CRIMINAL LAW (PROCEDURE) AMENDMENT BILL 2002

Second Reading

Resumed from an earlier stage of the sitting.

MR McGINTY (Fremantle - Attorney General) [3.29 pm]: I thank members for their contribution to this debate and their support for this important reform to the criminal justice system. Other reforms will follow, all of which are designed to make the administration of justice in Western Australia more efficient.

The combination of the two things that this legislation does - the abolition of preliminary hearings or committals, coupled with the increased disclosure by particularly the prosecution and in certain circumstances the defence - will be a significant step forward in ridding the justice system of an anachronism. Varying points of view have been put by a number of members today, and I thank them for that.

An issue we raised some weeks ago was how the matter should be dealt with procedurally from here. Over the years there have been occasions when people with particular expertise in a matter before the House have taken carriage of the consideration in detail stage of the legislation, speaking on behalf of the minister. I raised the prospect that the member for Innaloo, who is arguably the most knowledgeable person on the question of criminal law procedure in Western Australia, having in a former life participated in a number of preliminary hearings -

Ms Sue Walker interjected.

Mr McGINTY: He is certainly more knowledgeable than the member for Nedlands.

Ms Sue Walker: I doubt that.

Mr McGINTY: I think he might be significantly more knowledgeable than the member on this matter.

Mr Johnson: Is the Attorney saying the member should have his job?

Mr McGINTY: I think he is an incredibly talented person. One of the things about this side of the House is that the back bench is absolutely brimming with talent, something that cannot be said for the opposition side.

In the 1980s when groundbreaking law was being introduced into this Parliament in the form of the Equal Opportunity Act, Hon Yvonne Henderson, who at that stage was a backbencher, was given carriage of the matter because of her great knowledge of and involvement in that issue over a number of years. She saw that groundbreaking law through this Parliament and brought it onto the statute books in Western Australia. Members will also recall the member for Cockburn, Bill Thomas, who over the years had an enormous interest in matters affecting conservation and environment issues. If anything, that was the particular issue that he dealt with from time to time. On behalf of Hon Bob Pearce he took carriage through this House of a CALM amendment Bill in approximately 1990. More recently than that the member for Pilbara, Larry Graham, on behalf of the then Deputy Premier and Minister for State Development, Ian Taylor, took carriage of the Pilbara Development Commission legislation through this House. There have been a number of occasions on which the House has taken advantage of the detailed knowledge and expertise that members have brought to this House in the form of debate, and they have seen matters through the House on behalf of the Government.

I understand an objection has been raised to my suggestion. Are members opposite prepared to allow John Quigley, the member for Innaloo, to handle this Bill? The member for Hillarys is shaking his head indicating no. I presume it is because he is scared. The member for Innaloo would wipe the floor with anyone the Opposition put forward to deal with this matter. If that is the member's view, it is not one that I wish to push, and it is certainly not a matter that I will ask the Acting Speaker to rule on. I express some disappointment at the churlish and frightened nature of the members opposite who are not prepared to have one of the very talented backbenchers from the Labor side present the case on behalf of the Government. There are sufficient precedents to enable this to happen. I cannot understand the rationale for opposition members being so opposed to this proposal.

Opposition members interjected.

The ACTING SPEAKER (Mr Dean): Order, members!

Mr McGINTY: The Opposition will not escape. From his seat the member for Innaloo will give all opposition members the benefit of his vast knowledge on this matter, most probably on every clause. Members will get the benefit of his knowledge. They will be entertained, informed and educated by the member for Innaloo during the course of this procedure. Given that the Opposition raises objection to the way in which I thought it made a lot of sense to proceed, we will not push the matter, but we will hear a great deal from the member.

Mr Johnson: He has no authority to speak on behalf of the Government.

Mr McGINTY: What authority did Larry Graham, Bill Thomas or Yvonne Henderson have? They had great knowledge, which the member is seeking to deny from this debate. Opposition members will hear it anyway.

Mr Johnson: We want you to be responsible for the carriage of the Bill.

Mr McGINTY: As indeed I am, and will be all the way through. I thank members opposite, with the exception of the member for South Perth, for their indications of support for this legislation, because it is an important reform.

Question put and passed.

Bill read a second time.

The ACTING SPEAKER: Is leave granted to proceed forthwith to the third reading stage?

Mr Johnson: No.

The ACTING SPEAKER: Leave is not granted. We will proceed with the consideration in detail.

Consideration in Detail

Clause 1: Short title -

Mr KOBELKE: I wish to comment briefly on the procedure for handling this Bill during the consideration in detail stage. It really shows up the pettiness and the lack of talent on the opposition benches that opposition members are not prepared to accept the member for Innaloo sitting at the Table. The Attorney General cited three previous cases when that has happened. However, the standing orders do not allow for that explicitly, and the Attorney General did not wish to waste the time of the House with procedural matters. The Attorney General has shown, with the numerous Bills he has handled in this House over the past year or so, that he is extremely competent, and he will handle this Bill with the same competency. He is also magnanimous enough to realise that we have in the member for Innaloo particular talent and experience in the area covered by this legislation. We look forward to the contribution by the member for Innaloo to ensure that the House is as fully informed as possible on the matters that will be debated during the committee stage, if I can call it that. It is not becoming of the Opposition to be churlish and afraid, as the Attorney General has said, and not be willing to accept that procedure. We will not delay the House with procedural matters. I am sure the member for Innaloo will be able to make an equally full contribution from his seat as he would have from the Table. The Government knows he will speak with authority and experience, and the Attorney General will show his support for that, as we proceed through the consideration in detail stage.

Mr JOHNSON: I cannot let those comments go without responding. Pursuant to the Constitution Acts Amendment Act 1899, ministers are responsible for the carriage of government Bills, and since then parliamentary secretaries have been specially authorised under section 44A. Private members therefore may not have carriage of government Bills. The Leader of the House and I both know that. A precedent may have been set to some extent under a previous Labor Government which seemed hell-bent on upsetting the conventions of the Westminster system and parliamentary procedures to suit its own ends when it allowed the member for Cockburn in 1989 or 1990 to have carriage of a Bill for one clause. I have the *Hansard* and I can quote the debate. The Leader of the House cannot tell me that it has been a past custom and practice of the House, because it has not been. Erskine May*'s Parliamentary Practice Twenty-second Edition* says that a motion standing in the name of a minister may be moved by any other minister in accordance with the constitutional practice which permits ministers to act for each other on the grounds of the collective nature of the Government. That is exactly what we expect of the Attorney General and all ministers.

On 30 May 1990 a ruling was made in the other place by the then President, who said -

> I rule that the carriage of Government legislation in this House is the responsibility of Ministers and cannot be transferred to unofficial members.

By that he meant backbenchers. When the Premier was Minister for Parliamentary and Electoral Reform in a previous Labor Government he brought the Acts Amendment (Parliamentary Secretaries) Bill into the House to expand the statutes so that parliamentary secretaries could be authorised under the Constitution Acts Amendment Act to act on behalf of ministers. We accept that and it has been a practice since then. In the second reading speech on that Bill, Dr Gallop said-

> The Government wishes to provide the required constitutional support for assistance to Ministers in the conduct of their work in Parliament and elsewhere, but wishes to make such a provision without unnecessary expense and without addition to the Cabinet.

That is the purpose of parliamentary secretaries.

This is a very important Bill, and some members on this side of the House have concerns that the Attorney General has a law degree but has never practised law. The member for Innaloo is absolutely more qualified than the Attorney General -

The ACTING SPEAKER (Mr Dean): I have allowed the member for Hillarys almost equal time with the Leader of the House. I am sure that he will get to the short title of the Bill soon because I see no relevance in what he has said so far.

Mr JOHNSON: I am responding to the Leader of the House.

The ACTING SPEAKER: The member is not responding; he is addressing the short title of the Bill, which is the order of debate.

Mr JOHNSON: Did the Leader of the House address the short title of the Bill?

The ACTING SPEAKER: I was about to say that he was out of order as well. I am not ruling the member out of order; I am suggesting that he stick to the short title of the Bill.

Mr JOHNSON: I will not take more than the allocated five minutes, but you should show some indulgence.

The ACTING SPEAKER: I have shown the member some indulgence and have given him the same quantity of time as the Leader of the House. Please address the short title.

Mr JOHNSON: The short title of the Bill is very important. The carriage of this Bill and the short title of the Bill are most important. The member for Innaloo would conduct the carriage of this Bill much better than the Attorney General because he is more qualified. However, the Attorney General receives an enormous ministerial salary, and the Opposition thinks he should earn it in the carriage of this Bill. He should not abrogate his responsibility. We want to hear from the organ grinder and not the other one. Frankly, we could change the title of the Bill. What the Attorney General proposed earlier was done with a sense of amusement on his part, and with a sense of vanity on the part of the member for Innaloo. The member for Innaloo could not wait to go to *Inside Cover* to tell the paper he will be handling this Bill. He has a direct line to *Inside Cover*. That is why the Opposition has problems with this. We want this Bill handled properly and responsibly, and we do not expect the Attorney General to abrogate his responsibilities but to handle this Bill, which is what he is paid to do and what he is sworn to do. The Attorney General can answer our questions and make statements with the authority of the collective Executive Government; no other backbencher can do that.

Mr BARNETT: I wish to address the short title, in particular the subject that we are discussing. As the short title indicates, this is the Criminal Law (Procedure) Amendment Bill 2002 and is about procedures within the courts. This is something that the Attorney General has knowledge of and is quite competent to handle and debate, as are members on this side of the House.

Mr Kobelke: We will wait to see that.

Mr BARNETT: I have no doubt that the member for Innaloo, given his extensive courtroom experience, has a point of view on, and is able to contribute to, the debate. This is not a matter of the competence of ministers, shadow ministers or backbench members of Parliament; this is about the handling of a piece of legislation. This legislation was not created within this Parliament. The legislation is a product of the executive arm of government, as is all government legislation. It is legislation developed under that title to reform and change court procedures. It was quite properly developed, drafted and put through Cabinet by the Attorney General, who then brought it to Parliament. Under the Westminster system of Government only a representative both of the Parliament and of the Executive can introduce that legislation and handle it. This legislation will ultimately be passed or rejected by this Parliament, but it is legislation initiated by the Executive. Therefore, the Executive is represented by, in this case, the Attorney General or another minister if he so delegates or, as has become the custom here, a parliamentary secretary who has been given a similar role through legislation.

This Bill is about court procedures. I am sure that the Attorney General is competent to handle the legislation. He is the most competent member of the Government - among a pretty miserable bunch - in the handling of legislation. Whether the member for Innaloo knows more or less about the Bill given his extensive courtroom experience - he probably does know more at a practical level - is neither here nor there in the issue of who should handle the legislation. The member for Nedlands also has extensive courtroom experience, the member for Kingsley has legal experience and other members will no doubt have points of view. It is not an argument about who is afraid of whom in the debate or who knows more about courtroom procedure. This is about a Bill introduced and initiated by the Executive and it must be handled by the Attorney General or his representatives in this place and in the other place. I am sure that the Attorney General will handle his legislation in this place, and that another minister will handle it for him in the other place. We do not need to say any more. The

member for Innaloo can contribute; he announced to the world - as the member for Hillarys pointed out - through *Inside Cover* that he will handle the legislation. Good on the member for Innaloo! He has just one more step to make; he has to get into Cabinet, and then he can handle some legislation.

Mr QUIGLEY: I was, of course, somewhat flattered when approached to handle this legislation. Given my experience, it is not a position that I sought. Mention has been made by the two previous speakers of the article that appeared in Tuesday's *The West Australian*, which was a result, not of vanity but of delight.

Mr Johnson: Did you phone them?

Mr QUIGLEY: Not only did I phone *Inside Cover* about this, but I will also phone them about the member for Hillarys. The point was the absolute delight that I took in three counsel sitting together in a courtroom 10 years ago, who would never have envisaged that they would move from that small courtroom to the Parliament to debate a Bill the subject matter of which was the very legislation under which they were operating at that time. It would not be too often in life that we see one of those coincidences that is a bit delightful. I can see the member for Peel in the background smiling at the convergence and coincidence of all of that happening. Members of Parliament should show they can be light-hearted and let people share in these things. I do not have a problem with this at all. It is not a question of vanity or who knows the most. If I have a contribution to make, and I do have some contribution to make, it is not the best or the most exclusive contribution. I was recalling my titles. I appeared in my first committal hearing in April 1976. It is a contribution borne of some experience. The last thing that colleagues within my profession want to see is the passage of the Criminal Law (Procedure) Amendment Bill 2002.

Mr Johnson: What did you do before 1976?

Mr QUIGLEY: I was a worker, unlike the member for Hillarys, the toffy Londoner. I worked on Mardathuna station for the Maslins.

The ACTING SPEAKER (Mr Dean): Member for Innaloo -

Mr QUIGLEY: I drove trucks for Brambles. I learnt about life in Western Australia. I drove a truck for the brewery and in 1969 I put myself -

The ACTING SPEAKER: Member for Innaloo! I remind the member of Standing Order No 179, which says that debate must be confined to the clause or amendment. I ask the member not to be beguiled by and enticed into a verbal jousting match with members on my left.

Mr QUIGLEY: I am never beguiled by those who sit opposite. I am sometimes distracted, but never beguiled.

I well understand that a large proportion of the Law Society of WA and the Western Australian Bar Association do not want to see the Criminal Law (Procedure) Amendment Bill 2002 on the statute books. From my experience in practice, I concur with the comments of the member for Nedlands in her speech at the second reading stage. The purpose is limited, the times at which preliminary hearings are used are very few, and the vast majority of people do not even have the opportunity of a preliminary hearing. It is time to move on. I support clause 1 of the Bill.

Ms SUE WALKER: I wonder whether the title of the Bill should be changed to the "Dizzy Blonde" Bill, because there are a few in this Chamber. I am quite sure that the Attorney General has enough talent and capability to handle this Bill. He has handled - not very well - other Bills that are far more complex. The Attorney General said that the member for Innaloo is arguably the most knowledgeable person on preliminary hearings in this State. I am not, but I am sure that many people would disagree with him. Therein lies the Attorney General's problem - not having experience in the criminal justice system and knowing the member's status in the profession in relation to legal knowledge.

Mr Hyde: Did Tom Percy tell you what to say?

Ms SUE WALKER: Tom Percy does not have to brief me about what I have to say; I had already prepared it.

Clause put and passed.

Clause 2 put and passed.

Clause 3: The Act amended -

Ms SUE WALKER: Can the Attorney General tell me whether all sections in the Justices Act relating to preliminary hearings have been dealt with?

Mr McGinty: What was the question? Have all the provisions in the Justices Act dealing with preliminary hearings been dealt with?

Ms SUE WALKER: Has this Bill dealt with all the provisions in the Justices Act that pertain to preliminary hearings?

Mr McGinty: I am having some difficulty understanding the member's question. There are provisions in the Justices Act that deal with preliminary hearings. Is the member asking whether this Bill deals with each of those provisions?

Ms SUE WALKER: Yes. Is it intended by this Bill to remove -

The ACTING SPEAKER: Perhaps the question of the member for Nedlands is more relevant to clause 4 than clause 3.

Ms SUE WALKER: The amendment is in this clause. I am asking whether all the amendments that can be made to the sections of the Justices Act that deal with preliminary hearings have been made. Was that the Attorney General's intention with the Bill?

Mr McGINTY: The answer to that question is that the provisions of the Justices Act are being amended. I do not know whether the member for Nedlands is asking whether all of them are being repealed or whether those sections that relate to preliminary hearings survive in any form. I am not sure exactly what is the question the member is posing to me. The answer is that, to the extent that the Government intends to legislate about preliminary hearings, that has been comprehensively done in this legislation.

Ms SUE WALKER: Perhaps I can help the Attorney General. I have a copy of the Justices Act 1902, reprinted as at 8 October 2001. Have any amendments been made to that Act between October and now?

Mr McGinty: Since October last year?

Ms SUE WALKER: Since 8 October 2001. Does the Attorney General have a copy of the Justices Act?

Mr McGinty: No, I do not. I am trying to answer the member's question and to recollect any changes to the Justices Act in that time. I am not sure.

Ms SUE WALKER: Has section 66 of the Justices Act, which relates to preliminary hearings, been repealed between October and now?

Mr McGinty: Not to the best of my knowledge.

Mrs EDWARDES: I would like to hear what the member for Nedlands has to say.

Ms SUE WALKER: Does the Attorney General have in front of him a copy of the Justices Act, which this Bill amends?

Mr McGinty: I have answered that question.

Ms SUE WALKER: He does not have a copy.

Mr McGinty: No.

Ms SUE WALKER: Section 66 of the reprinted copy of the Justices Act refers to "preliminary hearings not open court". Section 66 of the Justices Act has not been amended in relation to preliminary hearings. Section 66 of the reprinted copy of the Act states -

> **Preliminary hearings not open court**
>
> The room or place in which justices take the examinations and statements of persons charged with indictable offences for the purpose of committal for trial and the depositions of the witnesses in that behalf shall not be deemed an open court, and the justices may order that no person shall be in such room or place without their permission; but they shall not make such order unless it appears to them that the ends of justice require them so to do.

That section relates directly to preliminary hearings. Has the Attorney General included all the amendments? That section seems to be excluded. I have not heard one government member who made a speech mention section 66. Can the Attorney General shed any light on why that section, if it is still in existence, has been excluded?

Mr McGINTY: We did not think it was necessary to amend that section. I made the point earlier that to the extent that we wish to amend the law relating to committals, it is contained in this legislation. Obviously a procedure is in place for committing people for trial. That has been achieved in this legislation by amending some sections, deleting others and leaving others intact when it remains relevant to the procedures we are setting

in place. Not all the existing provisions of the Justices Act relating to committals have been repealed. Those that should remain in place will remain in place.

Mr QUIGLEY: I support clause 3. Section 66 of the Justices Act does not mention preliminary hearings, as asserted by the member for Nedlands. The side note, which does not form part of the legislation, refers to preliminary hearings. The section itself does not mention the term "preliminary hearing". The section states -

> The room or place in which justices take the examinations and statements of persons charged with indictable offences for the purpose of committal for trial and the depositions of the witnesses in that behalf shall not be deemed an open court, and the justices may order that no person shall be in such room or place without their permission; but they shall not make such order unless it appears to them that the ends of justice require them so to do.

Although I am not a member of the Cabinet or the Executive, I anticipate that the executive arm of government sensibly decided not to amend section 66 because in clause 10, proposed section 102 provides for the compulsory examination by the prosecution of a witness who has not cooperated with the investigators. Let us look at this at a practical level. A person is charged with an indictable offence and a witness - for example, the bookie's clerk in the Connell case - who does not want to give evidence is taken to a compulsory hearing under proposed section 102 for his deposition to be taken. The deposition is taken in front of a magistrate. What is the status of that room? The status of the room is to be found in section 66 of the Justices Act, which states -

> The room or place in which justices take the examinations and statements of persons charged with indictable offences for the purpose of committal for trial . . . .

It is not an open courtroom; it is a closed room unless it is expedient in meeting the ends of justice. Proposed section 102(4) states -

> A person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public any evidence taken on an examination under subsection (1), or attempts to do so, commits a contempt of the Supreme Court and is punishable accordingly by that court.

The Bill proposes that compulsory examinations will be taken in camera and not published. Section 66 of the Justices Act does not mention the term "preliminary hearing" and preserves that situation. I anticipate that is why the Executive decided not to remove section 66 of the Justices Act.

Ms SUE WALKER: Thank you, member for Innaloo, because that tells me that the member never thought of it. The member is arguably the most knowledgeable person on preliminary hearings in this State, according to the Attorney General. The dizzy blonde got you on that one! Section 66 of the Justices Act quite clearly refers to preliminary hearings and not open court. The Attorney General forgot to do it; he does not even have a copy of the Justices Act with him. That is the Act we are debating. I asked the Attorney General whether he covered all amendments. For the member for Innaloo to get up and say that it is just a heading referring to preliminary hearings and not open court and that it does not form part of the legislation is nonsense. The member is thinking about indictment. He was never a legislator. I hope that when the House resumes next week there will be an amendment and a deletion. It is very strange that we are abolishing preliminary hearings in this State, yet the Attorney General - with the help of the member for Innaloo who could not work it out for himself - retained a heading that clearly refers to preliminary hearings. It states "Preliminary hearings not open court". That should have been deleted. That is why I specifically asked the Attorney General whether there had been any amendments since the reprinted version of the Justices Act 1902, and there have not.

That is my first contribution to the debate. Aside from that, I have no difficulty with clause 3.

Mr JOHNSON: I must say that I am very dismayed that the questions originally asked by the member for Nedlands on this clause have not been answered by the Attorney General. The member for Innaloo thinks he answered the questions but he obviously got his answers completely wrong. The Attorney General should not abuse the processes of this House. He should do what most members and ministers do and that is answer the question.

The ACTING SPEAKER (Mr McRae): Take your seat, member for Hillarys. The member's debate is not relevant to clause 3.

Mr JOHNSON: I am sorry, but I was asking a question about clause 3. I want to know why the Attorney General did not answer the earlier question.

The ACTING SPEAKER: The issue before the member is the debate on clause 3 -

Mr JOHNSON: In relation to justices.

Several members interjected.

The ACTING SPEAKER: Order, members! The question before the House is that clause 3 stand as printed. It is not whether the Attorney General or any other member of this House should make comment on it. The Attorney General has already commented on the clause, as have the members for Nedlands and Innaloo. It is not open to debate to argue that the question on the clause should be answered by any particular member. The previous Acting Speaker has already ruled on this matter.

Mr JOHNSON: I will speak on this clause. I will not canvass the ruling of the Acting Speaker as I realise I should not do that.

Mr Hyde: The member has been told to sit down.

Mr JOHNSON: The question has been put again. I will speak on clause 3, which deals with amendments to the Justices Act 1902. The comments made by the member for Nedlands were very pertinent. I did not hear the Attorney General answer her questions. Quite frankly, I would like to hear the answers on this clause from the minister responsible for this Bill. That is totally reasonable. The Attorney General is abusing the processes of this House by staying in his seat and not sitting at the Table with his advisers as he has done with every other Bill he has brought to the House. I want him to respond on his feet and not by way of interjection because members cannot hear. The member for Innaloo may well have made a comment on this clause that my colleague, the member for Nedlands, regards as irrelevant. I ask the Attorney General to do his job. He is the organ grinder; he should do his job and answer the questions in relation to the Justices Act as put by the member for Nedlands.

Clause put and passed.

Clause 4: Section 4 amended -

Ms SUE WALKER: The Justices Act contains a definition section, as do most Acts. The explanatory memorandum to the Bill states -

> Definition of "preliminary hearing" (committal hearing) deleted because preliminary (committal) hearings are abolished by this Bill.

If this Bill is to abolish the definition of "preliminary hearing", what will happen to section 66 of the Justices Act, which is headed "Preliminary hearings not open court"?

Mr McGINTY: The simple answer is that a heading is not a part of an Act, as the member for Nedlands knows. The content of the Act is the part that is interpreted. Consequently, the heading is not important. This legislation will abolish preliminary hearings or committals, as we have come to know them, and will substitute a new procedure. Clause 4 makes it clear that the procedure for committals or preliminary hearings, which was outlined in the Justices Act, is being repealed and replaced by a new procedure.

Ms SUE WALKER: That must be nonsense. Under the Criminal Code, the offence of rape was replaced with the offence of sexual assault through a series of amendments. Why was the term "rape" not kept as a heading in the code? It was not retained because it would not have made sense. This clause has exposed the poor housekeeping of the Government and its failure to properly deal with this Bill. The term "rape" was removed after the name of the offence was changed. Will the Government leave the heading "Preliminary hearings not open court" in the Justices Act for everyone to see?

Mr McGinty: Yes.

Mrs EDWARDES: I slipped out of the House for a couple of seconds, but I point out to the Attorney General that we would appreciate the answer to the question posed by the member for Nedlands.

Mr McGinty: I said "yes" by way of interjection.

Mrs EDWARDES: The heading will remain.

Ms SUE WALKER: Will the heading be left in that Act indefinitely? I would like confirmation of that from the Attorney General, because some time down the track, when he is not feeling so embarrassed by it, he might want to slip it in. Will the Attorney General ever change that heading?

Clause put and passed.

Clause 5: Section 69 amended -

Mr Hyde interjected.

Ms SUE WALKER: The member for Perth should just suck his dummy. If he does that, he will be okay. Does clause 5(3) reflect what is currently contained within the Justices Act?

Mr McGinty: What section of the Justices Act are you referring to?

Ms SUE WALKER: Section 69(2) and (3). Will any of the provisions contained in those subsections be replaced by or reflected in clause 5(3)?

Mr McGINTY: Section 69 of the Justices Act does not currently contain the provision that is contained in clause 5 to provide for a statement to be tendered by the prosecution to a court of summary jurisdiction. Section 69 deals generally with the question of statements that may be admitted on indictable charges. The provisions referred to in clause 5 of the Bill are not currently contained in section 69 of the Act.

Mr QUIGLEY: I support the amendment contained in clause 5. Under the procedures explained to the Chamber earlier this afternoon by the member for Nedlands, once a person has been charged with an indictable offence, he appears before the Court of Petty Sessions and the ninth schedule is read. He is then put through to what is known as an election date. The defendant is told that he will be served with a hand-up of the prosecution brief - a copy of the depositions - no later than four days prior to that election date. Section 69 as it currently exists sets the conditions that must be complied with by those written depositions. Those conditions are set out in subsection (4), which is preserved. The subclause provides that when a deposition is made by an adult, the statement must purport to be signed by that person. When a deposition involves a person who cannot read, it must show that it had been read aloud to that person. Under the current procedure, subsection (4) sets out the condition precedents for depositions - what they must contain if made by an adult or a child and how they must be given. My learned friend is just trying to take the Attorney General through some sort of pathetic word-for-word examination to see whether she can trip him up and find that there is a word in the clause that was not contained in the old subsection. Clause 5 will delete section 69(2) and (3) of the existing legislation, because those subsections deal with preliminary hearings. Under the existing legislation those statements may, on a preliminary hearing, be tendered to the justices. However, no preliminary hearings will occur. When there is no preliminary hearing, a statement may be tendered to a justice to be used in evidence for the purposes of a trial or sentencing of a defendant if it complies with section 69(4) of the Justices Act. Subsection (3) states -

> Despite any other Act, where a person is charged with an indictable offence and the charge is not dealt with summarily, a statement of an affected child, as defined in section 106A of the *Evidence Act* . . .

That relates to a vulnerable child. The subsection then refers to how the evidence taken from those vulnerable children at a preliminary hearing will be dealt with.

There will be no preliminary hearing in which children are subjected to the ordeal of cross-examination. There will be a date set down for mention of the matter and, as the clause provides, for the conditions to be complied with as set out in section 69(4) of the Justices Act. When these conditions have been complied with, proposed new subsections (2) and (3) will come into effect, bearing in mind that there will be no preliminary hearing. When those statements comply with subsection (4) of the Act, they may be tendered by the prosecution to a court of summary jurisdiction for use in any resulting trial or sentencing of the defendant. They therefore become admissible at the committal mention date; likewise with the evidence of affected children. That is one instance in which witnesses will not be subjected to the ordeal of double cross-examination.

Proposed new subsection (3) states -

> Despite any other written law, where a person is charged with an indictable offence and the charge is not dealt with summarily, a statement of an affected child, as defined in section 106A of the *Evidence Act 1906* may be tendered . . .

Proposed new subsection (3) then sets out the conditions. Not all of the words in the Act are contained in the new provisions of the clause. We will have a new system of going forward, which the Opposition endorses. That is why section 69(2) and (3) of the Act have been deleted and new subsections (2) and (3) proposed to be substituted. I support clause 5.

Ms SUE WALKER: The member for Innaloo said that the words "preliminary hearing" do not matter. Why has the Attorney General not inserted the words "preliminary hearing does not matter" in section 69(2)(d) of the Act, which refers to section 101A(e), because the words "preliminary hearing" remain in other sections of the Act?

Mr McGinty: I do not follow that.

Ms SUE WALKER: The member for Innaloo said that the change came about because preliminary hearings are being abolished. However, in essence, much of what is contained in section 69(1) of the Act is also contained in proposed new section 69(2) and (3). For clarification, I refer to the member for Innaloo who said that proposed new subsection (3) in clause 5 will help children. I do not know when he last read these sections of the Act;

proposed new subsection (3) is virtually the same as the current subsection (3) of the Act, except that it amends some of the sections that it refers to, such as section 103(1). Section 69(3) of the Act reads -

> Despite any other Act, where a person is charged with an indictable offence and the charge is not dealt with summarily, a statement of an affected child, as defined in section 106A of the *Evidence Act 1906* . . .

That section goes on to give the criteria as is proposed in new subsection (3). Will the Attorney General tell me - apart from the fact that preliminary hearings will be abolished and a new regime will be in place from section 102 of the Justices Act onwards - whether there is any difference between the proposed new subsections in clause 5 and section 69 of the Act?

Mr McGINTY: A word-by-word analysis will indicate the amendments that have been introduced by this legislation to section 69(2) and (3) of the Justices Act, as the member for Innaloo said, to give effect to the new regime proposed by the legislation. Those amendments are consequent on the abolition of preliminary hearings as we have known them.

Mrs EDWARDES: I refer the Attorney General to subclause (2). The subclause seeks to insert new subsection (7a), which states -

> A written statement tendered under this section to a court of summary jurisdiction need not be signed by the judicial officer constituting the court.

Section 69(7) of the Act states -

> Any document or object referred to as an exhibit and identified in a statement tendered in evidence under this section is deemed to have been produced before the court and identified by the maker of the statement.

The proposed new section states that it need not be signed by a judicial officer of the court. What is the rationale for that proposed new subsection? Is it as a result of court cases in which statements of evidence were unable to be tendered because they were not signed by a judicial officer of the court?

Mr QUIGLEY: I do not want to answer on behalf of the Attorney. However, I want to say, before the Attorney answers the member for Kingsley's question that, in my experience of courts of superior jurisdiction, a prior inconsistent statement of a witness must be formally proved before a jury if a witness disputes any part of the statement. That includes calling a judicial officer to prove the officer's signature. It is highly undesirable to have a stipendiary magistrate called to give evidence in a trial in a court of superior jurisdiction. I anticipate that is the thinking behind the provision not to require judicial officers to sign exhibits tendered in their court. These statements are always marked as exhibits by the court. As my colleagues from the electorates of Nedlands and Kingsley would know, such statements would probably be marked "Exhibit 1" and are retained by the court. They do not need to be signed by a judicial officer unless during the course of a trial a party takes issue with a prior inconsistent statement. That could result in the embarrassing and undesirable situation of a judicial officer being called at short notice into court to give evidence.

Mr McGinty: I agree with that.

Mrs EDWARDES: There is no reason for the Attorney General to disagree with the comment. He has not answered the question.

Mr McGinty: It clarifies the position. I do not know why it needed to be clarified, but it places the issue beyond doubt for the reasons given by the member for Innaloo.

Mrs EDWARDES: The member for Innaloo referred to the circumstance in which a prior inconsistent statement might be put in question in the presence of a jury. However, we are talking about proposed new section 69(2) and (3), of which (2) deals with summary jurisdiction and (3) with indictable offences. Those documents will not need to be signed by a judicial officer in the hand-up brief that will take the place of a preliminary hearing. Although I accept the view of the member for Innaloo, and know it to be so, it is only a narrow aspect of the reasons for including that provision.

Mr McGinty: It is a good thing to place beyond doubt that it does not need to happen.

Clause put and passed.

Clause 6: Section 73 amended -

Ms SUE WALKER: I ask the Attorney General to explain this clause.

Mr HYDE: I took great offence, as did women in my electorate, at the member for Nedlands referring to herself as a dizzy blond. I hope the member will apologise for those comments.

Ms Sue Walker: Even the member for Innaloo pulled a face at that stunt!

Mr QUIGLEY: I do not want to take the time of the House with a complete dissertation on section 73 of the Justices Act, but I note that subsection (1) states that when a person is charged with an indictable offence, the depositions of the witnesses shall be reduced to writing; or recorded by means of sound-recording apparatus in the manner described. This is very important for the section of the Act that deals with compulsory hearings; that is, a deposition that is taken from a person in a compulsory hearing must be properly recorded. Subsection (1c) states that the Governor may make regulations prescribing the procedures to be adopted in relation to the taking and recording of depositions under this section. Subsections (2) to (5) of section 73 deal with the procedure that shall be adopted in dealing with statements at a preliminary hearing. I do not know why that question was asked. I have known the member for Nedlands for 10 years, and I can say only that the quality of her questions has shown not one skerrick of improvement during that decade. The member for Nedlands asked the Attorney General to explain why he is proposing to repeal section 73(2). It is bleeding obvious! Subsection (2) states -

> Where, on a preliminary hearing, a written statement is tendered in evidence . . .

The member for Nedlands is supporting a Bill that will do away with preliminary hearings, yet she is asking the Attorney General to please explain why he is doing away with this subsection! Similarly, subsections (3) and (4) deal with procedures for preliminary hearings. Preliminary hearings will be extinguished after the passage of this legislation through both Chambers of this Parliament, and in their place will be committal hearings. That is why we have to take out these subsections. Subsection (5) states -

> Where, on a preliminary hearing, a video-tape of an affected child is admitted under section 106T . . .

I am only a backbencher, but I do not understand why the Attorney General is being pestered with questions such as why is he removing references to preliminary hearings, when he was criticised in the opening part of the debate and was asked whether he was sure that he had removed all references to preliminary hearings, and he said that these subsections are no longer relevant or necessary and should be taken out. Subsection (4) states -

> Where, on a preliminary hearing, a statement of an affected child . . .

These subsections are predicated on the use of statements at preliminary hearings. However, preliminary hearings will cease to exist. I do not know whether that helps the Attorney General, who is about to rise and answer the question. I sympathise with the Attorney General, as I have sympathised with some learned magistrates in the past, because both he and they have to use some forbearance and fortitude in suffering the questions that they are asked.

Mrs EDWARDES: During consideration in detail, every member of this House has a right to ask questions about a Bill clause by clause. Members will not be intimidated, and nor should they be intimidated, by comments of a personal nature, as we have heard this afternoon, or bullying. It is important to put in *Hansard* a clear interpretation of the meaning of this clause. As we have said in the past, under the Interpretation Act, what is said in this Parliament is crucial to the interpretation of the clauses of a Bill and may be referred to in the future in courts, in legal briefs or in whatever other way. As such, to ask the Attorney General to clarify the reasons for and the impact of these amendments - in this instance why particular subsections will be repealed and what is the impact of that repeal - is a very important question. The member for Innaloo has done himself a disservice by making a personal attack on another member of this House.

Mr QUIGLEY: I was not making a personal attack. I asked why the question was asked about the purpose of this clause. I did not say that the member for Nedlands does not have the right to ask the question and should not ask the question. I said it was a stupid question. The member for Nedlands asked the Attorney General why he is deleting from the Justices Act sections that deal with procedures for preliminary hearings, when this Bill will wipe out preliminary hearings. Therefore, it was a stupid question.

Ms SUE WALKER: That was not my question at all. I asked the Attorney General a simple question - to please explain what the clause means - so that it can go on the record. The puppeteer over there then got up and tried to help the Attorney General by saying what he thought I meant, and then resorted to personal abuse and made some attempt to intimidate me from getting up again and asking for an explanation.

Point of Order

Ms QUIRK: I draw the attention of the House to Standing Order No 93, which states -

> A member will refer to other members by their title of office or by the name of their electorate.

I believe the member for Nedlands referred to the member for Innaloo as a puppet.

Ms Sue Walker: Puppeteer.

Mr Johnson: If you want to raise a point of order, at least get it right.

The ACTING SPEAKER (Mr McRae) There is no point of order. However, it is probably timely for me, given the way this debate is going, to draw the attention of all members of the House to the standing order to which the member for Girrawheen just alluded; namely, Standing Order No 93. While it gives some specific guidance in the footnote - namely, the use of a member's name in debate is disorderly - a more general interpretation could be taken that when a debate is continuing, members should avoid referring to members other than by their title of office or the seat that they hold. The other point that I was going to make in any case is the obligation on all members to keep their comments relevant to the question before us; and that is found in Standing Order No 179. I have been fairly lax and have allowed the debate to range a bit, but we are in consideration in detail, which means that we are required to focus on the clauses. It is probably better that we do not go into the motives for people's debates and stick to the interpretation of each clause.

Debate Resumed

Ms SUE WALKER: I did not ask the question that the member for Innaloo said I asked. I wanted a simple explanation for why sections 73(2) and (5) of the Justices Act are to be repealed. I am entitled to ask that question to put it on record. I do not expect my personal competence in court to be used to demean me. I do not refer to the member for Innaloo's personal competence or lack of it in court. We could go on like that all day. I will continue to ask questions. I have not had a satisfactory answer to my question and I wonder whether the Attorney General can enlarge on the explanation of why those sections are being repealed.

Mr McGINTY: Sections 73(2),(3), (4) and (5) of the Justices Act outline certain conditions relating to the tendering of written statements and videotaped evidence in preliminary hearings. Preliminary hearings are being abolished and therefore it is appropriate to abolish these sections, as the member for Innaloo more than ably spelt out to the House.

Clause put and passed.

Clause 7: Section 97B inserted -

Ms SUE WALKER: Proposed section 97B states -

> **"committal mention"** means any hearing to which the complaint is adjourned under section 101A(g);

Would the Attorney General explain where the phrase committal mention comes from and whether that is used in any other part of the Justices Act?

Mr QUIGLEY: I found the definition of that under the interpretation provision. I then referred to proposed section 102, which states -

> At any time before the committal mention a person may, without notice to the defendant . . .

The Bill will do away with the election date and the preliminary hearing. A simple appearance will now be known and defined as a "committal mention" to which a person will be remanded after he has received the ninth schedule. The procedure providing for the limited use of the ninth schedule is in the legislation. Proposed section 104 deals with what will happen when a person is remanded to the committal mention. On the date the offender attends a committal mention, he will be required to plead guilty to a charge. Proposed section 104 states that on the committal mention the justices are to -

> (b) require that all written statements that are, under section 69, to be tendered to them are tendered, and they are to receive those statements which are not to be read in court; and
>
> (c) require that any video-tape of evidence that is, under section 106T of the *Evidence Act 1906*, to be admitted is tendered, and they are to receive the video-tape which is not to be played in court.

Proposed subsection (2) reads -

> (2) The defendant is not to -
>
> (a) give or tender any evidence; or
>
> (b) submit to the justices that there is insufficient evidence before them . . .

The committal mention first appears in the amendment to the Justices Act and thereafter appears in substitutions of references to election dates and preliminary hearings.

Ms SUE WALKER: I asked the Attorney General a question and he gave the nod to the member for Innaloo, who promptly stood up. I am not sure what is happening in the House with the answers I seek. The Attorney

General gives the nod to the member for Innaloo and the member for Innaloo sometimes prompts the Attorney General.

Mr McGinty: We are working as a team.

Ms SUE WALKER: I feel very embarrassed for the Attorney General.

Several members interjected.

Ms SUE WALKER: We are a great team over here.

I now refer to the definition of contempt offence. Does the Attorney General agree with the member for Innaloo's explanation of that clause?

Mr McGinty: Yes, I do.

Ms SUE WALKER: What are proposed sections 102(4) and 104(5) about? Is that a reflection of an offence that is already in the Justices Act? Is it a new offence? If so, why is it in the legislation? I raise the matter because an offence of contempt has been created for publishing evidence. Proposed section 102(4) states -

> A person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public any evidence taken on an examination under subsection (1), or attempts to do so, commits a contempt of the Supreme Court and is punishable accordingly by that court.

That is very odd. As my colleague, the member for Kingsley pointed out, it occurs when the defendant is not present. Is that already in existence in the Justices Act? If not, why is it in this legislation?

Mr PENDAL: I will raise a matter about the future implications if a matter of this nature is to go to a court for adjudication, as is likely. Although I think there were other ways around it, I have some sympathy for the position in which Attorney General finds himself. My question is rhetorical. Given the nature of the Interpretation Act, what would happen in five, 10 or 15 years when a judge is asked to make a judgment on the will of Parliament and the meaning it gave to this clause if answers are given by a member who is not a member of the Executive and is not in charge of the passage of the Bill? I have some sympathy for the position in which the Attorney General finds himself, but only because I recall in another place on another occasion that something similar happened. That is pretty important to the future interpretation of the statute with which we are dealing. If a member who is not part of the Executive and does not have carriage of the Bill answers the member for Nedlands' questions, it begs the question whether the courts can interpret it.

Mr McGINTY: Earlier in this debate I asked whether members opposite supported the member for Innaloo taking carriage of the consideration in detail stage of this Bill and they indicated that they did not. That is fine because I have carriage of the Bill. The member for Innaloo got the call and made comments, and I indicated that in toto I supported the answer he gave to the last question asked by the member for Nedlands. There is no issue.

During the preceding clause, the member for Nedlands asked me why we were deleting provisions that were applicable to preliminary hearings. My answer was that we are abolishing preliminary hearings, which I would have thought was self-evident. Frankly, I did not think that question needed to be responded to because it was self-evident. If there was an issue other than that - as I think there was on the last question - I indicated that, on behalf of the executive arm of government, I supported the comments of the member for Innaloo. I appreciate the point raised by the member for Nedlands. It is valid, and that no doubt is the reason members opposite said they were not prepared to allow the member for Innaloo to have carriage of the consideration in detail stage of the Bill, notwithstanding the fact that that practice has been followed on a number of previous occasions. I accepted that, and I did not press the point. The Government did not seek to have the Speaker make a ruling and have a debate on it. If the view is that the Opposition did not want the member for Innaloo to have carriage of this Bill, then I shall have carriage of it. The member for Innaloo is a very knowledgeable man, and I am happy to indicate where I agree or disagree with anything he says to the House. I have just indicated that, in respect of that question, there is really nothing I can add to the answer he has just given.

The ACTING SPEAKER (Mr McRae): Before I give the call to the next speaker, a short while ago, when making reference to Standing Order No 93 in a point of order, I went on to make some general observations about Standing Order No 179. I have allowed a little leeway on Standing Order No 179. For those members who have not read it recently, in relation to consideration in detail, which is the stage of debate the House is now in, Standing Order No 179 states -

> Debate will be confined to the clause or amendment before the Assembly and no general debate will take place on any clause.

I have allowed some debate about the procedure the House is following, but the time has come to start asking the House to remain focused on the clauses. I will start enforcing that.

Ms QUIRK: I am mindful of the ruling of the Acting Speaker. The member for South Perth is well aware that the discussion of a Bill in Parliament is an extrinsic aid to interpretation by the courts, that is called upon in cases where there is some ambiguity. I have to observe that many of the provisions we are talking about are, to use the words of the member for Innaloo, bleeding obvious, and in my respectful view would not require the courts to resort to extrinsic interpretation.

Ms SUE WALKER: After all that, I did ask the question about the contempt offence. What is it about? Does it already reflect what is in the Justices Act? Because it is an offence, it is important.

Mr McGINTY: This clause creates the definition of a contempt offence, and refers to proposed sections 102(4) and 104(5). Proposed section 104(5) reads -

> A person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public any evidence tendered on a committal mention, or attempts to do so, commits a contempt of the Supreme Court and is punishable accordingly by that court.

These provisions deal with the material contained in a hand-up brief, and people who abuse those processes will be dealt as being in contempt of court. It is my understanding that, in a general sense, that reflects the current law of disclosure of material before it has been properly read to the court.

Mr Johnson: Would it not be appropriate for the Attorney General to come to the Table of the House with his advisers? It would be much quicker if he did that. Rather than act in a churlish way, he should handle the Bill professionally, with advisers.

Mr QUIGLEY: I was fascinated to hear the question, taking the Attorney General to clause 7 and asking what the contempt offence actually means. It might have been rhetorical, and maybe I have got the question wrong.

Ms Sue Walker: I asked what it was about. Why do you not listen? I am not under cross-examination here. You get on with your answer.

Mr QUIGLEY: I did, but the member for Nedlands shifted her ground. It means it is a description to attach to those offences prescribed in proposed sections 102(4) and 104(5), which shall be called contempt offences. This is not -

Mr Johnson: We cannot rely on your answers. We can rely only on those of the Attorney General.

Mr QUIGLEY: I am allowed to support a Bill. Is the member for Hillarys attempting to deny me my democratic right to speak in this Assembly? Arrogant people from Hillarys want Innaloo to sit down. Innaloo will not sit down; he will point out the bleeding obvious in response to what the member for Nedlands is asking. The label means what it says in the interpretation section - that the offences in proposed sections 102(4) and 104(5) shall be called contempt offences. I add just one more comment - der!

Point of Order

Mr MARSHALL: I have sat for the past half hour watching the member for Innaloo treat this Assembly as a circus. He is trying to establish himself as the one and only egotistical lawyer who has ever existed in Western Australia. Every time he gets up he forces the issue, raises his voice, points and thinks he is the only one in the House. He is making a joke of this debate.

The ACTING SPEAKER: There is no point of order.

Debate Resumed

Ms SUE WALKER: My question was what is the contempt offence about, and does it already exist under the Justices Act; and, if so, can the Attorney General tell me where that is? I raise this because a new offence is being created under this Bill, and I have some difficulty with that. That new offence relates to the failure to disclose, and does not talk in terms of contempt. As the Attorney General knows, contempt is a serious offence, because it gives the court the authority deal with a person indefinitely. I am not sure. Perhaps the Attorney General could clarify this for me. Failure to disclose in relation to a jury trial, which could cost the State Government hundreds of thousands of dollars, is dealt with, as it says, by sanctions, but I do not see the sanctions being there under the Criminal Code. I have to jump about a bit to show the Attorney General where I am coming from. In clause 18 of the Bill, proposed section 636A(5) reads -

> A failure to comply with a disclosure requirement may be the subject of adverse comment to the jury by the court, counsel for the accused person, or the prosecution.

I wonder why that is a slap over the wrist, if you like, while the contempt provisions are there for doing things like photocopying. Any prosecutor, or any defence counsel, could be punished for contempt under this provision, because it refers to a person who "prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public any evidence". The brief may be photocopied any number of times and distributed to the defence. Why was that provision retained? Was it discussed with crown counsel? Was there any rationale behind it? The sanction under the Criminal Code, which goes to the very heart of this Bill - that is, there is disclosure in lieu of abolishing preliminary hearings - is just a slap on the wrist. It is an adverse comment to the jury. I would like the Attorney General's response to that.

Mr McGINTY: Given the member's knowledge on these matters, I am sure she is aware that the Justices Act contains an almost identical provision. That is being replicated here.

Ms Sue Walker: Why did you retain that provision?

Mr McGINTY: This provision makes it a contempt of the Supreme Court to publish depositions. As the member knows, an existing provision in the Justices Act does that. Maybe I am missing the point of what the member is saying. We have retained that provision but have taken it out of the section that deals with preliminary hearings because we are abolishing preliminary hearings. Am I missing something in the member's question?

Ms Sue Walker: Why are you retaining that provision when clearly it happens all the time if it is printed, published or circulated? It is a serious offence, yet failure to disclose results in a slap on the wrist. There is no sanction. If it is found during the course of a trial that a police officer has deliberately withheld relevant information that would exculpate the accused, all he gets is a subjective adverse comment to the jury. Why is there a difference? Why was that not taken into account when looking at the whole Bill?

Mr McGINTY: I return to the issue of the depositions. Under the law as it currently applies, depositions are confidential.

Ms Sue Walker: Yes; apparently under the current law.

Mr McGINTY: Is the member saying that that provision of the law is breached with great regularity?

Ms Sue Walker: It has to be, doesn't it?

Mr McGINTY: No, it does not.

Ms Sue Walker: Yes, it does, because the depositions are sent up from the Magistrates Court to the Director of Public Prosecutions and are photocopied and sent to defence counsel and different people. They are photocopied, printed and circulated all the time. I thought that would have been pointed out to you.

Mr McGINTY: Yes; copies are made for the purpose of a trial. However, we are talking about people who make the contents public. Obviously, if someone in the office of the Director of Public Prosecutions photocopies a deposition for the purpose of a trial, that is not making it public. An existing provision of the Justices Act makes the contents of depositions confidential. It says that a breach of the provision is punishable as a contempt of the Supreme Court. That provision will be retained in the context of the new scheme. I must be missing something. I do not understand. It substantially replicates what is already there, but puts it into the new context. What is the problem?

Mrs Edwardes: What is the public policy? What is the reasoning behind it?

Mr McGINTY: For making depositions confidential?

Mrs Edwardes: The defendant is not present and has no right to cross-examine. It is a repeat of an existing section. What is the public policy behind retaining the confidentiality of the deposition?

Mr McGINTY: It is no different in the Supreme Court. Hon George Cash filed a deposition in relation to the Yallingup land issue, which we might deal with early next week. Until such time as it was presented to the court and read, it was confidential; in other words, it was not something -

Mrs Edwardes: Until it is a matter before the court.

Mr McGINTY: That is certainly how it applied to that deposition in the Supreme Court.

Mrs Edwardes: In that instance.

Mr McGINTY: Yes. Members should look at the existing provisions. The member for Kingsley is right. The qualifying words are -

> . . . before those contents or part thereof, as the case may be, are, at the trial or sentencing of the defendant, admitted as evidence . . .

It is in the lead-up to the trial. There are some changes in the wording. I do not think that there is a significant change in the policy or the operation of the law from that which is currently contained in the existing provisions that deal with both the confidentiality of depositions and the power of justices to restrict the publication of evidence that is given in a preliminary hearing. We are abolishing preliminary hearings and these are substitute provisions.

Mr QUIGLEY: I was just thinking about the question as posed - that is, that it is prescribed that there be a penalty that shall be dealt with as a contempt of the Supreme Court should there be a publication of the papers at committal - and how that changed the position. Having asked that question, the member for Nedlands well knew that it did not change the position. Section 101C(c) of the Justices Act, with which the member is no doubt intimately aware, provides the current procedure to be followed when there is no preliminary hearing, which will be the case in the future. When there is an election date, no preliminary hearing and the statements are merely handed up in what we know as a hand-up brief, section 101C(c) provides -

> a person who prints, publishes, exhibits, sells, circulates, distributes, or in any other manner makes public the contents, or any part thereof, of the depositions, if any, or the statements, or the video-tapes, if any, or attempts to do so, before those contents or part thereof, as the case may be, are, at the trial or sentencing of the defendant, admitted as evidence, or stated aloud under section 617A of *The Criminal Code*, commits a contempt of the Supreme Court . . .

The new legislation provides for that. Not only was the member for Nedlands acutely aware of this during her time at the office of the DPP, but also she was practising under it. The member raised the hypothesis that the prosecution might break the law if the statement is photocopied and handed to the magistrate or sent down the Terrace to the defence counsel. As the Attorney General has pointed out, both the existing section and the new provision, which closely reflects it, provide for a person to be dealt with for a contempt if that person deals with papers or evidence which he or she had a legal obligation to keep secret. There is no substantial change between the new provision and that which existed before. It has been raised as a furphy. I take the member to section 101C(c) and ask rhetorically, how is the prosecution service any more exposed under the new provision than it was under the old section? It is not. Once again, this issue is raised not to beguile but to distract.

Ms SUE WALKER: During debate on this matter, the member for Innaloo has had the temerity to assume that he knows what the Cabinet and the Executive were thinking and also what I am thinking. I put on record that just because he assumes that does not necessarily mean it is right, and in this case it is not. In my position now as a politician, I will continue to closely question Bills, as is my right. I will not be deflected from that by the member for Innaloo.

I return to my original question in relation to the contempt offence. Proposed section 102 is titled "Compulsory examination by the prosecution". Proposed subsection (1) states -

> At any time before the committal mention a person may, without notice to the defendant, be summoned under section 74 or 78 . . .

Is that now different? Does a defendant have to be present when a person is summoned and a deposition taken? I require an explanation of that.

Mr McGinty: We will deal with that when we get to clause 10.

Ms SUE WALKER: I am happy to do that.

Clause put and passed.

Clause 8 put and passed.

Clause 9: Section 101A amended -

Ms SUE WALKER: Why will section 101A have the term "proceedings" deleted and "complaint" substituted?

Mr McGINTY: The complaint will be adjourned. The term "proceedings" refers to committal proceedings and preliminary hearings. As such, there are no proceedings at that stage.

Clause put and passed.

Debate adjourned, on motion by Mr McGinty (Attorney General).

House adjourned at 5.12 pm
