangements at Parliament House. Today I saw a lot of police around the Parliament, checking ministers' offices. I think they were security guards; they were not with anyone. I did not ask the member for Kingsley, but I do not think anyone came near our offices today. I am very disappointed and it is very ungracious of the Premier not to include our leader in those discussions. At least then we could have asked our leader what the current position was.

Mr C.J. Barnett: Member for Nedlands, you have raised that issue and the one comment I will make is that what you say is true. The reality is that the only communication I have had with the Government has been with the federal Government - full stop. That is in sharp contrast to the conduct of the Prime Minister and other State Premiers.

Ms S.E. WALKER: I thank the Leader of the Opposition. It struck me how gracious the Prime Minister was. I know that we have our differences in this House - someone described it to me as a bear pit - but they should be put aside and common decency should be shown to people who represent other electorates and the people of Western Australia. In times of emergency I would like to know that we can ring our leader and find out what the situation is.

My electorate has several of the large major hospitals in the State. I will be asking for a briefing on the security at those hospitals. I share other hospitals with the Leader of the Opposition. I would like to know whether the Government will brief members on this side of the House on state infrastructure. However, I will put that issue to one side because I thought it appropriate to raise it at this point.

I will continue with what has happened federally, because it is important in this context.

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

Ms S.E. WALKER: In relation to infrastructure, on 14 May 2002 the federal Attorney-General, Hon Daryl Williams issued a media statement indicating that \$24.9 million would be allocated over four years as part of the federal Government's strategy to protect our national information infrastructure. On 13 September this year the federal Minister for Justice and Customs announced that security arrangements had taken off. His media release states -

Australia's aviation security measures have been significantly enhanced in the year since the September 11 terrorist attacks in the United States . . .

On 24 October this year the Prime Minister released a statement on the counter-terrorism review. His media release states -

The government is committed to ensuring that Australia has every tool it needs to prosecute individuals who engage in heinous crimes like those in Bali. In order to ensure that Australia can effectively cooperate with the broadest range of countries in bringing such people to justice, including through mutual legal assistance and extradition on the basis of dual criminality for murder, the government is introducing an extra-territorial murder offence . . .

I raise these issues because I would like the federal Government's actions to be recorded in this Parliament because at times those important matters are not recorded here. The federal Attorney-General announced on 24 October the implementation of stronger powers to prosecute terrorists. He referred to the powers under consideration in this Bill.

The purpose of this Bill is -

. . . to refer certain matters relating to terrorist acts to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth.

Mr Colin Barnett; Ms Margaret Quirk; Mrs Cheryl Edwardes; Mr Phillip Pendal; Mr John Hyde; Mr Max Trenorden; Mr Rob Johnson; Speaker; Mr Tony McRae; Mr Jeremy Edwards; Ms Sue Walker; Mr Paul Omodei; Mr Matt Birney; Mr Larry Graham; Dr Janet Woollard; Mr Jim McGinty

That provision deals with matters referred to the Parliament of the Commonwealth by the Parliament of any State or States, but so that the law shall extend only to States by which Parliaments the matter was referred, or which afterwards adopt that law.

A commentary on this matter assumes that State Parliaments can refer matters to the Commonwealth Parliament and give constitutional powers to pass laws about them. In theory, it makes the division of powers between the Commonwealth and the States quite flexible by enabling them to change matters by agreement between themselves, as we are doing tonight. The section raises some legal questions about how the power works. This relates to the amendments of the members for Kingsley and South Perth. The commentary refers to section 109, and outlines that the commonwealth law overrides any inconsistent state law. The power can be referred in such a way that it automatically returns to the States after a specified time. The commentary before me poses a question that is not settled: can a State can take the referred power back at any other time? It indicates that if a reference ends, commonwealth power ends too, and the matter becomes the sole responsibility of the States.

I hope the Attorney General's adviser can enlarge on this point for us. Therefore, the States have cautiously sought to terminate references of power through the legislation; namely, through clause 5, which is the subject of the proposed amendments. Interestingly, in order for the States to refer this power, it can be referred by only some of the States. Once it is referred and the law is enacted, other States can then adopt it if they so wish.

Interestingly, the powers under section 51 have not been used often. The only references I could find related to interstate aviation and extended commonwealth powers during the Second World War. More recently, references were made on meat inspection and aspects of family law. An example of legislation that exists under this power is the Commonwealth's Mutual Recognition Act, which requires States to recognise each other's standards for most goods and occupations.

What is driving this Bill? It started with the September 11 attacks in the United States. The Commonwealth Liberal Howard Government acted quickly to adopt new policy measures outlined in legislation and the provision of substantially more resources for security and intelligence agencies to bolster Australia's ability to combat terrorism. On the legislative side, the Howard Liberal Government has passed a package of counter-terrorism legislation that has created a number of offences in relation to terrorist acts and the financing and membership of terrorist organisations. I compliment John Howard on his handling of all issues relating to terrorism. I contrast his handling on this issue to that of the Premier of this State.

Mr C.J. Barnett: I complimented Simon Crean on this aspect.

Ms S.E. WALKER: I agree with the Leader of the Opposition in that regard - Simon Crean has been very gracious. I will say no more about the federal Government.

This is a small Bill comprising five clauses. Attached are the offences created in relation to terrorist acts. I have a concern that we are giving over this power, and it is important that we can get it back. I do not agree that the Governor should be the person who determines whether we get them back. I am not sure that I agree that both Houses of Parliament are required for that purpose. Those matters will arise during debate. I hope that during consideration in detail, the member for South Perth can enlarge on his comments on his Henry VIII clause, which I found very interesting. I support the Bill.

MR P.D. OMODEI (Warren-Blackwood) [9.25 pm]: This is important legislation. In the interests of not wasting time, I will not go over the areas already discussed by members. I understand that the Bill is one of three pieces of legislation involved in the state reference of powers over terrorism to the Commonwealth. First, the current commonwealth terrorism offences measure; second, a model Bill, similar to those already introduced in the New South Wales and South Australian Parliaments; and third, the commonwealth Criminal Code Amendment (Terrorism) Bill.

It is important that Western Australia proceed with this Bill as quickly as possible. I understand that other States are yet to introduce the model legislation. I understand Queensland has yet to do so, and Victoria is engaged in an election campaign at the moment and its Parliament probably will not sit again before Christmas. Needless to say, they are masters of their own destiny, but it is important that this legislation be passed in Western Australia.

I rise as the opposition spokesman for emergency services. I am surprised that the Premier is not here for this most important legislation. Albeit a small Bill, it is vital for the safety of the people of Western Australia. I am also surprised that the Minister for Police and Emergency Services is not in the Chamber.

Ms M.M. Quirk: She is at a ministerial conference on hand guns in Sydney. Are hand guns not important?

Mr P.D. OMODEI: I know of nothing more important at the moment than this legislation and its passage through Parliament. The Premier has the important position as the premier figure in Western Australia. The

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Government of Western Australia is made up not just of members of the Labor Party; but also members of the Opposition. We are all part of the process of passing legislation through Parliament. I find it surprising and incongruous that the Premier is not in the Chamber. I take members back two years to the estimates debate in which I raised the important issue of government measures to provide security to installations in Western Australia. This was before September 11. I raised it again in the last estimates debate, and I asked a question about whether the state emergency plan and local government emergency services plan were both up to date. The Premier of Western Australia failed to properly answer those questions. That was because Western Australia's preparedness was lacking. That matter continues to be of great concern. I recall clearly two or three years ago during an Executive Council meeting when I was a minister of the Crown, the Governor Sir Michael Jeffery raised the issue of the security of Western Australia, and the flimsy veneer that protected our resources. He said that 20 well-trained undercover people could come into Western Australia through normal channels and cripple the State - that is, our energy and water supplies and a number of other important installations, including our medical facilities. I am reluctant to raise these issues because, as members of Parliament, we know well that a number of people in Western Australia could be regarded as unstable. They are not religious fanatics but people who may be suffering an illness and not be on medication. They have the capacity to do great damage to the security of Western Australia.

Mr P.G. Pendal: There could be an odd one here.

Mr P.D. OMODEI: There could be an odd one here, member for South Perth. The member for Kingsley will remember well the visit we made to the Swanbourne Barracks and the display put on for us by the Special Air Service. I remember that they used live ammunition and that the member for Kingsley had her foot burnt by a cartridge that lodged in her shoe. There is no doubt that highly trained SAS people are in Western Australia and that a tactical response group operates here, which is well trained. However, no distinct body is being trained to combat terrorism.

Like many other members of this place, I have been to all the far flung places in Western Australia. I am reminded of the North West Shelf gas facilities, and obviously some of them are easier to guard than some of the water supplies and electricity installations close to the metropolitan area. We need only think about the proposition of blowing up our sewerage facilities to imagine what would happen if the sewer backed up.

Mr R.C. Kucera: Trust you to think of that. You are usually in it - just the depth varies.

Mr P.D. OMODEI: Trust the Minister for Health to raise his objection to that. It is a real possibility. It would take one 20-litre drum of the appropriate insecticide to put our whole water supply into disarray. We do not need terrorists or someone with a fanatical religious background on a crusade or a sleeper who has been in Australia for many years; it would only take someone with an unstable mind to create real problems.

I understand that the Australian Federal Police and the Australian Security Intelligence Organisation have an important role to play.

As did the member for Nedlands, I commend the federal Government, the Prime Minister and the relevant ministers for their action. It has not been mirrored by the Australian Labor Party, the Premier and the ministers responsible.

I too was a member in this place during the sitting of Parliament on September 11, when the World Trade Center was hit by terrorists. I recall very clearly the Leader of the Opposition saying that the World Trade Center had been hit by an aircraft. Everybody thought he was joking; there was an air of disbelief. Members who were taking part in the debate went and sat in the bar and watched the footage as the first tower was ablaze and, before our very eyes, the second plane hit the building, and then it collapsed. It had an impact on everybody. The world changed from that date. A consequence not recognised by everybody in the street was the impact it had on families throughout the world: people who invested, people's security and the stock market. It impacted on almost every family who had investments in the bank or even under the bed. A similar event could throw the financial markets of the world into chaos. It is vital that preventive measures be taken. The member for Pilbara made a valid comment when he said we probably need to do two things: we need to try to prevent an event and at the same time to be prepared to deal with a disaster, whether it is an act of terrorism or a natural disaster.

I referred earlier to the State Emergency Services plan. I would be very concerned about an accident in Fremantle Harbour involving a nuclear powered ship, with the "Fremantle Doctor" blowing a bloom of pollution over the city of Perth. The impact of such an event would be absolute devastation. The World Trade Center event was followed then by the Bali bombing, which affected all of us. As the opposition spokesman for emergency services, I am concerned, that the Government has not provided a briefing to the Opposition on the State Emergency Services plan. I thought that would have been on offer. I will seek a briefing on that plan. I

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know for a fact that not all local governments have their emergency services plans up to speed. Some have excelled and some have none whatsoever. If ever there were a time to use an event as a catalyst to improve our preparedness for any event similar to that which has occurred in recent times, now is the time to act. We must act in a bipartisan way to ensure that the concerns of the people of Western Australia are placated and that the people are made aware that everything humanly possible is being done by their Government; namely, the Executive, government members and opposition members.

I support the legislation and reiterate my disappointment that the Premier is not here. If ever there was a time when the Premier and the Minister for Police and Emergency Services should be in this Parliament it is when we are discussing the most important Bill to come before this Parliament this year.

Ms S.E. Walker: Which ministers are here?

Mr P.D. OMODEI: Three ministers are in Parliament. Opposition members outnumber them by three to one. I support the legislation and commend the federal Government for expediting the Bill. I hope it has quick passage through the Parliament.

MR M.J. BIRNEY (Kalgoorlie) [9.37 pm]: I realise that the hour is late and that we have had considerable debate on this Bill. However, I would like to place on record a couple of points. It must be said that there can be no more barbaric act than that of terrorism. Any act that involves the senseless and random taking of innocent lives must be deplored at every corner. To date, those types of events have not touched Australian and certainly not Western Australian soil; albeit, we recently saw the tragedy that occurred with the loss of Australian, particularly Western Australian, lives in Bali. Western Australia may well be considered a good target for people who seek to perpetrate their evil on civilised society. I say that for a number of very good reasons. Some of the intelligence to come from the United States recently indicates to us that past terrorist acts have been particularly concerned with loss of life. In fact, the point of those attacks has been to ensure massive loss of life. Intelligence coming from the US now indicates that future terrorist attacks may well be designed to cripple economies throughout the world, particularly western economies.

If we are to accept this intelligence as good intelligence, and if we are to apply it to Australia, it could well be said that Western Australia has a few potential targets, the destruction of which would have the capacity to cripple our economy. I think everyone would agree that the massive mineral and energy resource projects in Western Australia would be attractive targets for terrorists. With that in mind, it is important, if not vital, that we as the legislators in this State guarantee that adequate legislation is in place to ensure that we are well equipped to deflect any possible terrorist attack and to deal with any terrorist attack that does take place in Western Australia. Members need only to look at the Palestinian-Israeli conflict to see some particularly abhorrent examples of terrorism, particularly by the Palestine Liberation Organisation and other Palestinian organisations that have taken the credit - if I can put it that way - for some of the disgraceful suicide bombings in Israel. Those attacks have caused the massive loss of innocent lives, including women and children and other people going about their ordinary, everyday business. We in Western Australia have a very good and unique way of life, and that needs to be protected at all costs.

When driving to a meeting on Monday afternoon I was listening to ABC radio, and I was particularly disturbed to hear that New Zealand has issued an alert to its citizens that Australia is now considered a country with a heightened terrorist threat. That alert was designed to ensure that New Zealanders take that risk into consideration before deciding to travel to Australia.

Mr B.J. Grylls interjected.

Mr M.J. BIRNEY: Some people may think that that is not a bad thing, but I am not one of them. The alert put out by the New Zealand Government will have a measurable effect on the Australian economy. It is a very sad day when one of our closest neighbours sees the need to issue an alert about the security arrangements that exist in Australia. That highlights the pressing need for this legislation.

I think it is fair to say that security arrangement in Western Australia are not good. We do not have massive amounts of security surrounding our icons or bastions of democracy. This Parliament is one of those bastions of democracy. In my view at least, security arrangements in this Parliament are pretty poor. I think that has been the case for some time. I am sure that, in the light of recent threats, the Government will take that on board and seriously consider reviewing the security arrangements at Parliament House.

This State's security arrangements are fairly lackadaisical in any case. I recount a story about an incident that happened to me about a year and a half ago. I had been a member for only a few months. I was working in my office in the post office building in Hannan Street, and I decided to go across the road to buy an orange juice. When I walked outside my office, I found that the main street was absolutely deserted. Not a soul was in sight,

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although a shopping trolley containing a duffle bag was sitting at the front of my office. When I looked around for all the people who normally inhabit Hannan Street, I was surprised to notice that not a soul was to be seen, even though it was 10.30 in the morning. I glanced towards the end of the street and saw no less than 300 or 400 people behind a barricade at the end of the block. At the other end of the block were another 300 or 400 people behind another barricade. The group of people at one end was madly gesturing for me to make a run for it, and the people at the other end were also whistling and screaming at me. It turned out that there had been a bomb scare and every building in the block had been evacuated - except mine. Various people have different points of view about why my office was not evacuated when everybody else's had been! An individual in the post office had said that he had a bomb in his bag and that he was going to blow things up. He then placed the alleged bomb in the shopping trolley outside my office. As I walked out of my office in a bit of a daze, I walked straight up to the shopping trolley. We generally do not take alarm at shopping trolleys parked in the middle of Hannan Street. I could not understand what the people at the end of the block were saying to me, but I eventually worked it out and walked to one end of the street, straight past the shopping trolley containing the alleged bomb. At the very least, that highlights that we do not have adequate security arrangements in place. It is fair to say that over the years we have not had a need to put them in place. However, the time has come for us to think very seriously about the security of not only the individuals associated with this Legislature but also the citizens of Western Australia.

It is important that we adopt a joint approach in conjunction with the federal Government. At the end of the day, the federal Government is the body that has the overwhelming majority of intelligence resources, such as the Federal Police. Of course, we also have the National Crime Authority, which will soon become the Australian Crime Commission. Together, those bodies form an intelligence strategy that is designed to ensure the safety of our citizens. If the State Government takes a one-off approach and refuses to accept the fact that we need this joint approach with the federal Government, we will be the poorer.

I said by way of interjection when the member for Girrawheen was having her say that I do not think I have read a worse second reading speech in the two years I have been in this place. I read it about five or six times and could not understand it. I simply did not know what the Government was trying to do. I spoke to a few people who are a bit more learned than I, and I now have a rough idea about what the Government is trying to do. I support that approach. I urge the Government of Western Australia to take these comments on board. I urge it to review our security arrangements. As I said, we have not in the past had a great need to dedicate too many resources to state security. The time has now come for us to do that. I am very pleased that the State Government is working with the federal Government to ensure that our security needs are met.

MR L. GRAHAM (Pilbara) [9.49 pm]: It is a truism in politics that if a State ever wants to use a power again, it does not pass it onto the central Government unless the legislation contains a return clause. There are hooks in this legislation that we have yet to see. There are any number of examples of that happening in the history of Australia, not the least of which being the temporary handing over to the federal Government of state taxing powers, which never came back. The political will to hand over those taxing powers is similar to the will to have this legislation. It is politically impossible to oppose this legislation, even if we wanted to. The national head of steam for it means that it will get very little scrutiny. There will be bipartisanship, and that can be both a good thing and a bad thing. At its worst, bipartisanship leads to secret deals among leaders of small groups to implement arrangements that favour them and remove scrutiny from legitimate legislation. The taxing powers were moved from the States to Canberra in a similar environment with the thought that we must hand over those powers because it was in the national interest. The States' interest and the national interest coincided; and that is true with this legislation. Nobody gave much thought to arguing about what would happen if we ever wanted to take back those taxing powers. It is possible for the State to take back its taxing powers, but it is politically impossible because the Government of the day would have to impose a state income tax; that will not happen. The same thing is likely to happen with this legislation. We hear regularly from Canberra that we must take a national approach to everything. We hear from the State Government in Perth that we must take a statewide whole-of-government approach to everything. Both of those clichés are pseudonyms for centralism; that is, a transfer of power to a smaller group further away from where things happen. That concerns me with everything; it particularly concerns me with this legislation.

I will not go through the events of September 11, Bali and other events. I had thought of about 300 clichés but they have already been used tonight just as in every other Parliament around the nation. The world has not significantly changed. What has changed significantly is the awareness of people in this country and in the United States. People in other parts of the world - I listened with interest to the member for Hillarys - have been living with this awareness for most of this century. The change in the world to emergency management came in the early 1970s with an outbreak of terrorism at the Munich Olympic Games. There the police forces of Europe understood that a police response to terrorism does not work. Members will be able to work out that I do not

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support the Opposition's call for a specialist unit. The rest of the world learnt nearly 30 years ago that solely a police response to terrorism does not work. The Americans did not learn that and neither did Australia. The world learnt a long time ago that it needs competent intelligence to deal with emergencies. If it does not have competent intelligence, it cannot deal with emergencies and cannot deal with terrorism. That is not all the world needs, but it is one essential step in dealing with terrorism.

One question in this place rages; that is, whether this legislation does enough. It does not do enough because it is not about that. The legislation is about moving state powers to the federal Government; it is not about collecting intelligence. Intelligence is collected. I do not know whether it is collected well enough and I never will know. Is it collected well enough to prevent terrorist attacks in this country? The history of this country indicates that it has been. It is not politically popular at the moment to say that we have done some things well, but we have. Members with long memories will recall the Croatian terrorists who formed a group in New South Wales. They were detected; they were raided; they were dealt with; they were disbanded; and their leaders were jailed. They were dealt with in Australia very competently, very efficiently and very effectively, and more importantly without loss of life, which was the plan.

The Japanese sarin gas terrorists were discovered, but not quite in time for some Japanese people. Why? It is because someone is out there doing something. Is it intelligence organisations? I do not know and I do not pretend to know. I know that in other parts of the world people have Basque separatists, the Irish Republican Army, the Middle East conflict, African terrorists in both north and south Africa, the Baader-Meinhof group, and the Red Army terrorists. Terrorism is not new; it has been around for a very long time. All that has happened now is that we have had to sit up and take notice. I have listened with interest to members talking about the security of Parliament House. An interesting aspect of having been around this place for a while is that the arguments go around and come around. I recall when we did not have security in this place; people just walked in and out without any security whatsoever, except for a doorman. I recall a big argument in the Caucus of the Australian Labor Party about whether we should increase security. That argument took place when I was a member of the previous Labor Party in government. The argument evaporated the night that a bloke walked into the Parliament with a rifle and thought he might shoot someone. The very next day we addressed ourselves to the question of the security of Parliament House. I do not know whether the security is good enough. When I asked Ken Craig whether the security is good enough, he told me that it was for what he perceives as a risk. He is the head of security and I take his word for it; I do not know, nor will I ever know.

I listened with interest in the car the other day to a chap on the ABC's *Radio National* program. I sadly did not hear his name, as I was listening in the car between meetings at Port Hedland and I therefore heard only a short part of what he said. He talked about this legislation having come from Canberra and being dealt with in the State Parliaments. I do not know whether I agree with him. However, he posed the question: what could a terrorist do in a terrorist event that is not already illegal? If someone blew up a nightclub in Perth, would that be an illegal act? I suspect that it probably would. Do we need the legislation? Again, I do not know. I have a natural reluctance to hand powers to central Governments. That is just part of my make up. The people who know tell me we need this legislation and I am prepared to accept their advice; I have no contrary evidence or argument. My mind these days does not work on what is right and what is wrong; it works on what I think will make a situation better or worse. I put things into one of those baskets, because very little that we do leaves things the way they are. There is no point in doing something if it does not change things. I think this legislation will probably make things better.

The second point that the guy on the radio made was that terrorists by definition are not usually insane. He spent some time explaining that concept. He said that if Osama bin Laden has done nothing else, he has convinced the world that he is an intelligent, articulate, calculating human being who set out deliberately to do some things and did them. I do not say that to give him credit or to praise him. I am just saying that the chap on the radio made the point that terrorists do not fit a stereotype. They are people who by their nature will ignore these laws. Terrorists will take absolutely no account of these laws. However, these laws make us feel we are reducing the frustration at our inability to deal with terrorism and give enforcement authorities some power to deal with some of the issues.

One issue that must be discussed at this stage is the question of Islam and Muslims. Port Hedland has had a significant - I mean significant - Muslim community now for more than 30 years. Muslims are an absolutely fantastic part of our community. I am extraordinarily proud of Port Hedland and the way in which it has dealt with matters relating to the refugee detention centre there. I am also extraordinarily proud of the way in which it has dealt with matters relating to terrorism, where instead of mosque burning and Muslim punching, as it is called in the eastern suburbs of Sydney, we have had shows of support for our Muslim community, with people reaching across church groups to provide help and support to the Muslim community. People often quite

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wrongly confuse religion with ethnicity. I have no religion. I do not say that is a good or a bad thing; I simply have no religion. It always amazes me that people assume that Muslims are of Asian or Middle Eastern extraction. That is a cause of some concern to the many Hungarian and Dutch people and people from other parts of Europe who are Muslim, and to the small number of British Muslims and American Muslims. Being Muslim has no more relationship to ethnicity than has being Catholic in the western world. I am not a great one for political correctness, but it intrigues me that we continue to describe people by their religion rather than by their race or even their name. That is not a difficult thing to do. The pressures, uncertainties and difficulties that have arisen in Port Hedland, and the way these things have touched people, are the same as anywhere else in the world. I am extraordinarily proud of how the community of Port Hedland has responded.

The question of whether our assets are protected is a vexed one. I say again: who knows, why should we know, and how would we make that assessment? The Canadians have grappled with this question. When we were in Canada recently we met with the head of the Canadian Office of Critical Infrastructure Protection and Emergency Preparedness. It is having God's own difficulty in working out what it has, because Canada, like Australia, does not run its economy on a centrally-controlled bureaucracy. We, as private citizens, are allowed to do things. I was nearly going to say - I was being a bit presumptuous - that we are allowed to own and build electricity systems. However, in some places in the United States people are allowed to own and build electricity systems, water systems, sewerage systems and hospitals. All of these things are not owned, operated and kept on a register by the Government. People in Canada are finding it extraordinarily difficult to determine what assets they have. The people in and around Toronto are apoplectic, because Canada is the biggest trading partner of the United States, and they see themselves as a soft target. They have worked themselves into a frenzy about this view that they are the next logical attacking place for the terrorists. That is starting to come out in the debate today. In the debate today there has been no realistic risk assessment and no realistic intelligence; and it is also limited in the Canadian experience. I just wonder why we all feel now that we are the next target for "the terrorists". An amazing dynamic is being set up in which we stand up and point out the reasons that we may be the next target. It is almost as though we are in an international bidding war with people and saying we are a good target too.

Mr P.G. Pendal: In addition to that we then publicly announce what our response mechanism will be for the next four years! That seems rather stupid in the circumstances.

Mr L. GRAHAM: Yes. I find that interesting. I listened with great interest to the debate. I have, unusually for me, sat in this Chamber and listened to the entire debate. Not one person has made the point that our state plan was activated after the Bali attack. I doubt whether anyone in this Chamber, other than government ministers, would have understood that the Western Australian emergency response team responded to Bali. It was not planned by the state management group that there would be a nightclub attack in Bali and we would do all these things if there were such an attack. However, a competent, tested and funded plan was in place to do certain things in the event that this sort of thing did happen; and those things did happen. It did not make the front page of the newspaper, as it should not have done. It was not widely advertised, as it should not have been. However, it operated, and it operated extremely well. There have been subsequent debriefs about what was done wrong, what was done best and what was done worst; and that is what we would expect from emergency management professionals. I find it difficult to understand that of the 57 members in this place it seems that only cabinet members and I bothered to pick up the phone to find out whether that had happened. That is extraordinary. It is not a difficult thing to do. We are entitled to know. We are entitled as members of Parliament to ring up and find these things out.

The second point is that arrangements are already in place between the State Government and the federal Government in the event of a terrorist attack or emergency; and, when triggered, significant resources will flow. Are information sharing regimes in place beforehand? Yes, they are. Do we need to have those resources before there is an emergency? If we had the resources of the United States or Europe, yes, we would, but in a State like Western Australia we simply cannot afford it. It is a fact of life that we will never be able to afford it. Do they flow if there is an emergency? Yes. The next question is: will they flow in a timely way? I hope so. I do not know so, but I certainly hope so. I am prepared to support the legislation, notwithstanding all the things I have said, for two reasons. The first reason is, as I said, that it is politically impossible not to support it. The second reason is that I think on balance it will be a better arrangement than the existing arrangement, and it will provide power and succour to our emergency management people.

I want to look at some of the amendments that have come forward. The point I have made about bipartisanship being dangerous and about secret deals is valid, because the member for South Perth has been working for some considerable time on two clauses, but then out of left field has come an arrangement between the Labor Party and the Liberal Party to deal with 80 per cent of those clauses; therefore, his other 20 per cent is irrelevant. That

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is what I mean about bipartisanship being decidedly unhealthy. We were, and are, entitled to hear the views of members who wish to move amendments to the legislation and vote accordingly. Not all of us in this place has to vote in the way we are told. Caucus has not arrived at a position on these amendments, because they have not been presented to Caucus; so in theory at the moment every member of the Government has a free choice. However, a deal has already been done between the Attorney General and the member for Kingsley. That is patently unfair. I happen to think also that it is unparliamentary. That is the great danger of bipartisanship. Bipartisanship is taken in the context in which I am using it to mean arrangements between the two major political parties. It is not universal support. It is an arrangement between the two major political parties. I will finish where I started; namely, with a warning that we should never give power to a central Government if we expect to get it back.

DR J.M. WOOLLARD (Alfred Cove) [10.09 pm]: I support the Bill. However, like the member for Pilbara, my concern is with the amendments that have been placed on the table this evening. I believe that the member for South Perth's amendment to substitute clause 5 provides a very good clause to insert into the Bill. The Bill states that the Governor may, at any time, by proclamation, decide when the power that will be handed over to the Commonwealth will terminate. The member for Kingsley's amendment seeks to reinforce that statement. My understanding of her amendment is that she agrees with the Governor deciding by proclamation. It means that the Governor will be given even more power. If the Parliament decides in four or five years that the power it has given to the Commonwealth has been used in a manner that is far beyond the way it imagined that power would be used, it will have absolutely no control over taking back that power. This amendment states that we agree that the Governor has the power to make the proclamation, and when he makes that proclamation, this House and the other House will decide whether they agree with that proclamation.

Mrs C.L. Edwardes: No, not at all. The Parliament makes the decision to terminate. My amendment seeks to ensure that the Parliament makes the decision to terminate, and only when the Parliament makes that decision to terminate can the Governor make the proclamation. The Governor proclaims everything the Parliament does. There is nothing new about the Governor's proclamation.

Dr J.M. WOOLLARD: Yes, the Parliament decides. However, the Parliament can decide only after the Governor -

Mrs C.L. Edwardes: No, before.

Dr J.M. WOOLLARD: Clause 5 states -

- (1) The Governor may, at any time, by proclamation, fix a day as the day on which the references are to terminate.

The proposed subclause in the member's amendment states -

- (6) A Proclamation is to be made under this section if and only if the making of that Proclamation has been recommended by resolution passed by both Houses of Parliament of this State.

That means that if we are unhappy with what happens with the power that we hand over, we cannot take that power back.

Mr J.B. D'Orazio: Of course you can.

Dr J.M. WOOLLARD: No, we cannot.

Mr J.B. D'Orazio interjected.

Dr J.M. WOOLLARD: No. This clause is giving -

Ms M.M. Quirk: There is a capacity in the legislation for a State to revoke a reference.

Dr J.M. WOOLLARD: There may be a capacity, but if we accept the member for Kingsley's amendment, that capacity will not be in the Bill. However, if we accept the amendment suggested by the member for South Perth, in five years this Bill will terminate unless the Governor or the Commonwealth puts a good case to the Parliament for this Bill to continue.

Mr M.J. Birney interjected.

Dr J.M. WOOLLARD: That is right.

Mr P.G. Pendal: That is why the Commonwealth does not want us to spell it out.

Dr J.M. WOOLLARD: That is why it is very important that there be a fixed termination date in the Bill. If the Commonwealth has a good case, it can argue its case and the Bill can be extended. However, if it does not have a good case, that power will come back to this Parliament. This Government constantly gets upset about

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commonwealth-state powers; yet under clause 5(1), this Government will give power to the Commonwealth. We can take back that power only if the Commonwealth, via the Governor, is willing to give back that power. Nothing within this Bill will automatically give that power back to this Parliament and to Western Australia. I prefer the member for South Perth's amendment. If the member for Kingsley's amendment is agreed to, the member for South Perth should move another amendment to terminate the Bill unless the Commonwealth can argue a good case for the Bill to continue.

Issues will affect all the States when this power is handed over for a period. However, because of the powers that have been handed over to the Commonwealth in the past, which have been used in ways that the States did not realise they would be used, this Bill should contain a termination reference so that this Parliament can take back that control. It does not matter whether it is in three, five or seven years; there needs to be a specific period after which this Bill will come back to this Parliament for review. Then the Parliament can decide whether it wants the Bill to continue or whether the Governor and the Commonwealth need or should continue to have this power.

MR J.A. MCGINTY (Fremantle - Attorney General) [10.18 pm]: I thank all members who have contributed to the debate. Some contributions were interesting, most were discursive, but generally they were supportive. It is for those contributions that I thank members for their support for this legislation. Everyone who has spoken has indicated support for the concept of referring this power to the Commonwealth to ensure that there is no gap in the legal coverage of anti-terrorism laws in Australia. Most of the issues that were raised dealt with whether the reference of power would be a permanent one, the circumstances under which the legislation could be amended, whether there should be a role for the Parliament and the way in which it should play that role in deciding whether the State should withdraw from the referral of power. However, I will attempt to answer the question posed by the member for South Perth. This is an unusual reference of power because the Commonwealth has already enacted these offences in commonwealth criminal law. We have agreed to refer power to the Commonwealth only over those matters to ensure that no jurisdictional offence is available to someone charged under these laws. As the member for Kingsley indicated, the intention of the Commonwealth is to re-enact the laws in the same terms as they appear in commonwealth criminal law.

Mr P.G. Pendal: That means that the referral is a referral of those offences now spelt out under commonwealth law, but for which they rely on us to make the referral. In other words, we are not referring the power beyond the offences created in commonwealth law, and which we are replicating in state law today.

Mr J.A. MCGINTY: We are not even going that far.

Mr P.G. Pendal: We must be going that far, or the Commonwealth will not be able to use the powers we are sending.

Mr J.A. MCGINTY: The Commonwealth already has the power to enact the provisions it has enacted; that is, to make these events criminal for the purpose of commonwealth law. It does so using a variety of powers, including the external affairs and numerous other powers mentioned by contributors to the debate. However, it is a concern that depending upon the circumstances in which terrorists find themselves, they may be able to mount a defence that it is not something validly within commonwealth powers; namely, it is not covered by the corporation powers or the external affairs powers. This Bill is a safety net to ensure that someone cannot pick a legal loophole later as a defence to laws otherwise validly enacted. I see this as simply providing the safety net in case a jurisdictional dispute arises in the future. However, the Commonwealth has legislative powers to enact the laws. Whether they cover every circumstance that might arise is the reason we are legislating to refer the powers to the Commonwealth. It is not as though there is an identifiable gap in those powers, as there was 12 months ago with corporations power. One could rely on a number of decisions in the High Court in that case to say functions were not within commonwealth powers. Therefore, a regime could not operate in a constitutionally secure way to regulate every aspect of corporations law in Australia. Some of those functions are exclusively state functions. That is not the case here. It must have been our early childhood education together that caused our minds to move along the same path. I was about to make the point in answer to the question just put to me by the member for South Perth.

Mr P.G. Pendal: I'm not sure whether that is an insult; if it is I will ask the Speaker to sit you down. If it's a compliment, I will get him to extend your time! You might clarify that.

Mr J.A. MCGINTY: I think it is a compliment. Powers can be referred to the Commonwealth in three ways. One means is the referral of a general power; that is, for the Commonwealth to take over a power and legislate as it sees fit on that subject matter. It is a subject matter referral. We have not in our lifetimes done subject matter referrals as other States have done. One might refer a taxation power to the Commonwealth, and it is up to the Commonwealth to enact any laws it likes having assumed that power. The second means is a text referral. That

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is the nature of the Bill before us. We say we will give the Commonwealth Parliament the power to enact a law in certain terms to deal with a subject in only those terms. We are dealing with such a mechanism here, not a general subject in referring terrorism, for instance, to the Commonwealth.

Mr P.G. Pendal: Is that why we have spelled out or replicated the offences the Commonwealth has created?

Mr J.A. McGINTY: Yes. We have limited it to that. It relates to how the Commonwealth amends its legislation in the future, which is crucial. That was the subject of the agreement by Attorneys General in Fremantle three weeks ago on the agreement mechanism agreed to between the Commonwealth and the States; namely, a majority of all States and Territories, including at least two-thirds of the States. That amendment mechanism is important in dealing with a text reference, such as that before us. One has a subject matter reference; a text reference, which is more limited; and a third mechanism, which is used, for instance, with ex-nuptial children - we adopt commonwealth law and re-enact it as our own. I suppose it is not a referral of power, but it has that effect when we simply adopt commonwealth measures. Express provision is made in section 51(xxvii) of the Constitution for the adoption of commonwealth laws into state jurisdiction.

We are not generally referring the power to deal with terrorism; we are doing so only in respect of the outlined offences in specific terms, and no others. Power is provided by agreement of the majority of States to amend them in the future. I hope those comments contribute to the answer to the question raised by the member for Perth. It is appropriate to deal with the other matters in consideration in detail.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 to 4 put and passed.

Clause 5: Termination of references -

Mrs C.L. EDWARDES: I think a little misunderstanding of Parliament's role has occurred during the debate. Parliament can introduce Bills to amend, revoke or vary legislation or to create new pieces of legislation. That is what this Parliament was established to do. Clause 5 relates to a referral of power, although this is limited, as just explained by the Attorney General, to the offences outlined in schedule 1.

The inclusion of the termination clause, as drafted, can be done in a number of ways: by a sunset clause as proposed by the member for South Perth; by the Parliament being given the express power to revoke, vary or change, which is my amendment; or, as the Government has proposed in its legislation, by providing for the Governor by proclamation on his own, obviously on the advice of the Executive, to terminate the referral of power. The member for Kalgoorlie indicated that some discussion had been held on whether on a referral of power - without any of the options I have identified - by including a clause to terminate in whatever format, we as a Parliament have the power to revoke the referral, and whether the Commonwealth could argue or, more importantly, somebody wanting a defence in a court case could argue, that there had been an absolute referral of power. The termination clause is an absolute must if we wish to preserve, without future argument, our ability as a Parliament to have that referral of power returned.

This is not an absolute referral of power, because it contains the termination clause. No member on this side of the House likes the Government's termination clause, because it provides for the Executive to make the decision outside the Parliament. That is wrong. If the Parliament refers the power, the Parliament must be able to take back that power. The termination clause must be included in whatever format. My amendment provides clearly for the termination of the referral of power to be done only by the Parliament.

Dr J.M. Woollard: The Parliament cannot make the decision.

Mrs C.L. EDWARDES: No. Legislation is passed in this Parliament when a minister of the Crown introduces a Bill. The member for Alfred Cove can introduce a Bill. I as a private member can introduce a Bill to revoke the termination of power. Nothing in this legislation or in my amendment will take away the power of the Parliament to terminate that referral of power. It does not happen by the Executive going to the Governor to make his proclamation to terminate the referral of power. It can happen only if the Parliament decides.

Mr J.A. McGINTY: I am enjoying so much what the member for Kingsley is saying that I would like to hear her continue.

The SPEAKER: The member for South Perth was seeking the call.

Mr P.G. PENDAL: Unlike the Attorney General, who is happy to accommodate the Opposition spokesman, I am not. I am well aware that when one is duded, one is duded; and one should act when one sees the writing

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on the wall. In view of what I foreshadowed was to be my amendment, which I circulated, I am a little happier on some levels with the member for Kingsley's amendment. However, I think her amendment will make the situation worse, not better. My original concern expressed in the second reading debate was to eliminate the Henry VIII principle; that is, getting the Governor to do the Parliament's job. The fact that the member for Kingsley's amendment will depend on a resolution being passed by both Houses of the Parliament is very dangerous. The possibility of a resolution passing both Houses of the State Parliament, given the current constitution of the Parliament, may well be at risk. We need only look at what happens in the upper House these days: no-one is in control. The Government and the Attorney General might be making rods for their own backs. I was attempting to get rid of the Henry VIII clause by a different method. My method was to get rid of clause 5 entirely - the clause we are debating now - and insert a five-year termination clause. The member for Alfred Cove has very cogently supported my suggestion of a five-year termination clause. Part 2 of my amendment is a protective measure for the Commonwealth.

The House should be very careful about accepting the member for Kingsley's way out of the dilemma, which I know is offered in good faith. It should accept my suggestion for the way out, which is the subject of the amendment I circulated. My amendment seeks to do away with the clause that has the Governor holding the whip hand. After we have got rid of clause 5 and the capacity for the Governor to hold the whip hand, I want the Parliament to decide by legislation whether we are to renew the powers that we are referring. The member for Kingsley is perfectly right in saying that anyone can introduce a Bill next year, next month or in two years. The reality is that Bills are passed in this Parliament only when they are introduced by people on the other side of the House. I accept that; that is the system. That is why members opposite are in government. However, if the Government of the day chooses not to do that, the capacity of a private member such as me or, dare I say, even the Leader of the Opposition or a shadow minister, is very minimal indeed.

The House should reject the member for Kingsley's amendment, because it is dangerous; it will rely on - I think the words are - "a simple resolution of both Houses". I do not think we will get the capacity for a resolution in both Houses. Therefore, if we reject the member for Kingsley's amendment, we will be left with my amendment. I acknowledge that the weakness of my amendment is that it seeks to limit the referral to five years. It is not unfair of me to say that when I discussed it with the Attorney General he said that it was what the federal Attorney General was insisting on. With all due respect, the federal Attorney General does not legislate in this Parliament. If we give him a referral of five years, he might not like it but he would have to lump it and it would still be good legislation.

Ms S.E. WALKER: I am somewhat concerned. I have not spoken to the member for Kingsley about this clause. I can see arguments on both sides. I have spoken to the Attorney General's adviser and it appears that the Commonwealth wants indefinite power in relation to this clause. During the second reading debate I looked at the Commonwealth Constitution and the commentary on the section that has been used by the Commonwealth to refer that power. In relation to the member for South Perth's comments, the commentary indicates that the power can be referred in such a way that it automatically returns to the States after a specified time, which is what the member for South Perth's amendment is seeking.

The commentary also states that it seems likely, although it is not finally settled, that a State could take a referred power back at any other time. Can the Attorney General, through his adviser, tell us what the law is? According to the commentary, it is preferable to legislate for a limited time frame because there has not been a final determination about whether a reference can be taken back willy-nilly.

Mr J.A. MCGINTY: In the Tasmanian public vehicles case of 1956, with which I am sure the member is familiar, the High Court held that a State could take back a once-referred power. That is the authority for that proposition.

Ms S.E. Walker: I cited a 1997 document.

Mr J.A. MCGINTY: It is a decision of the High Court to that effect. Throughout this matter we have worked on the basis that there are two ways in which we can bring the power back to the State. One is by a subsequent enactment, to which the member for Kingsley alluded. The other is by proclamation, which is what would happen if this Bill were to pass in its current form. I have indicated my agreement for the amendment proposed by the member for Kingsley. That would enable the power to be taken back by proclamation following a resolution of both Houses of Parliament. We understand that that is a constitutionally valid way of bringing the power back.

Ms S.E. Walker: The resolution proposed by the member for Kingsley would give the Commonwealth more power. Depending on the situation in the Houses, it could be very difficult for this State to take back that power. As the Bill stands, the Government might decide that it does not like what the Prime Minister is doing in relation

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to acts and get rid of the legislation right away - the next week or the next day. That is how I read the Bill as it stands. Is that right?

Mr J.A. McGINTY: Yes.

Ms S.E. Walker: Under the proposed amendment, that could not happen. The House might not be sitting. The Government might want to take back the power because of something that the federal Government wants, but the other House might be dominated by Liberal Party members and the Government could not get the resolution passed. In effect, the State would not get what it wanted. The situation could be reversed; Simon Crean could be the Prime Minister.

Mr J.A. McGINTY: There is some strength in the argument that the proposed amendment will place an additional burden on the State's ability to retrieve the power.

Ms S.E. Walker: It will place an additional burden on the State.

Mr J.A. McGINTY: I correct the member on one thing. The Bill makes provision for the Commonwealth to be given three months notice. It is not something that could be done the next day. That is probably a semantic point in the overall scheme of things.

Ms S.E. Walker: The proposed amendment says that a proclamation is to be made. The Governor can only act on that. It does not say that the Parliament can tell the Governor the date of proclamation of the resolution, whereas clause 5(1) of the Bill states that the Governor may, at any time, by proclamation, fix a day. Under the proposed amendment, a proclamation will be made, but it will not refer to the day on which it is to be fixed.

Mr J.A. McGINTY: It would be up to the Parliament to determine whether it wishes to fix a date in its resolution. I would have thought that that would bind the Government to make the proclamation.

Ms S.E. Walker: That is fine for you to have thought -

Mr J.A. McGINTY: Would the member not have thought that?

Ms S.E. Walker: I might be a lawyer arguing against the provision. I am just considering the legislation. The Bill says that the Governor can, by proclamation, fix a day on which the reference is to terminate. The Attorney General's proposed amendment gives the Parliament the power to determine only that a proclamation be made, not the day on which it is to be fixed.

Mr J.A. McGINTY: With respect, it is the Opposition's proposed amendment, not mine.

Ms S.E. Walker: You are agreeing to it.

Mr J.A. McGINTY: I have indicated my intention to support it. The Government would need to support the passage of the resolution through the Parliament. The resolution could contain a date. The suggestion of the member is that the Government would then renege on the date that was supported by the Parliament.

Mr P.G. PENDAL: I would like to test the House by moving the amendment that has been circulated in my name. The amendment is to delete words - effectively all of clause 5 - and substitute -

- (1) Subject to subsection (2), references made under this Act terminate on the fifth anniversary of the day on which this Act commences.
- (2) When the references terminate under subsection (1), the termination does not affect any laws that were made before that termination but have not come -

The SPEAKER: Member, with respect, your amendment does not say that. It says that you want to oppose the clause, not delete the words. As such, the test of your -

Mr P.G. PENDAL: Must I oppose and defeat the clause and then insert my provisions?

The SPEAKER: That is correct. In essence, the Chair is bound to consider the member for Kingsley's amendment prior to testing your opposition to the clause.

Mr P.G. PENDAL: I understand that the member for Kingsley has not moved anything.

The SPEAKER: That is right.

Mr P.G. PENDAL: She has only circulated a proposal. If there is no amendment before the Chair -

The SPEAKER: In moving your amendment, you would be opposing the unamended clause. If that were defeated, the opportunity for the clause to be amended would dissipate. I gather from what you said earlier that you would support the Bill with five clauses less than you would support the Bill with six clauses.

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Mr P.G. PENDAL: Do I need to oppose clause 5 in the hope it will be defeated and then move the amendment I have circulated?

The SPEAKER: Yes.

Mr P.G. PENDAL: I would like the House to oppose the clause for the three reasons I set out in my speech during the second reading debate. Firstly, it contains a Henry VIII provision, which almost everyone now sees as repugnant. The Henry VIII provision means that we will effectively give the Governor the power to decide legislation in Western Australia. Secondly, we should defeat the clause so that we can agree to my amendment, the first part of which contains a five-year termination clause. The Government should feel very confident about inserting a termination date. It did that last year with the Corporations (Commonwealth Powers) Bill 2001 that passed through the House. Clause 5 of that Bill was headed "Termination of references" and stated -

(1) Subject to earlier termination under this section, -

That section took into account the valid point made by the member for Kingsley that the Government can always come back to the Parliament and ask for earlier action -

the references terminate on the day that is the fifth anniversary of the commencement day . . .

What I am asking for is not unusual. There is a convention that one should not repeat private conversations. However, I do not think I would break that convention if I said that I had discussed with the Attorney General the reason that he would not accept a termination of the references after five years. He told me that at the Standing Committee of Attorneys-General meeting in Fremantle recently, the federal Attorney-General, Mr Daryl Williams, made it clear that he would not go along with a termination of references after five years. That may well be Mr Daryl Williams' view. Daryl Williams is a very fine commonwealth Attorney-General, but he does not legislate for this place. If the worst case scenario were that the Western Australian Attorney General had to ring Daryl Williams in the morning and say, "Daryl, we got the legislation that you wanted through the Parliament but there is a five-year termination clause", I can assure the House that he would not go out and commit an act of terrorism against the Western Australian Government. He would say, "That's a bit of a bother. I wish you had been able to persuade your colleagues otherwise, but thank you for the five years." He would say that, especially given what the member for Kingsley has said. The Attorney General knows that the Parliament has the capacity, through the Government of the day, to come back to the Parliament after four and a half years and ask for an extension of that five-year period.

I do not like the notion of our referring powers. In a few moments, when I get more time, I will refer to some of the comments included in the latest version of the annotated Constitution; they put a great deal of doubt on the whole question of the referral of powers for a definite or indefinite period. No-one is entirely certain what we do, as will be clear when I quote from those comments. I therefore ask the House to defeat clause 5 so that we can insert no more and no less than an end to the Henry VIII clause and the insertion of a five-year termination clause.

Mrs C.L. EDWARDES: I move -

Page 4, after line 29 - To insert the following subclause -

(6) A Proclamation is to be made under this section if and only if the making of that Proclamation has been recommended by resolution passed by both Houses of Parliament of this State.

In moving the amendment I agree entirely with the member for South Perth. The Opposition totally and absolutely opposes clause 5 as it stands in the Bill. It will give the Executive the power to revoke the referral of power to be made by this Parliament. My amendment will give to the Parliament the ability to revoke any provision in the legislation that resembles a referral of power. The amendment will not extend the Governor's power and it can only be enacted by this Parliament when the Governor has decided to do it on the advice of the Executive. It is purely a mechanism that will allow this Parliament to revoke the referral of power, but incorporating it in the legislation will ensure that no challenge will be made to it and there will be no absolute referral of power to the federal Parliament as outlined in schedule 1.

Mr P.G. Pendal: You said no absolute referral.

Mrs C.L. EDWARDES: Yes, by having a termination clause in the Bill there will be no absolute referral of power. That is the reason for including it. It is not otherwise needed in the legislation. Under the Constitution, the State has the power to revoke, but there is a question about that power. We do not want to have that question tested. None of us wants to be in the High Court - maybe some of us do from time to time - having that question tested. This legislation, by virtue of this termination clause, will not give the absolute referral of power to the

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Commonwealth; we can take it back. The Opposition absolutely detests the way the Government proposes to give to the Executive through the Governor the ability to revoke that power.

Mr P.G. Pendal: The Henry VIII clause.

Mrs C.L. EDWARDES: Yes, we absolutely detest and oppose it. My amendment will give that power back to the Parliament. That power will not be consequent upon a decision by the Governor and will not extend the Governor's power. The Governor makes proclamations only when they come from this Parliament and/or the Executive on delegated legislation. Therefore, this amendment will return to the Parliament the ability to terminate the referral of power and Parliament will have supremacy in respect of that referral of power. I believe my amendment will improve the legislation, will get us to where we want to go and will ensure that the Parliament has that supremacy in the revocation of that referral of power. The revocation can happen at any time. What would happen if we wanted to revoke the power and members successfully opposed the clause and agreed to a sunset clause of five years? The Government could bring legislation into both Houses of Parliament at any time. There was a furphy about where both Houses of Parliament sit. Again, we must rely on the Parliament, as it is elected to deal with legislation that any Government brings into the Parliament. The decision of both Houses of Parliament is then referred through the Speaker and the President to the Governor to make a proclamation. This amendment gets rid of the Executive from that process and, as such, it is worthy of support. Even if the sunset clause were inserted in the legislation, we would want the Parliament to have the power to ensure it could revoke that referral of power at any time in the future.

Ms S.E. WALKER: It was a shame that the members for South Perth and Kingsley did not get together on this amendment. I would like to see the Parliament have the power to revoke the referral of power, but I am aware of the difficulties that would be faced by the Government of the day. I do not like giving indefinite power. It is a shame that we could not give the Parliament the power by putting a time limit on the legislation. In that way the Government of the day would not have to go through all the problems that it may face if it wanted to amend the legislation and had the power in this Chamber but not in the other Chamber. With a time stipulated in the legislation, the Government would at least know that it would happen. If it did not want it to happen, given the current circumstances or the circumstances that might exist for the Government of the day, the time limit could be extended. There is no doubt, no matter who is in power in this State, that the time limit would be extended if the current circumstances remain as they are. However, not having a time limit on the legislation will make it very difficult for the State to get back its powers. I feel as though I am caught between a rock and a hard place. It is a shame that a time limit was not included in the legislation. I do not know what the Attorney General thinks about putting a time limit on the legislation so that we do not have to go through the problem of wresting back our powers from the Commonwealth.

Mr P.G. PENDAL: The sticking point appears to be now not the question of our legislating to entrench a Henry VIII clause, because it appears that everyone now accepts that that is a bad thing; and I am the first to acknowledge that the amendment moved by the member for Kingsley would overcome that part. I still have a problem about a resolution that is passed in both Houses, given the current composition of the two Houses. However, I will not pursue that, because I have already placed that concern on record. Therefore, it seems to me that the one sticking point now is the question of why we would not put in a five-year limit. The only answer that I have heard is that the federal Attorney General would not like that. I also keep getting assurances from people that this is not an unqualified referral. I will read a couple of sentences from *The Constitution of the Commonwealth of Australia*, annotated version, at item 400, because that introduces an element of doubt about the implications of referring powers. I am the first to admit that it does not totally support my argument, but I hasten to add that neither does it totally support either the member for Kingsley or the Attorney General. It states -

It is clear, therefore, that a State Parliament may refer a matter to the Federal Parliament for a fixed period, or for an indefinite period of time or without any period of time specified. There is considerable doubt, however -

I break in there to say that I also have a concern about this considerable doubt. Who knows what will happen, given the High Court's capacity to have made a number of decisions that have puzzled people, particularly in the smaller States. I continue -

as to whether the reference may be in terms specifically irrevocable as this would constitute an infringement of the basic constitutional principle that a State Parliament cannot bind its successor. Taking the matter further one might also venture the opinion -

I break in again to say that is all it is - it is an opinion, albeit from a very learned individual. I continue -

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that a reference of power made in unqualified terms (that is, for an indefinite period) may be repealed by a State Parliament at any time.

If I could have read that without the qualifications of the writer and without the conditions that he or she places on it, then I would feel a lot more encouraged.

Having said that, I return to this point. We all seem to agree that we do not want a Henry VIII clause, and I am pleased about that, because that was my principal objection in the second reading debate. Secondly, what the member for Kingsley is proposing is that if we go along with the principle that half a loaf is better than no loaf, then we should support her amendment. Finally, I am puzzled in the extreme as to why we would dispute or resist a five-year or a seven-year termination clause. We did that one year ago with the corporations powers. I had heard a few side explanations about how that is different, because that is criminal law and corporations power. That is a nonsense. It is absolute poppycock. We are talking about where do we draw the constitutional dividing line. Therefore, there seems to be no logical reason that we would not put in some period. That is, in fact, covered by the annotated Constitution; and if I am wrong about five years and the war on terrorism takes longer than that, then let us make it seven. I cannot understand why there is any resistance to the notion that we should put in a finite period by which time either the power would return to the State or this Parliament would renew it for another period. That is where I think the weakness of the member for Kingsley's amendment lies, even though her amendment goes halfway towards achieving what I want to achieve; that is, an end to the Henry VIII clause. I am interested to know where the Attorney General stands on that matter.

Mr J.A. McGINTY: If I can answer the question posed by the member for South Perth, for a range of reasons the Federal Attorney General argued very strongly at the meeting of the Attorneys General that he wanted an indefinite reference of power. The first reason was that the subject matter - that is, terrorism - has gripped the nation and is considered to require an unequivocal response. An indefinite reference does that. The second reason that we should not impose a time limit on the legislation for the reference of power is that it will negate the agreement that has been entered into. I think it is true to say that each of the States and Territory Attorneys General went into that meeting with a general view of following the corporations law model, which was to have a five-year reference of power. In the end, we wished to make sure that this was done on a highly cooperative basis. The Federal Attorney General argued very strongly that we should have a national and very strong uniform approach. Therefore, we wanted to support the view that he was putting forward. To now insert this clause that has been suggested by the member for South Perth would depart from what was agreed in a cooperative spirit with the federal Government and would depart from the uniformity that would otherwise be achieved.

Mr L. Graham: I understand the argument, but what will be the practical effect on the arrangements of proceeding with the amendment moved by the member for South Perth? I accept that it will have an effect on the agreement, but what will be the practical effect?

Mr J.A. McGINTY: The practical effect could be - and this is only hypothetical, and I do not know that if push came to shove Hon Daryl Williams would refuse to accept the reference - but there have certainly been indications that he wants an indefinite reference and he will not accept a reference of power that is for a limited time. It might well be - and this is the worse case scenario - that Western Australia was excluded from the national approach on this matter.

Mr L. Graham: Are you seriously telling me that on a matter such as this the Attorney General of Australia has made threats to isolate Western Australia if the Parliament of Western Australia says that it wants a five-year term?

Mr J.A. McGINTY: I never said to him defiantly that I will not agree with what he is saying, so he has never particularised it down to Western Australia, but it is true that at that meeting he indicated that the Commonwealth might not accept a reference that was limited in time.

Mr L. Graham: Seriously?

Mr J.A. McGINTY: Yes, I am serious. That is exactly what he said.

Mr L. Graham: So the whole of the nation's coordinated anti terrorist arrangements would go out the window if a state Parliament were to exercise its prerogative? Is that what he is saying to us?

Mr J.A. McGINTY: In that case, it would not apply only to that State.

Mr L. Graham: It could be any state exercising its right.

Mr P.G. Pendal: I think we should call him to the Bar of the House!

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Mr L. Graham: You should have told him to get nicked! That is what centralist ministers always argue ; and when taken to the wire they never pursue it.

Mr J.A. McGINTY: I will answer that point. I prefaced my initial comment by saying that that was what he said. Who knows whether that will be his final position when push comes to shove, but certainly that was the threat. The view that I took - it was taken by all state and territory Labor Attorneys General - was that we wanted to do this cooperatively. He was the central player in the whole affair. Although I accept the point of view that has been put by the member for South Perth - that is, the federal Attorney-General is not a legislator in Western Australia and it is not up to him to dictate to this Parliament what it should do - it certainly influences what I will do and the way that I will vote. It is up to other members who do not accept his point of view to vote according to their wishes. We wanted to do it cooperatively and that is the way it was done.

Mr C.J. BARNETT: The issue we are facing is in part the product of this legislation being passed through this House in one day. I do not apportion any blame for that. However, when a legitimate issue such as this arises, it shows the fallacy of passing legislation on such a timetable. To assist the Attorney General, it would have been desirable, after Crown Law had heard the arguments in this House -

Mr J.A. McGinty: We have heard them all before; there is nothing new.

Mr C.J. BARNETT: The Attorney General may have heard them all before, but now he has a sense of the intensity of feeling. It would have been possible to come up with something that was suitable and perhaps acceptable to the Commonwealth. Now time precludes that happening.

At first glance, the argument put by the member for South Perth at a superficial level - I do not mean that in an insulting sense - is the most attractive argument. Our view of most areas of legislation is that if powers are to be referred to the Commonwealth, they should be limited in time, and then this Parliament can re-enact the legislation to either continue those powers or let them lapse. However, there are two special circumstances in this case - maybe even three. The first is that we are dealing with terrorism - a unique threat to Australia - and we must recognise that. Another aspect - I disagree with the member for South Perth on this - is that we are talking about criminal investigation and perhaps criminal prosecution. The nature of terrorism and terrorist organisations probably means that investigations will be long term, as will court proceedings to prosecute and gain a conviction. I am sure everyone in this House would hate to think that a terrorist could somehow escape the law because of the inability of a future Parliament to re-enact this legislation. I do not know whether that is a realistic scenario, but I would hate for it to arise or, indeed, for a gap in reinstating the law to become the grounds on which a person can appeal or escape conviction. That creates a different environment.

Therefore, the Liberal Party supports the member for Kingsley's amendment. I am sure the member for Kingsley would concede that it is not ideal, but in these circumstances it is the best way we can proceed. It is probably the only way we will get the agreement of the Government, and at least it protects the authority of this House, perhaps not as perfectly as the member for South Perth would like, but it is achievable and it is better than the legislation that is currently in place.

Mr L. GRAHAM: When I last sought the call, I simply wanted to allow the Attorney General to continue with the reasons he thinks we need this, because he very kindly allowed me to take up half his time with my interjections.

Mr J.A. McGINTY: The third reason that leads me not to support a five or seven year cut-off time is the point that was made quite well by the Leader of the Opposition; that is, we are dealing with the criminal law. One very important aspect of the criminal law is the need for certainty. People need to know what the law is. I am trying to think of some examples. Street prostitution immediately springs to mind as one exception to that general rule. The criminal law operated with a sunset clause. It is not common for that to occur for the simple reason that the criminal law provides sanctions that can deprive people of their liberty. That is certainly the case here. There are very heavy penalties of 20 and 25 years for the various offences that will be created by the commonwealth legislation as a result of this reference of power. When dealing with the criminal law, it is not desirable to have an on again, off again situation, which could well be the case depending on whether the legislation is extended in five years.

The fourth and final reason is that other provisions enable us to achieve what a five-year cut-off point would achieve, including the ability to enact legislation to revoke the reference or simply the proclamation power to bring these powers back home. We may want to exercise those in a number of circumstances, two of which immediately appeal to me. The first is that the circumstances surrounding the reference of power no longer exist. Frankly, I think we will live with terrorism for the rest of our lives in one form or another, so I do not think it is likely that the international terrorism threat suddenly will disappear off the radar screen. Times have

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changed for good. I do not think that circumstance will arise. Secondly, we might well find that the Commonwealth abuses the power or moves to amend it contrary to the agreement that has been reached. In those circumstances, we may want to revoke the reference of power to the Commonwealth. That was certainly another point put to me -

Mr L. Graham: By then it will have tied grants attached to it and politically you will not be able to do it.

Mr J.A. McGINTY: That is the political reality of these issues. Without digressing too far, now that the Greens (WA) have become constitutional conservatives, we might find that they will be very supportive of these powers reverting back to the State. If a Government of either persuasion were to decide -

Mr P.G. Pendal interjected.

Mr J.A. McGINTY: More importantly, their suddenly thinking that they cannot change an age-old institution, which has no contemporary relevance - that is, the presidential vote in the upper House - as they are very good conservatives.

Mr L. Graham: I have told the Attorney General that I would be happy to second his Bill to reduce it to one member.

Mr P.G. Pendal: It is good to see that your de facto relationship with them has come to an end before the two years are up.

Mr J.A. McGINTY: It is very sad.

Dr J.M. WOOLLARD: Earlier, the member for Kingsley pointed out that a private member has the ability to introduce a Bill or the Government can introduce a Bill to revoke the power of this Bill. I put a Bill on the Table and it took over a year for the Opposition to agree to debate it in this House. I question the member for Kingsley's comments. Had my private member's Bill in relation to the Heathcote site been debated six months ago, Duncraig House would not have been put out to tender. I do not accept as fact that a private member's Bill can necessarily be put on the Table and be debated in this House.

In relation to the Parliament revoking this Bill, again I read the wording of the member for Kingsley's amendment. It states -

- (6) A Proclamation is to be made under this section if and only if the making of that Proclamation has been recommended by resolution passed by both Houses of Parliament of this State.

I remind the Attorney General of his efforts to pass the one vote, one value legislation, which he knows was supported by the Independents. That has not passed through the upper House. Everyone agrees that we must have a united approach to terrorism. It is very good that all the States are working together. Everyone in this House supports this united approach. However, there is a problem now. What will happen in seven years? How will the Commonwealth use these powers? I think the member for Perth said the writing was on the wall. When he said that, I was reminded of the episode of *Yes Minister* in which the Government was collecting in a computer all sorts of information about people, such as their social security and bank numbers. A member of the media asked the minister why the Government was collecting the information, and he responded, "We're just collecting it to keep it on the computer." Why was the information collected?

Mr P.G. Pendal: That minister was called Jim, too.

Dr J.M. WOOLLARD: That is right. How does the Attorney General see the Commonwealth using these powers? The way he sees them being used now could be very different from how they are used in three to seven years. I agree with the Attorney that we must deal with terrorism, but I am concerned that we will hand over powers. What are those powers, and will we want to take those powers back in five or seven years? How difficult will it be for Parliament to take those powers back?

Mr P.G. PENDAL: I add two things to what I have said previously. I am a realist; I know that two and two make four in the political game, and the equation is coming out to be four. I do not often agree with the Leader of the Opposition - I do not know if I should call him my friend the Leader of the Opposition, as it could be eternal damnation for him. However, he was as wrong in his comments, as was the Attorney General, in respect of the notion that we must leave the terrorism powers open-ended because terrorism does not neatly fall into five-year categories. I think the Leader of the Opposition said he would hate to see a terrorist get off a serious charge because time limits had run out. Last year we applied that time limit in respect of dreadful corporate rogues like the Bonds and the Skases. Last year we applied a five-year termination provision on the Corporations (Commonwealth Powers) Act 2001. It passed this House. We applied a five-year termination clause, yet no-one suggested we were dealing with anything but the worst of criminal behaviour, albeit within a corporations context.

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Secondly, as a final appeal to the House, and in the event that the member for Kingsley's amendment fails - I concede that that is unlikely - and that I could have defeated clause 5, I place on the record what I would have sought to insert. My amendment reads -

Page 4, after line 29 - To insert the following -

- (6) Subject to subsection (7), references made under this Act terminate on the fifth anniversary of the day on which this Act commences.
- (7) When the references terminate under subsection (6), the termination does not affect any laws that were made before that termination but have not come into effect before that termination.

That is what I had intended. This is still the most efficient way of dealing with a Bill that we all want to see passed. I said at the outset there were a small number of sticking points on two or three critical areas. I am very pleased that I have won the issue to reject a Henry VIII clause. That was won by the member for Kingsley's amendment, and I am happy that that amendment is in her name. I make a final appeal: we should include a finite termination clause, as not to would be to our detriment. The federal Attorney-General, Mr Williams, will not spite this legislation on the grounds that this Parliament - as the member for Pilbara said - exercised its constitutional prerogative by saying, "We will give you the power but we will give it to you for five years."

Mr J.A. McGinty: He did say that if there were any problems with the Liberal Party to let him know and he would straighten them out.

Mr P.G. PENDAL: This federal Attorney-General is a decent and erudite man. He is known in the federal capital as Rowdy, and there is a message there. Whatever my regard and esteem for Mr Williams is not the point; he will accept whatever this Parliament says, because he will be in a position to reject comprehensive anti-terrorism laws on the grounds that a State Parliament placed a five-year termination clause on them. Of course he will not do that. I therefore ask that members reject the member for Kingsley's amendment, so I can move for the deletion of clause 5; I will then proceed with my amendment. However, I do not hold my breath.

Amendment put and passed.

Clause, as amended, put and passed.

Schedule 1 -

Mrs C.L. EDWARDES: I refer members to divisions 100.6 and 100.7 of schedule 1. I raised this issue during my second reading contribution. These are very important clauses. It is important that the Parliament remember these provisions for future referral pieces of legislation. This part of the schedule saves the Western Australian laws and provides for the concurrent operation, irrespective of what section 109 says, of the commonwealth laws and the Western Australian laws, even though they may - and will in this instance - be referring to the same thing. Where there is an inconsistency between the commonwealth and the state laws, the commonwealth laws will prevail. Divisions 100.6 and 100.7 will be very important in the future for any referral pieces of legislation.

Mr J.A. McGINTY: The problem would otherwise exist if the Commonwealth had legislated in respect of terrorism. Section 109 refers to inconsistency problems. These roll-back provision in divisions 100.6 and 100.7 are very important and will give greater efficacy to state law. They are part of the quid pro quo of that which we gave up in making this reference. I think we have achieved certain advances by the roll-back provisions and I agree with the member for Kingsley.

Schedule put and passed.

Title put and passed.

Third Reading

Bill read a third time, on motion by Mr McGinty (Attorney General) on behalf of the Premier, and transmitted to the Council.