CRIMINAL CODE AMENDMENT BILL 2003

Second Reading

Resumed from 9 September.

MR R.F. JOHNSON (Hillarys) [12.15 pm]: Yesterday I gave a great speech before I sought leave to continue my remarks at a later stage of the sitting. I did that primarily so that the debate could be adjourned because the Opposition's lead speaker on this Bill was unfortunately away ill yesterday. I am pleased to inform the Speaker and the House that our shadow spokesman in this area has recovered and is back in the saddle today. She will make a very valuable contribution to this Bill. As I said yesterday, it is a very important Bill. The Opposition hopes that the Government will agree to our motion to split the Bill in two so that we can support the vast majority of the Bill, which we have no problem with.

As I said yesterday, there is a distinction between murder and wilful murder. The Opposition opposes the Government's plan to do away with the section that classifies wilful murder. As I said yesterday, which I will repeat today as I am in the dying throes of my speech, a distinction should be made between murder and wilful murder. Wilful murder is one of the most heinous crimes. Wilful murder requires premeditation and planning and can be carried out by one or more people, whereas simple murder can be an act of murder when murder might not have been the intention. That type of murder would usually be classed as manslaughter. However, between manslaughter and wilful murder, there is the crime of murder. The Opposition considers that that deserves a lot more debate. The Opposition would like to make some amendments in that area if the Bill is split. We believe there should be a greater differential in sentencing between murder and wilful murder. People who premeditate committing a murder should suffer the maximum penalties. The people of Western Australia would share our view that a premeditated, wilful murder is even more serious - if I can say that - than murder in the common sense. I will now resume my seat because we are all waiting to hear the member for Nedlands give a wonderful oration on this Bill.

MS S.E. WALKER (Nedlands) [12.18 pm]: I rise on behalf of Her Majesty's Opposition to speak on the Criminal Code Amendment Bill 2003. I thank the member for Hillarys for his kind words. I thank also the member for Kingsley for the negotiations she had with the Attorney General yesterday with regard to splitting this Bill.

This is a very serious Bill. Wilful murder is the most serious crime in the criminal calendar. Parliamentarians are required to give this matter very serious consideration before amending or deleting the offence of wilful murder from the Criminal Code of this State. I know that members on my side of the House have given it serious consideration. We oppose the offence being removed from the Criminal Code.

This Bill has eight parts and five schedules. For my first half-hour I will speak on other parts of the Bill and not the provisions that affect murder. Part 1 is the preliminary part of the Bill that deals with the title and commencement. Part 2 deals with amendments to the Criminal Code and the Travel Agents Act 1985. Within state legislation, the amendments criminalise the depraved and evil conduct of Australians who travel overseas on paedophile sex tours. It is concerned with the protection of children from adults. I will deal with that part first. This part of the Bill is fully supported by the Opposition, although I expect the Attorney General to explain how effective the legislation is likely to be. We can assure the Attorney General that, if any weaknesses are detected in the legislation during the consideration in detail stage, the Opposition will support any moves to strengthen them.

Part 2 of the Bill contains only two clauses. One clause deals with prohibited conduct and refers to chapter XXXI of the state Criminal Code and the commonwealth Crimes Act 1914. When I first read it I wondered how effective the provision would be. I hope the Attorney General can tell me whether there have been any prosecutions under similar Acts in Victoria and Queensland. The commonwealth legislation has been in effect since 1994. That is nearly 10 years. Have there been any prosecutions under that Act; and, if so, have they been successful? I consulted the commonwealth *Hansard* at the time the Act was introduced. The issues that were raised by members time and again concerned whether the Bill had any teeth. That confirms the Opposition's position that the effectiveness of this Bill must be paramount. As the Attorney General said in the second reading speech, the object of the Bill is to prevent the sexual abuse of children. As such, the legislation casts a net much wider than just targeting the perpetrator of an offence. That is reflected in proposed section 187, which deals with facilitating sexual offences against children outside Western Australia. It defines prohibited conduct as -

> the doing of an act in a place outside Western Australia in respect of a child under the age of 16 years which if done in Western Australia would constitute an offence under Chapter XXXI; . . .

Chapter XXXI of the Criminal Code deals with sexual offences. The definition of prohibited conduct under proposed section 187 also includes -

> the commission of an offence under Part IIIA Division 2 of the *Crimes Act 1914* of the Commonwealth.

I have with me a copy of the commonwealth Crimes (Child Sex Tourism) Amendment Act 1994. Having read the Act and gone through submissions made by the Law Society of WA, I am not sure whether it adds to or subtracts from the state Criminal Code offences. Perhaps the Attorney General can advise the House.

As I said earlier, this Bill casts the net much wider because prohibited conduct refers to a person -

> (a) who does any act for the purpose of enabling or aiding another person;
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> (b) who aids another person; or
>
> (c) who counsels or procures another person,
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> to engage in prohibited conduct is guilty of a crime and is liable to imprisonment for 20 years.

The conduct is prohibited conduct that comes within chapter XXXI of the Western Australian Criminal Code and includes a variety of sexual offences, including the old rape offences that have been subsequently renamed. I have also looked at the Travel Agents Act 1985. Under part 2 of this Bill, that Act is consequentially amended as a result of amendments affecting child sex tourism. The Act provides for the licensing of travel agents and the regulation of their operations and any connected matters. Clause 5 of the Criminal Code Amendment Bill permanently disqualifies a person or body corporate from being a licensee under certain circumstances. There are extensive amendments to the Travel Agents Act compared with the amendments about child sex tourism in proposed section 187 of the Criminal Code. If a person is found guilty under proposed section 187 or under provisions of the relevant commonwealth Act, he will be refused a travel agent's licence. The same applies to a corporate body. I wonder how effective the provisions will be. That does not mean that the Opposition does not fully support the legislation. In this day and age, someone who has held a licence and is then disqualified can certainly operate through another person. Is the Attorney General able to advise whether anyone has been disqualified from holding a travel agent's licence and suddenly found to be manipulating the system through someone else?

I will touch mainly on the commonwealth Crimes Act 1914 because it appears to be the catalyst for legislation in Victoria, Queensland and Western Australia. The Attorney General advises that this legislation is modelled on the Victorian legislation. The commonwealth Crimes Act is important. It now contains the amendments made pursuant to the Crimes (Child Sex Tourism) Amendment Act 1994, which is subsequently referred to in our state legislation. When debating this Bill it is important to see exactly what we are supporting. Reading this part of the Bill was when I first asked myself whether the legislation would be effective and whether it would have teeth. Is it to be just a public relations exercise by this Parliament? I do not mean that in any disrespectful way to people's motives in bringing forth this legislation. Have any prosecutions been commenced under part IIIA division 2 of the commonwealth Crimes Act 1914? If so, have any been successful? How many actions have there been since 1994? I am very much a realist. I do not want to stand in this Parliament and pay lip service to the prosecution of people who hunt children. That was the description used in the federal Parliament - hunters of children. I want to think that we are doing everything we can to catch offenders and deal with them effectively. A further question to the Attorney General is how long the Victorian legislation has been in effect. Has anyone ever been prosecuted, including Australian paedophiles, under that legislation? If so, how many?

An examination of the state Criminal Code and the commonwealth Crimes Act shows that different definitions of sexual offences operate. The Crimes (Child Sex Tourism) Amendment Act 1994 came into force in July 1994. It made sexual activity with a child under the age of 16 years committed in an overseas country by an Australian citizen or resident a criminal offence in Australia. The law applies to individuals, companies or corporations and provides for a term of imprisonment up to 17 years and fines of up to $500 000. It is also an offence to encourage, benefit or profit from any activity that promotes sexual activity with children. I am not sure how the federal Parliament arrived at a term of imprisonment of up to 17 years. We can see right away that the Criminal Code in Western Australia is probably firmer than the commonwealth legislation, in that many of the serious sexual offences against children carry a penalty of imprisonment of up to 20 years. Members should not forget that with clause 4, which will insert section 187 into the Criminal Code, we need to look at the sorts of offences that are constituted under the commonwealth Crimes Act. We see right away that in the amending Act, as it was, it is an offence under part IIIA, division 2, for a person to have sexual intercourse with a child under the age of 16 while outside Australia. The penalty is 17 years imprisonment. As I said, it is a lesser penalty than the one contained in the code. It is also an offence under section 50BB(1) to -

> . . . induce a person who is under 16 to engage in sexual intercourse with a third person outside Australia and in the presence of the first-mentioned person.

Again, the penalty is imprisonment for 17 years. It is also an offence for a person to involve a child under 16 in sexual conduct. The penalty for a variety of those offences is imprisonment for 12 years. I note that there are defences. There was a lot of debate in the federal Parliament about defences to the commission of these crimes.

One of the divisions of the Act also covers situations in which courts may take evidence by video link. This is one of the issues that I would like the Attorney General to take the Opposition through, because I would like to know how this will work in practice. How will evidence be taken from child witnesses in the countries that we are targeting overseas? In order to look at this issue, I went to the second reading debate on this legislation in the federal Parliament. In the second reading speech to this Bill in this House, the Attorney General stated that the Western Australian committee that was set up to investigate the matter recommended that the legislation in this State be modelled on the Victorian model. However, he did not say why. Perhaps the Attorney General could enlighten us on that point.

I have not received any input from any member of the legal profession on this Bill. However, this morning the Opposition received a copy of a submission by the Law Society of Western Australia. I have visited the Chief Justice on this Bill, particularly, of course, on the issue of homicide. I have looked at various articles. As the shadow Attorney General, I have not received anything proactively from any member of the legal profession. I asked the Attorney General's office whether I could have a copy of the submission by the Chief Justice on the issue of homicide, but that has not been forthcoming. I looked to the federal legislation to find out why this Bill was introduced. I would like to know whether the issues and reasons behind this Bill being brought on are still relevant today. The person who introduced the Bill in the federal Parliament was the then Minister for Justice, Mr Kerr, the member for Denison. When the Bill was introduced in the House of Representatives on 3 May 1994 the minister stated -

> The principal aim of this legislation is to provide a real and enforceable deterrent to the sexual abuse of children outside Australia by Australian citizens and residents. It is unfortunate that a minority of Australian citizens and residents are now known internationally as major offenders in several Asian countries. They exploit the vulnerability of children in foreign countries where laws against child sexual abuse may not be as strict, or as consistently enforced, as in Australia.

As I go through and read aloud some of the comments on this matter, I hope that the Attorney General may be able to tell me whether any of the bases on which the legislation was passed have shifted or changed. Are there more bases? Has more research been done in this area? Is a larger group of Australians now operating in those countries? The member for Denison continued -

> Some may wonder why the Australian parliament should enact laws to protect foreign children from sexual abuse and ask why the foreign country should not protect its own children. It is true that the primary responsibility for protecting children from sexual exploitation rests, as it should, with the countries where the children are exploited. The Asian countries which I have visited are indeed taking measures to do so but are confronted by social and economic factors which make their task difficult. They welcome any assistance in kerbing the trade in children's bodies that other governments can give . . . Apart from the fact that Australia is gaining an unenviable reputation in the world press on this issue, we also have international obligations to protect children, whatever their nationality.

I am quoting from this speech because it is important that people understand the background to this issue and the other things that impacted on the Commonwealth Government in relation to the commonwealth Bill. The member for Denison further stated -

> Australia ratified the Convention on the Rights of the Child on 17 December 1990, and this imposes an obligation to protect children, at both the national and the international level, from sexual exploitation and abuse. Australia played a key role in the development of the Convention on the Rights of the Child and the Australian government is committed to pursuing the aims of that convention.

The intention of the Bill in the federal Parliament was said to be to -

> . . . strike the correct balance between the need to minimise the enforcement difficulties that always arise where overseas evidence is required, and which are exacerbated when child witnesses are involved, and the need to ensure that the rights of the defendant receive a similar degree of protection as would apply if the offence had been committed in Australia.

This is the important point that the member for Denison made -

> The legislation must be more than mere window-dressing. I am concerned to see that it is practically enforceable, as it must be if it is to have the deterrent effect for which I have aimed.

He went on to say that it was unusual for sexual offences to be contained in a commonwealth Bill. I suppose the Western Australian Attorney General, having a huge array of lawyers at his beck and call, would be able to tell me whether this has been more than window-dressing, which is very important for us to know.

The commonwealth Minister for Justice touched on evidence being given by video link and stated -

> . . . the provision for the use of video link so that overseas evidence can be presented to a court in Australia. Video link has already been used effectively in major trials in Australia, including one of the war crimes trials.

I hope that the Attorney General can tell me what is being done in Western Australia to take evidence from witnesses who are overseas.

There was bipartisan support in the federal Parliament for that Bill to go to a committee. That issue was raised by the then commonwealth shadow Attorney-General, the member for Tangney, Mr Daryl Williams, who is now Attorney-General. At that time he stated -

> The call for legislation of this nature has come from a number of quarters, including the National Conference on Child Prostitution in Asian Tourism held in 1993 and the inaugural World Congress on Family Law and Children's Rights held in Sydney in July 1993. The United Nations Special Rapporteur to Australia made similar proposals. In addition, an active group named End Child Prostitution in Asian Tourism has lobbied extensively for the introduction of this legislation. ECPAT now operates in 13 countries, including the Philippines and Thailand. Apart from Australia, there are ECPAT organisations within the United States, Canada and some European countries where tourists to Asia come from.

He also said -

> The coalition offers full support for the objects of this bill.

The Opposition also offers support for this government Bill. The commonwealth shadow Attorney-General also said -

> However, in our view, it is necessary that we get the legislation right. That involves determining whether the legislation is appropriately drafted in order to achieve its objectives.

The then shadow Attorney-General said also -

> The issue of enforcement is crucial to the success of the bill. Although the bill sends out an important message to the community, it is important that it have teeth. The successful enforcement will depend upon the establishment of specialist law enforcement units with trained investigators. Exchange of intelligence needs to be undertaken between Australian bodies such as the Australian Federal Police, the Australian Customs Service and state police forces.

I hope the Attorney General can also tell us about those matters.

I will now read the comments of some other members on the commonwealth Bill. Mrs Easson, the member for Lowe, said -

> I am not happy to be speaking on this child sex tourism legislation. It is a moment of shame for our nation that we need this kind of legislation. We have all known for years that the child prostitution racket is very widespread in Asia and that it exists in Australia. This legislation is long overdue and I will be pleased to vote for it.

She said also -

> Whilst I support this legislation, I am not especially confident that it will be effective on a day-to-day basis.

It is interesting that the speakers in this debate were from all over Australia. Mrs Worth, the member for Adelaide, said -

> Thanks to the bravado of those involved, perhaps one of the worst kept secrets in this country is that many Australians travel to Asian countries for the primary purpose of buying sex. Although there are approximately 300,000 Australians visiting Asia each year, it is estimated that only about 200 of these are undertaking sex tours.

I would like to know whether those figures have changed, because I am sure some research must have been done prior to the introduction of this Bill. She said also -

> The media coverage of Australia's paedophiles in Asia has been extensive and damaging, blasting any comfortable perception we may have had of loud but generous Aussies in Asia for a bit of harmless fun.

> The participation of Australians in the Asian child prostitution industry is anything but harmless; it is destructive, and even when it leaves no physical scars it is no more than an act of violence.

I recommend to anyone interested in the Bill that they read that speech, because it contains graphic case histories. It also quotes from an article by a writer for the *Sunday Age* that talks about the children whom he found when he went to Bangkok.

Mr Cleeland, the member for McEwen, raised the question of whether the victims would be willing to be part of a prosecution process; and, if they were willing, whether their lives would be put at further risk. That is something that I also ask the Attorney General. These are practical things that I would like some information about.

Mr Cobb, the member for Parkes, said -

> A number of countries overseas have already introduced legislation or taken measures to ban their citizens from engaging in child prostitution in Asian countries. Amongst these are Germany, France, Norway, Sweden and other Scandinavian countries. Of the five million tourists from countries around the world who visit Asian countries each year, the worst offenders engaging in child prostitution come from Australia, Germany, the United States, Japan and Britain. Some travel agents openly organise sex tours to these countries.

He also talked about the physical danger to the children, and he referred to a particular case. I will not read it out, because I do not like in these sorts of situations to become emotive, but at page 154 of the House of Representatives *Hansard* of Wednesday, 4 May 1994 he talks about a 10-year-old Filipina who died after being vaginally abused by a 33-year-old Austrian or German doctor. I always find it instructive to read the *Hansard* of other States when legislation is introduced in this State that is similar to legislation that has been introduced in other States, because it allows us to benefit from the thoughts of other members of Parliament in other States.

Mrs Crosio, the member for Prospect and parliamentary secretary to the Minister for Social Security, said -

> Ironically, though, children need protection, and, sadly, it is often adults from whom they need to be protected.

It certainly is a sad aspect of this legislation. The Opposition supports this part of the Bill, and I will be interested in consideration in detail to determine whether this legislation has any teeth.

Part 3 of the Bill deals with amendments about public order. It is obvious straightaway that the penalties are proposed to be softened, because for the first time fines are to be introduced. That makes me wonder how effective these amendments will be, considering that no-one in Western Australia appears to be paying their fines. The week before last I happened to tune in to the Paul Murray or Liam Bartlett radio show - I cannot remember which - and I heard the member for South Perth talk about the millions of dollars in unpaid fines in the community. In clause 6 of the Bill, section 62 of the Criminal Code is to be amended; and in clause 7 of the Bill, sections 63 to 67 are to be replaced and the Police Act is to be consequentially amended. Proposed new section 63 is headed "Taking part in an unlawful assembly" and states -

> Any person who takes part in an unlawful assembly is guilty of a simple offence and is liable to imprisonment for one year.

The proposed penalties are the same. Proposed new section 64 is headed "Unlawful assembly may be ordered to disperse". This is a change, because for the first time we will have a summary conviction penalty of imprisonment for two years or a fine of $8 000. Proposed new section 65 is headed "Taking part in a riot", and the penalty has also been softened to a summary conviction penalty of imprisonment for two years or a fine of $8 000. Proposed new section 66 is headed "Rioters may be ordered to disperse". Proposed new subsection (1) states -

> If 12 or more persons are riotously assembled, a justice or police officers may orally order them to disperse.

I think this was the proposed section that the Attorney General used when he tried to say that he was modernising the law. I am not sure how we can modernise the law. We can modernise the language, but the law is about justice. The current provision allows a justice of the peace, a mayor or the president of a local government to go among people who are assembled and command them to disperse themselves, to use old-fashioned language. In this proposed new section the mayor and the shire president have been removed; they obviously no longer have any authority. Also, the words that people can be commanded to disperse themselves have been removed. Therefore, we do not know what words will have to be used to make people understand that they have to move on. That could be the subject of some interesting case law because we have quite a few assemblies of people and a few demonstrations in Perth. That penalty is to be brought down from 14 years to 10 years. It has been softened. The penalty has also been softened in relation to rioters causing damage, and no

mention is made of rioters being in company either. Being armed in a way that may cause fear is a misdemeanour, and it is to be made a crime. The former penalty was imprisonment for two years, and that has been increased to seven years; however, it has been softened to be a summary conviction penalty, which is imprisonment for three years or a fine of $12 000. One must wonder, again, how all these fines will be enforced. Section 71 of the Criminal Code is to be repealed. The penalty for the offence of fighting in public causing fear has been softened to a $6 000 fine. There will be further softening of offences in relation to all those new provisions. The Opposition will look at public order, particularly in relation to riots and assemblies, in the amendments, and how police will prosecute and impose fines, particularly in the current climate in which nobody appears to pay fines.

I now turn to the most important part of the Bill - part 4. I understand that the Attorney General has agreed that part 4 of the Bill will be made into a separate Bill. It is a very important issue for Western Australians. I have thought long and hard about this Bill, and I have read a few relevant publications. The central issue is whether Parliament should take the question of whether somebody intended to kill another person or to cause grievous bodily harm away from the jury and give it to the judge. In its most basic form, this is the issue before the House. I have sought views from the Chief Justice and the Director of Public Prosecutions, Mr Robert Cock, and from crown counsel, George Tannin, SC. I have read two relevant articles: "Sentences for Wilful Murder and Murder" from the University of Western Australia's *Law Review,* volume 26 of July 1996, by Ms Irene Morgan. I found this very enlightening. It involved a historical analysis of sentence length for this offence. It must have been a difficult paper to research. I found it very helpful. I also read "From Marble to Mud: The Punishment of Life Imprisonment" in a paper presented at the Australian Institution of Criminology in December 1999 by Mr John Anderson. I have also considered a comparison table of the provisions for the punishment of crime in the Australian States and Territories. I note that Western Australia is the only State of Australia to retain the concept of wilful murder; however, that should not be a reason to change its operation in Western Australia. The question remaining is whether it is more just in our State to retain the provision for wilful murder. I have also read the relevant volume of the "The Criminal Code - A General Review" of June 1983 conducted by Michael Murray, then crown counsel, and now justice of the Supreme Court.

Before I comment on this very significant part of the Bill, I want to spend a few moments looking at Irene Morgan's article. When I considered the second reading speech and the explanatory memorandum concerning these provisions, it seems the Government hinges its reasoning for abolishing wilful murder in this State on the fact that the Chief Justice views the distinction as unnecessary, and that it unduly complicates things for a jury. However, it did not unduly complicate things for a jury when Dave Dempster, the crown prosecutor, was successful in bringing a wilful murder prosecution yesterday. Another reason given for the proposed change is outlined in Ms Morgan's paper; namely, the fact that judges must grade murderers. Five reasons are offered for this change, the last of which is that other States do not have a wilful murder provision. I refer to Ms Morgan's article because I place on record the historical analysis of murder and wilful murder provisions in this State. This article is an excellent overview of sentences for murder. I read from my notes taken from the article. It is very instructive and interesting to see how successive Governments have altered legislation in this area. Ms Morgan said that the Criminal Code in this State has always distinguished between wilful murder and murder. Wilful murder requires a prosecution to prove that A intended to kill B under section 278. Murder requires a prosecution generally to prove that A intended to do grievous bodily harm under section 279. That is a simplification by Irene Morgan concerning this legislation.

I turn now to the relevant section of the Criminal Code. The definition of "wilful murder" in section 278 reads -

> Except as in hereinafter set forth, a person who unlawfully kills another, intending to cause his death or that of some other person, is guilty of wilful murder.

That is currently a decision to be made by a jury - namely, whether the person in the dock committed wilful murder and whether the person in the dock committed murder. The definition of murder is a little more extensive than only that the offender intended to do grievous bodily harm. It reads -

> . . . a person who unlawful kills another under any of the following circumstances, that is to say -
>
> (1) If the offender intends to do to the person killed or to some other person some grievous bodily harm;
>
> (2) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life -

I pause at this point. Those two definitions of murder will be retained, but the definition of wilful murder will be included in this provision. The Bill will state to a jury that it must decide whether person A has been murdered. It will be for the judge to decide whether the person intended to cause the death; whether he intended to do grievous bodily harm; or whether the death was caused by an act of such nature as to endanger human life. That

question will go to the judge. That is the Opposition's issue. Should it go to the judge? I discussed this point with the Chief Justice and many of my colleagues, including the shadow Attorney General and the member for Kingsley, who is a former Attorney General. In the end, I fell over the line with the view that a person charged with the most serious crime in the criminal calendar should be judged by his peers, not by a judge. The facts are for the jury - the law is for the judge. This Bill will change this arrangement, and that is a change to which the Opposition objects.

It is important to note that definitions of murder will be repealed; that is, section 279 (3), which reads -

> (3) If the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime;

The section further reads -

> (4) If death is caused by administering any stupefying or overpowering thing for either of the purposes last aforesaid;
>
> (5) If death is caused by wilfully stopping the breath of any person for either of such purposes;
>
> is guilty of murder.

It is not simply a distinction been whether, on the one hand, wilful murder requires the prosecution to prove that a person intended to kill or whether, on the other hand, murder requires the prosecution generally to ascertain whether the person did grievous bodily harm. The law is much broader as it stands at the moment.

Ms Morgan says the original punishment for both wilful murder and murder was the death penalty. In the early days when Australia was a colony, a person who committed murder or wilful murder received the death penalty. She writes that wilful murder and murder were first differentiated in 1961 when wilful murder attracted the death penalty and murder attracted a mandatory life sentence. The Murray review of the Criminal Code recommended that that not be changed. The Murray review is one of the planks the Government has used to justify eliminating wilful murder from the code. However, we must remember that when Michael Murray presented his review in June 1983, the death penalty was still in place in Western Australia, and that has to be taken on board. In practical terms, Ms Morgan states that there was little difference because very few offenders were executed and basically both classes of prisoners - those who were convicted of wilful murder and those convicted of murder - were required to serve approximately 15 years before the possibility of being released by the Governor's exercise of the royal prerogative of mercy.

In 1963 - two years later - an offender had the benefit of the newly established Parole Board that was created by the Offenders Probation and Parole Act. Between 1963 and 1965, those people convicted of wilful murder and murder before 1963 were governed by the provisions of the Criminal Code that related to the royal mercy provisions, and other prisoners convicted of wilful murder and murder could be released on parole under the Offenders Probation and Parole Act, rather than the royal prerogative. Under the Offenders Probation and Parole Act, the Governor could still order a release, but only following a positive report by the newly established Parole Board. In 1965, as a result of an amendment to the Offenders Probation and Parole Act, all lifers - the name given to those serving life imprisonment - were subject to parole rather than the royal prerogative. The point I am leading up to is that the Government wants to not only abolish wilful murder, but also increase the first parole release date from seven to 10 years, and we have not been given justification for that increase. I will go through the history and come back to that point.

In 1965, all lifers became subject to parole rather than the royal prerogative. The Governor still ordered the parole, but only following a report that the Parole Board was required to prepare on all lifers at their first statutory review date and at specific intervals thereafter. Statutory review dates still exist and the courts, depending on whether a person has been given a sentence of strict security or life imprisonment for wilful murder or life imprisonment for murder, have the discretion in that range. For instance, for murder it is seven to 14 years, and for wilful murder it is life imprisonment, between 15 and 19 years and up to 30 years. I may have to correct myself in relation to that. The sentences for those offences start at seven years and extend to 30 years. All those sections are being repealed and the judge will not only have the discretion to determine the intent of the accused, which is currently the decision of the jury, but also, will not be able to start from the seven to 30 years for the first statutory review date - he must start at 10 years. The Opposition believes that is important.

Ms Morgan states that the amendment that commenced the first statutory review date was significant, because it was the first time there was a differentiation between wilful murder and murder. By that she means that the first statutory review date for wilful murder was 10 years from the date of the commutation of the death penalty. I

put on record that I am very indebted to Ms Morgan's work, because drawing together all these Acts would have been complex and comprehensive, and would have required a fine brain and talented research skills. Ms Morgan states that in all other life sentences imposed for murder, the statutory review date was five years from the date of sentence. However, when the first statutory review date was imposed for wilful murder it was 10 years from the date of commutation of the death penalty, and for murder it was five years from the date of the sentence. The Government is upping the commencement date to 10 years. I can think of a circumstance, for instance, of a young mother who gives birth to a baby at her parents' house without her parents knowing that she was pregnant. She becomes concerned by the baby's crying and smothers it out of fear and without any unlawful purpose or intent to kill. If she is convicted of murder, the judge can start at seven years. I suppose it is possible for the jury to arrive at a decision of manslaughter, but it may not. The judge has to start at 10 years.

In 1980, a further distinction was made between the offences with the introduction of strict security life imprisonment under the Acts Amendment Strict Security Life Imprisonment Act 1980. Today, there are the three regimes: strict security and life imprisonment for wilful murder and life imprisonment for murder. At that stage, strict security life imprisonment could not be imposed by the courts as it is now, but by order when the Governor commuted a death penalty. Therefore, until 1984, the death penalty for wilful murder was still on foot in Western Australia. Looking back, Western Australia was the last State, I think, to do away with the death penalty. I looked at what happened in the other States, and I think one State removed the death penalty back in 1955. However, until 1984, the death penalty was still on foot for wilful murder in Western Australia. Ms Morgan states it was invariably commuted and, if commuted to life, the first statutory review date remained at 10 years as it did in 1965. If it was commuted to strict security life imprisonment, the first statutory review date was 20 years. It is important to understand that just because people were given a review date for parole, it did not necessarily mean they would get it. People were in for life, but they had the opportunity or the hope of obtaining parole review for the first time after a certain period. In relation to murder and other life sentences, the statutory review date remained at five years from the date of sentence. In 1984, capital punishment was formally abolished in Western Australia. Eric Edgar Cooke was the last person to be hanged in Western Australia in 1964 at Fremantle Prison. Interestingly, Ms Morgan's research revealed that the first executions in Western Australia took place in 1814 and involved two Aboriginal men. The first white person - a 15-year-old boy - was executed in 1844, and at the time it was said that he was launched into eternity.

Interestingly, Ms Morgan says that the courts were spared the hypocritical ritual of imposing a sentence that was not going to be carried out. However, they continued another hypocritical ritual of imposing one or other forms of life imprisonment knowing that the prisoner, if sentenced to wilful murder, would serve only part of his sentence, not life imprisonment. In strict security life imprisonment the first parole review was 20 years from the date of sentence and in the latter case it was five years from the date of sentence. According to Ms Morgan, that was an oversight and, in 1985, this House restored the difference. It then became that if life imprisonment was imposed for murder, the first review date was 10 years. In all other cases, it was five years. Ms Morgan says that although the public perception might be that the abolition of the death penalty was an act of leniency, that is not the case. In 1987 the first review date was increased from 10 to 12 years for wilful murder, and five to seven years for other life sentences. In 1988 the Parliament gave the judge power, when imposing strict security life imprisonment for wilful murder, to order that that person never be released on parole. A classic example of that would be the Birnies. In my view, that ruling did not go far enough. That happened under the then Offenders Community Corrections Act 1963. In 1995 the coalition Government made further changes. The first parole review was no longer fixed by statute under the Offenders Community Corrections Act but set by a sentence in court, as it is now. Now strict security life for wilful murder can be set between 20 to 30 years or for the person's natural life. Life imprisonment for wilful murder can be set for 15 to 19 years and life imprisonment for murder can be set for seven to 14 years. The progressive tightening of the law for wilful murder from 1985 to 1995, and for murder and other life sentences between 1965 and 1995, are outlined in a table in Ms Morgan's paper, on page 212. The distinction of the sentencing structure hinges upon the distinction between wilful murder and murder, which she says ostensibly delineates between the intention to kill and the intention to do grievous bodily harm.

I will read from Ms Morgan's paper in the *Western Australian Law Review* because it is one of the five or six reasons upon which the Attorney General is relying in his plank for doing away with the offence of wilful murder. Ms Morgan states at page 213 that -

> The first point to note is that GBH is a relatively narrow definition under the Criminal Code, being limited to bodily injuries which are either 'life threatening' or which cause or threaten to cause 'permanent injury to health'. It will not always be easy for a jury to distinguish an intent to kill from an intent to do such serious injuries.

I do not agree with that. It is difficult to prove what is going on in a person's mind. However, having prosecuted and been involved in murder trials and trials in which I have been required to prove an intent of

grievous bodily harm, I know that it is not impossible to prove that. Yesterday a verdict of wilful murder was brought down in a trial involving crown prosecutor Dave Dempster. The Opposition's issue with this legislation is one about which I have thought long and hard and over which I fall over the line in relation to retaining it; that is, this Bill will take away from the jury the people's right to determine whether one of their fellow men or women intended to kill or to do something else. To be honest about this, if I were still a crown prosecutor, I might have fallen over the line the other way. Why do I say that? It is possible for a person who knows the system to manipulate it under the current legislation. A person might go into a house and stab someone in the heart 17 times. He then fronts up to his criminal lawyer's office and explains that he has been charged with an offence and presents the facts. The lawyer might then say, "Before you start telling me anything, I need to tell you a bit about the law. If, when you stabbed the person through the heart 17 times, you intended to do that, you will be up for wilful murder. However, if you went into that house just intending to hurt that person or do GBH, you will get a verdict of murder. So, tell me, what was your intention when you went to that house and stabbed that person 17 times?" It is possible to manipulate the system. It is possible that the victim's family could suffer injustices under the current system. I recognise that, but I am now speaking as a person who represents the people. In the words of Mr Michael Murray, crown counsel as he then was, in the criminal code review, wilful murder is the most serious crime in the criminal calendar. Murder comes underneath that. We are now about to try to squash those offences into one.

It is important that when a person is charged with wilful murder that he or she have the benefit of being judged by his peers from the community and not by just a single person. This is just; it is the way to proceed. Juries are invariably always fair. It is sometimes possible for a person to have a trial in court when the evidence is there to convict. However, the jury members might look at the person and take into consideration that perhaps she is a bit young. They review the circumstances and juggle the facts to bring in a verdict that they believe is fair. I do not think that because a defence lawyer might manipulate the situation that is a good enough reason to take away the right of a person who is being charged with the most serious offence to be judged by his peers. I appreciate that the reasons given included that the Chief Justice views the distinctions as unnecessary and that it is said that it is an unduly complicated thing for a jury to deal with. That has not prevented wilful murder verdicts being handed down in the past. The fact that other States have this legislation is not a reason to remove this right. Perhaps Ms Morgan in her paper might be underestimating the intelligence of people and their ability to listen - which is not a slight on Ms Morgan's view at all. People are capable of distinguishing between an intent to do GBH and an intent to deliberately kill. The last reason for removing this right is that judges have to grade murderers. I am not sure whether this issue arises because a Supreme Court judge made a tactless remark about a case, which is probably the best I can say about it. However, judges must deal with these people; it is a skill they require. The Law Society of WA does not agree with what this legislation is meant to do and I will raise that matter during the consideration in detail stage. It is the view of one senior counsel to whom I have spoken that it cheapens the upper end of the scale of criminality and it unnecessarily raises the lower end by removing the discretion of seven years. By removing the sentence of wilful murder, is this Government saying it will soften it, or is it saying it will look tough because it is now basically imposing a sentence of 10 years for murder? If that is right, it is unjust.

Having seriously considered this Bill, I will be raising other issues. The Opposition is fully supportive of the Bill apart from this aspect of it. I welcome the opportunity to debate this legislation more closely in a separate Bill and during consideration in detail.

DR J.M. WOOLLARD (Alfred Cove) [1.18 pm]: I agree with some of the comments made by the member for Nedlands. People in the community use labels. We use labels in this House and that is why we have ministers, opposition spokespersons and backbenchers. In the community there is a big difference between being labelled as a person who has committed wilful murder and a person who has committed murder. The people I have spoken with in the community would not like to see those definitions changed.

A problem has arisen with sentencing. The Attorney General has said that some juries find it difficult to decide what verdict to hand down. I suggest that the definitions not be removed, because someone could still be convicted of murder, although not convicted of wilful murder. There should be a wider scope of sentences for people convicted of murder and wilful murder, rather than an increase in the sentences for murder. If there were provision for a broad stand of years, and if a jury were unable to make a determination between wilful murder and murder, rather than automatically giving the power to the judge hearing the case - which these amendments will do - the judge could determine the years of imprisonment.

The proposed amendments are not in the best interests of the community. Some community members have been very unhappy when people have been sentenced to imprisonment for fewer years than they believed they should have been sentenced for the crimes they have committed. I ask the Attorney General to broaden the sentences for wilful murder and murder so that if a jury were not 100 per cent certain about convicting someone for wilful murder, it could convict the person for murder. Depending on the circumstances that were presented to the

court, the judge would then be able to determine the number of years for which that person should be imprisoned.

I will make a contribution on other aspects of the Bill at the consideration in detail stage. I know that the Attorney General is hoping to move on, but I hope he will consider retaining the definitions and consider only the penalties for wilful murder and murder.

MR J.A. McGINTY (Fremantle - Attorney General) [1.22 pm]: I thank members opposite for their support for the legislation. The Government has indicated its support for splitting the Bill into two Bills. It would be most appropriate, immediately after putting this motion, to move to the motion proposed by the member for Kingsley, which will enjoy government support.

Question put and passed.

Bill read a second time.

Division of Bill - Motion

MRS C.L. EDWARDES (Kingsley) [1.23 pm]: I move -

That the Bill be divided into two separate Bills, being -

(1) The *Criminal Code Amendment Bill 2003* consisting of -

(a) a Title "A Bill for an Act to amend *The Criminal Code* and to consequentially amend various other Acts.";

(b) clauses 1, 3 to 15 and 23 to 83 inclusive, and schedules 3 to 5 inclusive, of the Bill currently being considered by the Assembly;

(c) new clause 2, containing an amended commencement provision, as follows –

"

2. Commencement

This Act comes into operation on the 28th day after the day on which it receives the Royal Assent.

"; and

(2) The *Criminal Code Amendment Bill (No. 2) 2003* consisting of -

(a) a Title "A Bill for an Act to further amend *The Criminal Code* and to consequentially amend various other Acts.";

(b) clauses 16 to 22 inclusive, and schedules 1 and 2, of the Bill currently being considered by the Assembly;

(c) new clauses 1 to 3 inclusive, containing the reference and commencement provisions, as follows -

"

1. Short title

This Act may be cited as the *Criminal Code Amendment Act (No. 2) 2003*.

2. Commencement

(1) Subject to this section, this Act comes into operation on the 28th day after the day on which it receives the Royal Assent.

(2) If the day fixed under subsection (1) is after the day on which section 117 of the Acts Amendment (Equality of Status) Act 2003 comes into operation, section 7(2) does not come into operation.

(3) If the day fixed under subsection (1) is before the day on which the Sentence Administration Act 2003 comes into operation, Schedule 1 clauses 11 and 12 come into operation immediately after the Sentence Administration Act 2003 comes into operation.

(4) If the day fixed under subsection (1) is after the day on which the Sentence Administration Act 2003 comes into operation Schedule 1 clause 10 does not come into operation.

3. *The Criminal Code* amended

The amendments in this Act are to *The Criminal Code** unless otherwise indicated.

[Reprint 10 as at 7 February 2003 (see the Schedule to the Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Act Compilation Act 1913).]*

".

Statement by Acting Speaker

THE ACTING SPEAKER (Mr A.P. O'Gorman): Prior to the major changes in 2000, the standing orders provided for the House to instruct the Committee of the Whole House to divide a Bill into two or more Bills, or to consolidate several Bills into one. In 2000 the Committee of the Whole process was replaced by a consideration in detail stage. At the same time, the standing order relating to division and consolidation was deleted, as it was considered this action would now be taken directly by the House itself, rather than referring that power to the Committee of the Whole House.

It remains open to the House, when commencing consideration in detail, to decide that a Bill should be divided into two or more Bills, or indeed to consolidate two or more Bills into one. Members should be aware, however, that this is an administrative and procedural motion and cannot be used to effect substantive amendments. The only permissible changes are those necessary to enable the division of the Bill into such parts as are considered appropriate by the House, which include any technical or clerical adjustments required to be made by the Clerk. The procedures relating to substantive amendments to be made during consideration in detail remain unchanged.

MRS C.L. EDWARDES (Kingsley) [1.28 pm]: I thank the Attorney General for agreeing to split the Bill, which will essentially allow for the provision dealing with homicide to be removed from some very important amendments that the Opposition supports. Although we will raise some issues at the consideration in detail stage, we support the passing of those amendments through the Parliament, which will permit a greater and wider debate on the appropriate sentences for wilful murder and murder. The Sentencing Act amended the penalties for those two offences back in 1994. Therefore, some 10 years on, it is an appropriate time for us in this Parliament to consider whether those sentences continue to reflect the views of the community and whether the community would accept a judge taking over the role of a jury to assess the seriousness and aggravation of the circumstances of an offence to determine whether it is sufficiently serious to attract the penalty for wilful murder as against the penalty currently available for murder. Juries are well known in the community as a meeting of our peers. People who have been charged with these offences have generally been satisfied to have the charges adjudicated by a jury. Dividing the Bill will provide an opportunity for a greater level of debate for all the reasons I have put forward, and particularly for the more extensive reasons put forward by the member for Nedlands. The Opposition welcomes the opportunity for future debate on sentences.

Question put and passed.

Consideration in Detail

The ACTING SPEAKER (Mr A.P. O'Gorman): Following the decision just made by the House, I advise that there is no requirement to reprint the Bills before further considering them in detail, even though in most circumstances that is the most desirable course. I understand that both sides of the House are content to proceed immediately with the first of the two Bills, namely, the Criminal Code Amendment Bill 2003, which now excludes clauses 16 to 22 and schedules 1 and 2. Consequently, I will propose clause 1, as printed in the Bill, followed by new clause 2, which appears on page 12 of the Notice Paper. Following that will be clauses 3 to 15, clauses 23 to 83 and schedules 3 to 5 as printed in the Bill.

Clauses 1 to 3 put and passed.

Clause 4: Section 187 inserted -

Ms S.E. WALKER: In the Attorney General's second reading speech, I think, he said that a Western Australian committee had been set up, and it had recommended that we adopt the Victorian legislation. Is the Victorian legislation the same as this legislation? When did that Western Australian committee meet, and who was on it?

Mr J.A. McGINTY: In the second reading speech I said that the Western Australian committee that was established to investigate the matter recommended that legislation based on the Victorian model should be enacted in this State. That was the Model Criminal Code Officers Committee, and it was a number of years ago. I could not give the member the date.

Ms S.E. WALKER: I wonder who was on that committee. I do not suppose the Attorney General could tell us that.

Mr J.A. McGinty: No.

Ms S.E. WALKER: Okay. Can the Attorney General tell me - I raised this in my second reading contribution - whether any prosecutions have been commenced under the relevant section of the commonwealth Crimes Act, and, if so, whether they have been successful; and whether there have been any prosecutions in any other State of Australia under this legislation and whether they have been successful?

Mr J.A. McGINTY: I am aware of some media coverage of prosecutions that have occurred under these provisions, but I cannot advise the House of any detail on that.

Mrs C.L. EDWARDES: I understand that in fact a couple of prosecutions in Western Australia have been successful. Therefore, I wonder what proposed section 187 will add to the laws that are currently in place. I am aware that there have been some successful prosecutions, particularly dealing with Western Australian sex tour operators.

Mr J.A. McGINTY: This legislation will ensure that Western Australian law is compatible and consistent with that which is applicable elsewhere in the nation. There is no acknowledgment in that that there is necessarily any inadequacy in those provisions. However, it will ensure that there is no possibility of anything getting through the net - we hope. There is also specific reference to travel agents that are licensed under the Travel Agents Act, which is an additional provision.

Ms S.E. WALKER: I find it astonishing that these amendments have been introduced nine years after the commonwealth legislation, yet the Attorney General is not in a position to tell us whether there have been any prosecutions. That is very important because, as I have mentioned, members of the federal Parliament, in their second reading contributions, wanted to know whether the legislation had teeth. Is this just a political exercise? I would have thought that if the Government were serious about bringing on this legislation, it would have looked at the cases that have been heard, how many there have been, whether they have been successful and what their weaknesses have been. There is nothing. I find that incredible because, as I mentioned, all members in the federal Parliament, in their second reading contributions, were concerned to know that this legislation would be effective; otherwise it is just window-dressing.

I am a bit angry about this, because I take child sex abuse very seriously, as do many members of this Parliament. I would have thought that the Attorney General would have got some of the lawyers at his disposal in the government departments to do some research into that, instead of just bringing on this legislation. It has been nine years since it was introduced into the federal Parliament. I find it incredible. Perhaps the Attorney General can tell us how these provisions work in effect.

Mr J.A. McGinty: I think I have already answered that in response to the member for Kingsley's question.

Ms S.E. WALKER: The amendments in clause 4 refer to prohibited conduct under the Criminal Code of Western Australia and the Crimes Act. Do we have videoconferencing facilities? How does it work in practice? In practice, how are these people prosecuted? It is important for that to be put on the record, if the Attorney General can tell us that.

Dr J.M. WOOLLARD: Under proposed subsection (1), prohibited conduct means -

> (a) the doing of an act in a place outside Western Australia in respect of a child under the age of 16 years which if done in Western Australia would constitute an offence under Chapter XXXI;

I am looking at chapter XXXI and wondering what will happen in countries in which children have arranged marriages before the age of 16 years. Will this Bill have any effect on someone from Australia who goes to one of those countries for an arranged marriage?

Mr J.A. McGINTY: I draw the member's attention to section 322(8) of the Criminal Code. I think that provides the answer to her question, and the answer therefore is no. Otherwise, it is no defence to say that the conduct engaged in is lawful in the foreign country.

Dr J.M. Woollard: If someone from Australia goes to another country and marries someone under the age of 16, is that lawful or unlawful?

Mr J.A. McGINTY: If it is lawful in that country, that provides a defence.

Dr J.M. WOOLLARD: Can that person then bring his or her partner back to Australia?

Mr J.A. McGINTY: That would be an immigration matter and would be within the purview of the Commonwealth. If someone is married in those circumstances, no offence is committed under the provisions of

the Criminal Code to which we are referring, in particular section 322, which relates to an offence by a person with authority over a child who is 16 years of age.

Ms S.E. WALKER: In my contribution to the second reading debate I asked the Attorney General whether the statistics that were cited in the House of Representatives were any different. In the House of Representatives, Mrs Worth from Adelaide said that approximately 300 000 Australians visit Asia each year, but only an estimated 200 of those undertake sex tours. Before bringing on this amendment did the Attorney General do any research on whether the problem has increased or decreased, or does he intend to target countries other than Asia with this legislation?

Mr J.A. McGinty: The answer to that is no.

Dr J.M. WOOLLARD: It is in section 321A of the Criminal Code. Can the Attorney General clarify whether the Bill will have any effect on someone from Australia going to a country and marrying a child under the age of 16?

Mr J.A. McGinty: It is the same provision in section 321A(8).

Dr J.M. WOOLLARD: I could not hear the Attorney General. If an Australian citizen goes to another country and marries someone under the age of 16 and then brings that person back to Australia, does this Bill have any effect on such an arrangement?

Mr J.A. McGINTY: Section 321A deals with children under the age of 16 and people who have sexual relationships with children under 16. Subsection (8) reads -

> It is a defence to a charge under subsection (3) to prove the accused person was lawfully married to the child.

If someone is lawfully married, that is a defence.

Ms S.E. WALKER: Can the Attorney General tell me what the difference is, if any, between the offences under chapter XXXI of the Western Australian Criminal Code and those in the Crimes Act?

Mr J.A. McGINTY: The existing provisions in chapter XXXI of the Criminal Code have been preserved. They are far broader in their import than the federal provisions in the Crimes Act. I am told that it is intended that the law of the jurisdiction concerned should be applied when changes are made to the Western Australian Criminal Code, rather than necessarily relying on the federal provisions. The Crimes Act has carried forward the Crimes Act provisions in relation to the commonwealth areas. The Western Australian Criminal Code preserves the offences within Western Australia and applies the same offences to activity beyond the jurisdiction.

Ms S.E. WALKER: The reason I raise the question is that the Law Society of Western Australia has commented on this area, and in particular part 2. The only thing it can say about the amendment is that the maximum penalty will be slightly greater, and I think that is correct. I read out the offences under the Crimes Act, some of which carry a maximum of 12 years imprisonment and others a maximum of 17 years imprisonment. Some offences in our Criminal Code carry a modest amount of imprisonment but go up to 20 years. The Law Society says that it is not clear what proposed new section 187 of the Criminal Code adds to part 3A of the Crimes Act. In particular, section 50DB of the Crimes Act, read together with the remainder of that part, seems already to prescribe the sort of conduct mentioned. It says also that the definition of encourage in section 50DB(3) to include organising an arrangement that facilitates an offence or assisting a person to travel outside Australia to commit an offence already seems sufficiently broad to embrace this conduct. Generally the proposal is not objectionable to the Law Society. I do not know whether this will add anything to the current law. How is it envisaged that evidence will be taken from witnesses for the purposes of establishing prohibited conduct?

Mr J.A. McGINTY: I will mention two points in response to the issues raised by the member for Nedlands. First, by inserting these provisions in our Criminal Code, the State will retain the right to prosecute its citizens who engage in this sort of behaviour. Currently we do not have that power because it is a Crimes Act provision; it is caught only by the Crimes Act. Secondly, these matters will be prosecuted in the ordinary way depending on the nature of the case and the evidence available.

Ms S.E. WALKER: Will evidence be taken from witnesses by videolink? I suppose that is what I am really searching for.

Mr J.A. McGinty: I have already covered that.

Dr J.M. WOOLLARD: I refer to lawful marriage and how it relates to proposed section 187. I have read the list of definitions in the commencement of the Criminal Code and note that there is no definition of a lawful marriage. How will this provision be applied? Many years ago, I worked in the Middle East where turning in a certain direction and saying, “I divorce thee” was regarded as a divorce and was accepted by the community.

What will the Government accept as lawful marriage if people go to other countries? They might use this provision as a reason for having had sexual intercourse with young children.

Mr J.A. McGINTY: I cannot add anything to the concept of a legal marriage.

Ms S.E. WALKER: As the Attorney General now wishes the State to retain the right to prosecute in this area, has any analysis been done of whether any additional resources would be required?

Mr J.A. McGinty: No.

Ms S.E. WALKER: Has the Attorney General committed any funds to pursuing these prosecutions? I ask the question again: has the Government committed any funds or resources to the prosecution of child sex tourism offences, or is this legislation just a public relations exercise?

Mr J.A. McGinty: If you are unhappy about it, vote against it.

Ms S.E. WALKER: I want to know whether the legislation will be effective, whether the Government is window-dressing these issues as usual or whether it is being real. From what the Attorney General has said today, he is not being real about it. He has not done any research or analysis of the federal legislation. The Attorney General cannot tell me how many offences have been prosecuted. He cannot even tell me how the State will action this provision. The Attorney General has not committed any additional resources or analysed whether any additional resources are required. It is a joke.

Dr J.M. WOOLLARD: The dictionary defines "married" as being united in marriage and "legal" as based on, or concerned with, law and appointed or acquired by law. Some members have referred to other countries earlier in this debate. Does "required by law" mean our definition of law, which requires certificates to be signed and a formal ceremony to be held? Will that be expected of people from other countries?

Ms S.E. WALKER: Does this clause differ in any way from the Victorian legislation?

Mr J.A. McGINTY: It was based on the Victorian provisions. There will obviously be some grammatical departures from it.

Clause put and passed.

New clause 5

Mr J.A. McGINTY: I move -

Page 3, after line 24 - To insert the following new clause -

5. *Sentence Administration Act 2003* consequentially amended

(1) The amendments in this section are to the *Sentence Administration Act 2003**.

[* *Act No. 49 of 2003.*]

(2) Schedule 2 is amended as follows:

(a) by deleting "chapters" and inserting instead -

"provisions";

(b) by inserting after paragraph (h) the following paragraph -

(i) Section 187 - Facilitating sexual offences against children outside Western Australia

This is a purely grammatical amendment, which is consequential on the changes made; nothing of substance is achieved by it.

New clause put and passed.

Clause 5: *Travel Agents Act 1985* consequentially amended -

Ms S.E. WALKER: Have any applications from persons for travel agents licences been refused in Australia? In what States have they been refused?

Mr J.A. McGINTY: I am not in a position to advise on matters in other jurisdictions.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Sections 63 to 67 replaced and *Police Act 1892* consequentially amended -

Ms S.E. WALKER: I refer to proposed section 64 with regard to public order. The amendments will impose a softening of the legislation by creating a summary conviction penalty and a fine of $8 000. Why has there been a softening of public order issues?

Mr J.A. McGINTY: The penalties have not been softened. The amendment removes antiquated provisions and penalties that were never used and replaces them with modern, understandable wording and offences. Also, they make provision for lesser offences to be dealt with by summary conviction rather than requiring them all to be dealt with in the usual way.

Ms S.E. WALKER: With regard to the softening, am I correct that for the first time fines instead of imprisonment will be imposed?

Mr J.A. McGinty: That is right.

Ms S.E. WALKER: With regard to unlawful assemblies, the Attorney General said that these penalties have never been used. Is the Attorney General saying that there has never been a prosecution for this offence?

Mr J.A. McGinty: No.

Ms S.E. WALKER: What does the Attorney General mean when he says that the penalties have not been used?

Mr J.A. McGinty: I refer to the maximum penalties that are prescribed in this legislation.

Ms S.E. WALKER: My point is that prior to this legislation being introduced - public order is an issue - it was only possible to sentence a person to imprisonment, whereas after the passage of this legislation, offenders will be fined. During the second reading debate, I mentioned that the member for South Perth has researched the subject of fines. In light of the fact that people are not paying fines, I wonder how these provisions will be enforced.

Mr J.A. McGINTY: Section 64 of the Criminal Code currently provides a penalty of three years imprisonment for rioting. Under proposed section 65, it will be a misdemeanour. Proposed section 65 states -

> Any person who takes part in a riot is guilty of a crime and is liable to imprisonment for 5 years.

If that is the member for Nedlands' idea of going soft, good luck to her.

Ms S.E. WALKER: The Attorney General has increased the penalty to five years, but he has also allowed for the first time a softening of the penalty by creating a summary conviction penalty of imprisonment for two years or a fine of $8 000 for taking part in a riot. That was my point with regard to all these clauses. Could the Attorney General tell us with regard to proposed section 66, why mayors and shire presidents are no longer able to disperse rioters? What was the reason for that?

Mr J.A. McGinty: It was an antiquated provision.

Ms S.E. WALKER: Okay. The Bill says that a justice or police officer may orally order people to disperse. Was no thought given to the words they might use? Can the Attorney General see that that will create problems when prosecuting offenders?

Mr J.A. McGinty: I do not see that.

Ms S.E. WALKER: The Attorney General cannot see that. That is probably because he has never been a prosecutor. I imagine that defence lawyers would have a field day in court, depending on the words used by the police officer or the justice officer. The language in previous statutes was old fashioned. However, the issue is not about modernising the law; it is about whether it is just.

Debate interrupted, pursuant to standing orders.