

Mrs Cheryl Edwardes; Mr Jim McGinty; Mr Arthur Marshall; Mr Martin Whitely; Mr Rob Johnson; Acting Speaker; Mr Tony O'Gorman; Mr Jeremy Edwards; Mr Bob Kucera; Mr Phillip Pental; Mr Tony McRae

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## **FLAGS PROTECTION BILL 2003**

### *Second Reading*

Resumed from 16 April.

**MRS C.L. EDWARDES** (Kingsley) [4.43 pm]: I welcome the opportunity to participate in this debate about two of Australia's most sacred symbols; namely, the Australian flag and the Western Australian flag. Both are symbols of our history, democracy and freedom, and both spark passionate feelings. Some in our community believe it is their right to desecrate their national and state flag as part of their right to protest. Their number, however, is far outweighed by those who regard our flag as sacrosanct and regard any desecration as beyond the point of acceptable behaviour. Where does one person's rights end and another person's rights start? That is the crux of the Flags Protection Bill now before the Chamber. Does one person have the right to carry his desire to protest to the point that he deeply offends the beliefs and feelings of another? As with so many other instances in life, the answer lies somewhere in between with a balance between the competing and conflicting views.

All too often we take our freedom and the right to protest for granted. Others around the world are not so fortunate. I refer to people who live in countries where suppression rather than freedom is the byword, where free speech is prohibited, and, worse still, where punishment can be extreme. One need look no further for an example of this than the horrors that have occurred in Iraq during the past 25 years. We saw how people reacted when for the first time they had the opportunity to experience what we take for granted; namely, attending schools, wearing certain clothes and being able to play soccer. Nevertheless, the freedom we enjoy does not extend to allowing people to damage other people's private property, to commit acts of vandalism or to indulge in graffiti in the name of the right to protest. Already a line is drawn in the sand with a balance between the right to protest and the right to have one's views respected. This Bill seeks to indicate to the world that there are moral as well as physical boundaries to acceptable behaviour. Vandalism at a personal level is not tolerated, and nor should vandalism be tolerated at a national or state level.

The Australian flag has been with us for more than 100 years, and the Western Australian flag for more than 130 years. Our national flag comprises three main elements: the Union Jack denotes our historical links with Great Britain; the Southern Cross has been associated with our nation since its earliest days; and the commonwealth or federation star denotes the six States and the combined Territories of the Commonwealth. If members pause to consider the rationale of the original flag, they can gain a better appreciation of its value as a true Australian identity. Some, of course, want to change our flag, but that is a debate for another time.

Western Australia's first flag was adopted in 1870, and today's flag has only one difference; namely, our beloved black swan now points to the left rather than the right. That change was made in 1953 to conform with the vexillological guideline that animals on flags should face toward the rope or flag pole. I understand that this was to ensure that when the flag is carried, the animal points in the same direction as the flag bearer.

Both our national and state flags are steeped in history and tradition. Both reflect community values, and both are respected symbols - in fact, they are often revered by the vast majority of people. The beliefs of such people are entitled to be protected. The Leader of the Opposition has indicated that 63 per cent of Western Australians believe that burning the Australian flag should be made a criminal offence. However, this Bill does not go that far. Instead, it proposes to make the desecration of either flag an offence attracting a maximum fine of \$6 000. That in itself is another example of trying to achieve the balance to which I referred. If most Western Australians had their way, flag desecration would be not only an offence, but a criminal offence. That would include the stigma that attaches to having a criminal record. The Leader of the Opposition has tried to tread the fine line and recognise the gravity of the offence but stop short of imposing a criminal record.

Many will argue that no barriers should apply to free speech, and that legislation protecting our flags is an invasion of that freedom. For those people I have a question: do they agree that someone should be allowed to smash somebody else's personal vehicle in the name of protest? No, of course not. Do they believe that graffiti on our war memorials in the name of protest and the right to free speech should be allowed? No. If they do not agree, they are accepting that free speech and the right to protest have limitations. Protection of the national and state flags is simply an extension of a principle already being applied in our community. Vandalism in whatever form it may take has no place in our society. Just as we are entitled to have our property protected against acts of vandalism, so too should something that is the property of all of us - our flags - be protected.

The Opposition is not alone in seeking to provide our national and state flags with the protection they deserve. In New Zealand, it is an offence to alter the New Zealand flag without lawful authority by placing on it any letter, emblem or representation, and in or within the view of any public place to use, display, destroy or damage the New Zealand flag in any manner with the intention of dishonouring it. The penalty is a maximum fine of

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\$5 000 for an individual and up to \$50 000 for a body corporate, with provision for a maximum fine of \$5 000 for every day the offence continues. A man arrested during the burning of the New Zealand flag at a protest outside the New Zealand Parliament earlier this year faced two separate charges: one for burning the flag and another for being a criminal nuisance relating to public safety. Would-be flag burners in New Zealand face a double penalty. The second penalty carries with it the taint of a criminal record. Tolerance is a value to be cherished not abused. Tolerance champions the causes of freedom of speech and the inherent right to protest. Tolerance also imposes an obligation on those exercising their freedom of speech and right to protest to respect the rights of others. People who desecrate our flags exhibit intolerance of the views of others. Australians are nothing if not a tolerant society - the fair-go approach. The protection of our flags may not have become an issue that has reached crisis point. Heaven forbid that it ever does. That protection should serve as a reminder to the entire community that there are fundamental icons in our society that are untouchable and our flags are among them. It is nothing more than sheer vandalism to desecrate a flag and such an act deserves to be treated as such. More often than not, it is very deliberate vandalism, not an action excusable on the grounds of being a spur-of-the-moment decision.

Why should vandals have the right to desecrate a flag under which so many Australian soldiers have fought and died for nearly a century? Why should they be allowed to inflict emotional pain and suffering on so many returned service men and women as well as on all other Australians? They should not, of course. This Bill tacitly acknowledges that. I have a question for people who insist that the right to protest carries with it the right to desecrate our flags. What additional weight does desecrating the flag give to their protest? The answer can be nothing, except to create shock value to gain media attention, particularly on television. For the hard-core, dedicated protester, burning the flag has little to do with protesting. It has far more to do with attacking authority at any level possible. A genuine protester will and should always be part of our society. Genuine protesters need also to recognise and to acknowledge that others in society do not share their views. Those people have just as many rights as the protesters. That point should always be remembered.

The Bill seeks to enshrine, in law, protection for the Australian flag and the Western Australian flag. Both deserve respect from all of us as symbols of our democratic freedom. I support the Bill.

**MR J.A. MCGINTY** (Fremantle - Attorney General) [4.54 pm]: I rise to join the debate on the second reading of this Bill moved by the Leader of the Opposition. The operation of this Bill is straightforward. Clause 4 officially declares the flag, described in a schedule to the Act, to be the Western Australian state flag. It defines the Australian national flag by reference to section 3 of the commonwealth Flags Act 1953. Clause 5 provides that any person who burns, damages or otherwise physically mistreats the Australian national flag, the Western Australian state flag or a reproduction of either in a manner that is either intended to cause offence or could reasonably be expected to and does in fact cause offence to any person or persons, is guilty of an offence. The penalty is a fine of \$6 000.

I will deal first with two fatal problems with the drafting of the Bill. The first refers to a reproduction of the flag.

Mrs C.L. Edwardes: Come on, Attorney General, give us your passion and your real views on this.

Mr J.A. MCGINTY: I will tell the member for Kingsley why I cannot support this Bill. The word reproduction requires definition. It is unclear whether this term extends to the small paper flags held by children on Anzac Day. I suspect it does and it is intended to do that. It also extends to the flag printed on a tea towel. They are reproductions of both flags. What about the flag logo on a piece of clothing worn by many young people when engaged in the activities I am sure the member would not condone?

Mrs C.L. Edwardes interjected.

Mr J.A. MCGINTY: It was at the member for Kingsley's expense; she should not worry.

There is a real issue with what is a reproduction. If this is to be extended to what we popularly regard as any reproduction of the flag, obviously the impact of the legislation will be cast far broader than the area addressed by members opposite. It is a significant difficulty with the legislation.

The second drafting matter, which again is a fatal flaw with this legislation, is that clause 5(e) defines the offence as causing offence to any person. Only one person would need to be offended. It is a subjective test. We all know from our own constituencies that even when we are doing something fundamentally wholesome and good someone will be offended.

Mr P.D. Omodei: Give an example.

Mr J.A. MCGINTY: I can think of tremendously good things I have done in my electorate to which someone in Fremantle has taken a contrary view. I suspect it is the same in all members' electorates. At a subjective level,

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if only one person is offended by any event whatsoever - people will disagree because someone is doing something - that would be sufficient to trigger a criminal offence. It will always be possible to find a person who is offended by burning, damaging or otherwise physically mistreating the flag. It might be that only one person in Australia is offended; namely, Bruce Ruxton. Everyone else might be perfectly happy with what is done.

Mrs Edwardes: I do not think he would be the only one. There is the rest of us on this side of the House, not members of the Labor Party.

Mr J.A. McGINTY: I am sorry, I should have said Bruce Ruxton and Her Majesty's loyal Opposition. It might not offend anyone else in the community. However, the mere fact that it has offended one person would make it a criminal offence. That is because the Bill provides a purely subjective test that should be replaced by an objective test if it is to be a proper application of a law that makes dealing with the Australian flag in the way described in this legislation a criminal offence. If the test were to be changed from causing offence to any person, which it is currently, to causing offence to a reasonable onlooker, an objective test would be applied and the notion would be something that could be reasonably applied in law. However, to make it an offence that one person is subjectively offended -

Mr R.F. Johnson: Would you like to move an amendment during the consideration in detail stage?

Mr J.A. McGINTY: No, in a word. I am just pointing out the problems with the way the Bill is put together.

Mrs C.L. Edwardes: We will help you draft it.

Mr J.A. McGINTY: I have had enough of that today. At a drafting level there are two real issues. The first is the question of what is a reproduction and how far does it extend beyond what we would all popularly regard as the flag.

Mr P.D. Omodei: Pass the legislation and put it to the test.

Mr J.A. McGINTY: I am telling members what the law is; that is, this is bad law.

Mr P.D. Omodei: You have not always been right.

Mr J.A. McGINTY: I am rarely wrong.

As I was saying, there are two real issues with the drafting of the Bill. The first is reproduction flags and how to extend this legislation to all those sorts of things that constitute reproduction, and the second is to have the subjective test that if one person is offended, that makes it a criminal offence.

Mr C.J. Barnett: It applies only to standard flags, not to reproductions.

Mr J.A. McGINTY: I think it does apply to reproductions.

Mr C.J. Barnett: It does not. It is standard-sized, full-blown Australian and state flags. It does not apply to reproductions, copies of flags on clothing, toy flags or anything like that.

Mr J.A. McGINTY: Clause 5 refers to reproductions. That is the problem to which I am referring. I can certainly understand the argument for standard flags. However, clause 5(c) refers to a reproduction of either the Australian national flag or the Western Australian state flag.

Mrs C.L. Edwardes: We will remove that if you support the legislation.

Mr J.A. McGINTY: What will be done about the objective test?

Mrs C.L. Edwardes: You come up with a view on that, and we will consider that too.

Mr J.A. McGINTY: If it offends a prudish member of the Opposition or Bruce Ruxton -

Mrs C.L. Edwardes: We are vehemently supportive of the Australian and Western Australian flags.

Mr J.A. McGINTY: Having dealt with those two issues and pointed out the fact that the legislation is not well crafted for those two particular reasons, I point out that a more fundamental issue is at stake. If the Bill were to be passed by the Parliament and then challenged, the advice I have received is that it would be very likely to be found to be invalid because of its infringing the implied freedom of political communication to be found in both the Western Australian State Constitution and also the Australian Constitution. In other words, this law is unconstitutional.

Mr C.J. Barnett: We have contrary advice to that. We are advised that it does not restrict freedom of speech. We sought that advice.

Mr J.A. McGINTY: My advice is that it does. I will briefly run through the argument.

Mrs C.L. Edwardes: Is that advice you have received or is it your own advice?

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Mr J.A. McGINTY: It is advice that I have received. Incidentally, the advice comes from the Solicitor General. His advice is literally as I have just related it. I am happy to accept his advice.

Mrs C.L. Edwardes: On this occasion.

Mr J.A. McGINTY: On this as on other occasions, as in all matters. So that members have it straight, the Solicitor General's advice is that the Bill would be very likely to be found to be invalid for infringing the implied freedom of political communication. That is the nature of the advice. I appreciate that the Opposition has its own legal advice on these matters, but we are dealing with a Bill that offends both the Western Australian State Constitution and the Australian Constitution. I do not think that this Parliament should pass a Bill that is unconstitutional or offends these very important constitutional principles.

Mr R.F. Johnson: It is not a political flag. The advice you have read out relates to political affiliations or political feelings, does it?

Mr J.A. McGINTY: Political communications.

Mr R.F. Johnson: Political communications have nothing to do with the flag.

Mr J.A. McGINTY: Perhaps I may explain why it is the case. It is now well established that a freedom of political communication is implied in the Commonwealth Constitution. There are a series of authorities for that proposition. I do not think I need to repeat them to the House now but, essentially, during the course of the first part of the 1990s, the High Court of Australia found that freedom of communication, at least for political matters, was a constitutional imperative; in other words, it was contained in both the Commonwealth and State Constitutions.

A notorious case arose when *The West Australian* newspaper accused Hon Tom Stephens of going on a junket when he went on some overseas travel. He sued West Australian Newspapers Ltd. The case went to the High Court. Arising out of that very evocative description of his trip to Europe, the High Court found that there was a necessary implication - by "implication" I mean something that had full legal effect - which was necessary to support the notion of representative democracy contained in both the Commonwealth and State Constitutions. It therefore derived from either of them. It essentially works in this way: the Constitution describes the structures of representative government - the election process, the Houses of Parliament and things of that nature. The High Court said that all the necessary supports to prop up representative government are there to be implied in the Constitution. Because we operate in a democracy in which people vote to elect their Governments, the ability to communicate freely about political matters is a necessary implication of democracy that is found in the Constitution. That in essence is what the High Court found. To be able to criticise the way in which members of Parliament do their job is an essential part of political communication or criticism that is protected by the provisions of the Constitution.

Mr R.F. Johnson: That sounds all right but I cannot see how the word "political" relates to the flag.

Mr J.A. McGINTY: Let me answer that in this way: in a later case of *Levy v Victoria*, heard in 1997, the High Court extended the essential concept of political communication to include actions. My recollection is that it was a duck shooting case. Mr Levy was a protester against duck shooting in Victoria who was running a campaign. I might be wrong on the facts because it is some time since I looked at the case, but I think he stood in the middle of a lake where people were shooting ducks. I think he carried placards with him and things of that nature and was arrested.

Mr A.J. Dean: He took a duck.

Mr J.A. McGINTY: Did he? It was something like that according to my recollection. I might be incorrect because it is some time since I read the case. However, he was charged with protesting, disorderly conduct, trespassing or something of that nature. It was found that even though what he did was in the nature of actions rather than words, it constituted political communication, and the right to protest about political matters was protected by the Constitution. It therefore encompasses not merely words but also actions. It would seem to me that burning a flag, to take the extreme example, is an action that conveys a political message. It is therefore caught by the same constitutional requirement in both the State and Commonwealth Constitutions that political actions are protected as part of the political communications principle that has been found in the Australian Constitution.

The next step in that law goes on to say that a law that transgresses the freedom of political communication or in any way at all reins in or checks the freedom of political communication or speech, if I might put it loosely that way, must be reasonably appropriate and adapted to serving a legitimate end or else it will not be valid. Something might be in the interests of public safety. For example, someone could not let off a bomb in Hay

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Street because it would damage people. Even though there might be a political reason for doing it, someone could not do it because a public safety issue is at stake.

Mrs C.L. Edwardes: It is interesting that you referred to letting off a bomb. Was there not a case along those lines in Western Australia?

Mr J.A. McGINTY: That matter would not be caught by constitutional protection, as I am sure the member for Kingsley is aware. Fortunately, the caretaker was not in the building at the time and the bomb did not go off.

I can recall a case, if my memory serves me correctly, of woodchip protesters who were engaged in a political protest in the Port of Bunbury against the logging of the native forests in the south west. They strapped dynamite to the woodchip loader, blew it up and argued that it was a political action. However, obviously, when such actions impair public safety, a law that states that people cannot blow up someone else's property is, to use the words of the High Court, reasonably appropriate and serves a legitimate end. That law, therefore, would be valid.

Mr R.F. Johnson: Are you saying it would not cover the case of someone who committed arson and burnt the flag and injured bystanders?

Mr J.A. McGINTY: No. If the point is that the law exists to protect other people from being burnt, that is a public safety issue, which is fine. However, this legislation does not refer to any such objective. This legislation simply prohibits flag burning simpliciter. According to this legislation, someone who sits in his backyard and uses a cigarette lighter to set fire to a little paper flag is committing an offence.

Mr R.F. Johnson: We can amend that bit.

Mr J.A. McGINTY: This legislation has nothing at all to do with public safety. If it had something to do with public safety it would satisfy the constitutional requirements. Although we are engaging in light-hearted banter, we are talking about -

Mrs C.L. Edwardes: A very serious issue.

Mr J.A. McGINTY: - a serious issue of breaching the Australian Constitution and the Western Australian Constitution. It is important that we spell out why that is so. This legislation makes flag burning, in itself, an offence, not flag burning in particular circumstances; that is the distinction. It would be a legitimate law if public safety were involved or it had a real longer-term objective. However, this legislation does not do that; it simply seeks to outlaw a practice that might cause offence. The legislation is not directed towards public safety or anything that might be regarded as a legitimate end. That is the constitutional problem with the Bill.

What legitimate end is sought to be accomplished by this Bill? The only end I can see in the legislation is to prevent people from being offended. That is the public policy objective at stake in this Bill. I have grave doubts about whether preventing people from being offended by a political matter is a legitimate aim when the source of the offence is a means of expressing political views. I am sure that aim would be struck down by the court as an inappropriate end to be achieved by the legislation.

An alternative argument could be raised that protecting the sanctity of the flag is a legitimate end in itself. I guess that is what is really the argument being advanced in this Bill. In my view, to hold that argument as a legitimate end result would undermine the freedoms in the Australian Constitution, because the flag is an inherently political object. We all support and rally around the flag. It is the embodiment of what it is to be an Australian; or, in the case of the state flag, a Western Australian. It is, therefore, the essence of a political expression of what it is to be Australian.

Mrs C.L. Edwardes: Community, I would have thought, not political.

Mr J.A. McGINTY: Yes, I put it in terms of the constitutional limitations on the power of the state Parliament to enact a law that abridges people's freedom of communication.

Mrs C.L. Edwardes: Because it suits your argument.

Mr J.A. McGINTY: No, because I believe it is a valid point. As I said, in my view the flag is an inherently political object. Actions in relation to it go to the heart of the constitutional freedom of communication in political matters because it is about a political symbol, which is our flag - a flag of which we are all mightily proud.

Mr R.F. Johnson: But it is one that crosses all political boundaries. It is the nation's flag and the State's flag, not a political flag. It is not the Liberal Party's flag nor the Labor Party's flag.

Mr J.A. McGINTY: It is not a partisan flag.

Mr R.F. Johnson: So it can't be described as political.

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Mr J.A. McGINTY: It can.

Mr R.F. Johnson: If it were a Builders Labourers Federation flag you would probably be more protective of it.

Mr J.A. McGINTY: I think the member needs to use the word “political” in a broader sense than the partisan sense.

Mr C.J. Barnett: You might equally use terms such as “a constitutional symbol” or “a symbol of sovereignty” as well as “political”.

Mr J.A. McGINTY: Exactly, because I believe all of those terms convey the extended meaning of political in the sense in which I am using it.

I will give members an analogy, which might be hard to accept first up; however, if they think about it, it is directly analogous. If we were to pass a law restricting criticism of ministers, that in my view would go to the heart of offending the constitutional right of the freedom of communication on political matters. In fact, people would not be able to say anything about ministers any more because the end we would achieve by such a hypothetical law would be the preservation of reputations of ministers and, therefore, the preservation of the reputation of the Government and, therefore, the esteem in which the public held them.

Mrs C.L. Edwardes: But that is the High Court case.

Mr J.A. McGINTY: Exactly.

Mrs C.L. Edwardes: But that does not necessarily extend to the flag.

Mr J.A. McGINTY: I think it does, if the member thinks about it. Why are we trying to prevent people burning the flag? It is to preserve our sense of nationhood and to prevent people from expressing a political view about a symbol of us as a nation, of our sovereignty and of our statehood, and all of those sorts of issues.

Mr C.J. Barnett: It does not limit people's ability to express a political view.

Mrs C.L. Edwardes: They can still attack you as a minister.

Mr J.A. McGINTY: This legislation prevents people from expressing a political view in a particular way, and it is not targeted towards a legitimate public policy objective. That is the problem with this legislation and that is why the advice I have received is that this legislation would be struck down in the courts as unconstitutional.

Mrs C.L. Edwardes: We are happy to have it tested.

Mr J.A. McGINTY: I do not know whether the member would have the opportunity to have it tested.

Mr C.J. Barnett: Are you aware that France enacted a similar law a couple of months ago?

Mr J.A. McGINTY: I am not.

Mr C.J. Barnett: Some people protested against the law but France enacted it.

Mrs C.L. Edwardes: It is unlike the Attorney General to be behind the times. He is usually right out there at the front carrying the flag!

Mr R.F. Johnson: And well travelled!

Mr J.A. McGINTY: That is right on all accounts.

Mr A.P. O'Gorman: The Attorney General has admirers on the other side!

Mr J.A. McGINTY: Indeed!

That is essentially the argument, notwithstanding the fact that New Zealand and France have a different constitutional framework. However we must consider how this legislation would apply in Australia. As a result of the development of the Australian Constitution and the Western Australian Constitution, the best advice that I am able to give to this Parliament tonight is that such a law would be found by the courts to offend both Constitutions as infringing the rights of all citizens to the freedom of political communication. That is the advice and the rationale that I have had to deal with.

Regardless of this legislation, this matter is currently before the courts in Perth in the case of Lockwood v Kraus as a result of the burning of the flag in a protest that I recollect concerned the lead-up to the Iraq war. In that case, notices were served on each Attorney General in Australia under section 78B of the federal Judiciary Act, which basically gave notice of a constitutional matter.

Mr C.J. Barnett: What was the charge laid against the defendant?

Mr J.A. McGINTY: I will read out the details of the charge. The defendant was charged with disorderly conduct by creating a disturbance in St Georges Terrace, Perth, contrary to section 54 of the Police Act. The

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prosecution presented evidence, which was uncontested, that the defendant was taking part in a youth and student protest march against the war in Iraq when he participated in setting fire to the Australian flag. This matter is currently pending in the Children's Court of Western Australia and has been adjourned until 9 June - that is next week - to enable the prosecution to respond to a submission that the actions of the defendant said to constitute the offence constitute the exercise of a freedom to communicate about government and politics implied in the Australian Constitution and that the general words of section 54 of the Police Act are not properly to be construed as abrogating that freedom. In essence, that is what it is about. I advise those members opposite who said they would like to test this matter in court that the trial is on next week.

Mr C.J. Barnett: It is a disorderly conduct charge.

Mr J.A. McGINTY: Arising out of the burning of a flag.

Mr C.J. Barnett: However, there is no law at present to protect the flag. I am not a lawyer but that charge is about disorderly conduct and because it happened to relate to the flag, it attracted attention. No law would make that an offence because a flag was involved. If that person is found guilty, it will be for disorderly conduct, lighting fires or whatever else rather than desecrating the flag.

Mr J.A. McGINTY: It is the desecration of the flag that constitutes disorderly conduct. I agree with what the member is saying; technically he is right. However, the real issue is whether the burning of the flag is protected as a political communication. That will be the issue debated on 9 June.

Mr R.F. Johnson: No, in relation to this Bill it is.

Mr J.A. McGINTY: Exactly the same issue would be raised if this Bill were to be passed by the Parliament.

Mr R.F. Johnson: It would be a different charge

Mr J.A. McGINTY: Yes, but it would be exactly the same argument about whether someone burning a flag, rather than being charged with disorderly conduct, is charged with a breach of the Bill that members opposite are now trying to pass.

Mr C.J. Barnett: The advice to us from a constitutional expert was that this legislation would not impinge on people's ability to express their political opinion. That is clearly his view. That could be argued -

Mr J.A. McGINTY: Yes, it is arguable. I agree.

Mr C.J. Barnett: I want the minister to put something on the record. With regard to clause 5 the minister raised the issue of the reproduction of a flag. This Bill was originally put out in draft form around Australia Day, and one of the elements of feedback that came through strongly was the impracticality of using a reproduction. I agree with the points made by the minister, but somewhere, whether it be in my office, during parliamentary drafting or in the Parliament, the earlier version of the Bill has been reproduced and distributed. We actually deleted paragraph (c) I am trying to find out where that error occurred.

Mr J.A. McGINTY: It does not matter.

Mr C.J. Barnett: Your argument is correct and that was one of the things we changed in the drafting of the Bill. We deleted the reproduction provision so the legislation was unambiguous in this area; it would be the flag and not a reproduction of the flag that would attract an offence.

Mr J.A. McGINTY: I am happy for the debate to proceed on the basis that it is the Leader of the Opposition's intention to delete clause 5(c).

Mr C.J. Barnett: The earlier version of the Bill was reproduced so there is an error in it.

Mr J.A. McGINTY: It still leaves us with two problems. First, the constitutional issue and, secondly, the subjective test of causing offence to any person. If a person is offended - I previously gave the example of Bruce Ruxton - that is sufficient to create criminality. If it were an objective test rather than a subjective test, which is the point I made earlier, then it would be unobjectionable from that point of view at least or from a construction point of view.

This is a matter about which people in the community have a variety of views. People have put both sides of the argument to me as I have moved around my electorate of Fremantle. A constituent from Bicton wrote to me in May. We have heard from all sorts of people, particularly senior citizens -

Mr A.D. Marshall: Careful!

Mr J.A. McGINTY: Not that the member for Dawesville is one of them. Of course he is not, so please excuse me. A range of views have been put by various people. We on this side of the House love our flag and we do

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not like seeing it desecrated. We want it to be appropriately protected. That point has frequently been put by older members of the community, particularly those who might have fought under the flag.

Mr C.J. Barnett: I agree with the minister about the older members of the community, but it is interesting to note that a number of young people also feel strongly about this matter. Perhaps the baby boomers are less passionate about it but those under the age of 30 tend to be quite passionate, judging by their reaction in a talkback program on an FM radio station. It is interesting to note the gap in the middle-aged group - those in their 30s and 40s.

Mr J.A. McGINTY: The growing crowds at Anzac Day services and the like are all part of the social phenomenon to which the member is referring.

One of my constituents wrote to me in the following terms -

Dear Mr McGinty,

In view of some recent speculation about the legal status of flag burning I write to offer my view.

I am very concerned about the prospect of creating law to make illegal the burning of national flags or flags other than national flags that hold deep symbolic meaning. It is the very meaning that these artefacts hold that makes them worthy of attack.

As I age I become increasingly unsettled by the enthusiasm of western democracies to regulate and eliminate dissent or difference while simultaneously reducing the regulation of factors that impact on the standard of living of each individual particularly those who are already disadvantaged.

Flag burning is an action rooted in ideological difference. It is a deliberate and controlled action while arising out of deeply held views or beliefs. It is a limited and contained action, usually it seems, and apparently absorbs or discharges even the most volatile feelings.

Far better that we see flag burning. Burn a thousand flags rather than see the burning of cities and towns and rampaging crowds brutally attacking each other. I remember the race riots of the sixties as a teenager. I remember well the police wading into crowds of protestors with batons in Brisbane in the late 70's, and I remember Nookenhah and 54b here in Western Australia. What I understood from all of that was that there is a very powerful force in our society that will go to almost any length to silence a challenge to the status quo.

The letter continues but members get the general drift of the sentiments expressed. I do not go as far as the points of view expressed in that letter, but I can understand the sentiment underpinning that view.

I will briefly touch on another matter. Now that Prime Minister John Howard will be around for some time into the future, his views as the Prime Minister of the country are also important. In *The West Australian* on 23 April, when this was a live issue, an article by Cian Manton read -

WA LIBERAL leader Colin Barnett is firm on the need to make flag desecration illegal despite Prime Minister John Howard saying yesterday he would not outlaw burning the Australian flag.

It later states -

Mr Howard said he could understand public anger at burning the flag during anti-war protests but reiterated that flag-burning demonstrators had a right to express their feelings.

I happen to agree with the views of the Liberal Prime Minister on this matter. It certainly gives me no pleasure to see the Australian flag burnt but the Parliament really ought to think long and hard before it criminalises this behaviour. It should be done only when there is significant public interest in the matter and, in particular, the protection of the community is at stake. This legislation prevents people from engaging in a particular activity. If it is done in a way that sets a fire in the middle of a crowd then sure, that should be proscribed by this Parliament because a public safety issue is at stake. We cannot simply say that anyone who desecrates an Australian or a Western Australian state flag ought to be criminalised when the activity could be as innocuous as a person doing it in his or her backyard. Under this legislation, if someone takes offence that is sufficient to criminalise the action. I do not think it is an appropriate use of power for this Parliament to criminalise behaviour and to make it an offence in this State for which a person will pay a penalty.

Mr R.F. Johnson: We can strengthen that by simply making it an offence to do that act in a public place. What a person does in his garden or home is up to him, but if he does that act in a public place he is inherently putting other people at risk.

Mr J.A. McGINTY: I will take that as another criticism of the drafting of this Bill.



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Mr R.F. Johnson: We are happy for it to be amended as necessary during the consideration in detail stage. We would like cooperation.

Mr C.J. Barnett: I do not happen to share the Prime Minister's view, but the Attorney General might be interested to know that a motion to support the protection of the Australian flag will be debated at the Liberal Party's federal convention in Adelaide over the weekend.

Mr J.A. McGINTY: No-one would ever accuse the Prime Minister of not having his finger on the pulse of what ordinary Australians are thinking. This proposition has a superficial appeal, but when it is subjected to analysis both as to its detail and the extremely strong likelihood, according to the best legal advice I have received, that it would offend both the Western Australian and the Australian Constitutions, and that it is not targeted at something which will damage members of the public financially or physically, it shows that this is a -

Mr R.F. Johnson: It will damage them emotionally.

Mr J.A. McGINTY: People get angry when they see the Australian flag being burnt. I do. I can understand that, but we get angry about a lot of things in life. To say this Parliament should outlaw everything that makes people angry - we are getting close to it here, because this is a subjective test about whether it causes an offence - is a bit over the top. I see this as a bit of a stunt. If it were targeted at a particular ill, rather than just being general - that is, the nice notion of protection of the Australian flag - if it were properly targeted at where there was a danger to the public, that would be fine. Should we say that people in the member for Cottesloe's electorate who go topless at the beach and cause offence to others should also have their behaviour criminalised? I do not think so. Society has moved on a bit. The criminal law is there to deal with real threats to the safety of the community.

Mr R.F. Johnson: They could hardly be described as a national or state symbol.

Mr J.A. McGINTY: The member is right. The criminal law should be confined to things that are serious, in the sense that they pose a threat to the life, wellbeing or property of an individual, or to the community as a whole. In years gone by kings and queens of England were executed for treason. People say treasonable things every day, but it is something that has declined in popular usage as a law to stifle dissent. In more authoritarian times we had laws of that nature, but we do not really regulate those sorts of things today. This proposed law is an example of something that has gone a bit too far into an outmoded area, notwithstanding our wholehearted support for the flag and our belief that it should not be desecrated, but to criminalise that activity is another thing altogether.

Mr C.J. Barnett: I gather the Attorney General will not support what is the main thrust of this Bill. I may be able to persuade him later. The other part of the Bill establishes the Western Australian flag, because there is no equivalent to the Commonwealth Flags Act. An important part of this Bill is to establish the Western Australian flag so that it cannot be changed. It has never been formally constituted. I hope that, as a minimum, the Government will support that part of this Bill which establishes the Western Australian flag by an Act of Parliament, which therefore means that any change to the Western Australian flag in the future will require an amendment to that Act of Parliament.

Mr J.A. McGINTY: I do not see that as being problematic. I doubt whether it will be supported, in view of all the other problems associated with this Bill.

Mr C.J. Barnett: I ask the Attorney to consider that. I set out in my second reading speech that protection of the flag is the motivation for this Bill. We discovered that there was no piece of legislation actually establishing the Western Australian flag. I hope all members of Parliament will, as a minimum, support a Bill to formally constitute and establish the Western Australian flag, as was done with the Australian flag in 1953.

Mr J.A. McGINTY: In principle I see no objection to doing exactly that, but it is an ancillary or incidental aspect of the Bill, rather than a substantive one.

Mr C.J. Barnett: But it is significant. If the Attorney General cannot bring himself to support the protection aspect, I hope he supports the establishment of the Western Australian flag by an Act of Parliament, which would establish the flag and, therefore, to change it would require an amendment through Parliament.

Mr J.A. McGINTY: In principle I see no problem with that.

**MR A.D. MARSHALL** (Dawesville) [5.35 pm]: I am one of the middle-aged people the Attorney General spoke about and I am very passionate about the Australian flag. I am a little disappointed in the Attorney General. He is a very fair person. During his 40-minute address he said how much he agreed with what the Bill had to offer, but at the same time he fobbed off any intention of allowing this Bill to get through. We have indicated that there should be changes, and the Attorney General has listened, as he always does, but at the end

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of the day I can see in his eyes that he really does not care. For that reason I am a little upset, because I considered him to be a very fair person. If the Attorney General believes in the cause, as he has indicated he does, one would think that he would look at the discrepancies in the Bill and work out how to change it for the good of the public of Western Australia, and of Australia if we took a national vote on it. The flag is a symbol that unites our nation; it is a symbol of freedom; it inspires our hope. We see our freedom when we look at the flag - it contains the Southern Cross. Where else in the world can a person look at a sky that is so clean, see the stars and feel free? Our national anthem says we are young and free; of course we are, and that is why Australians are special.

Mr M.P. Whitely interjected.

Mr A.D. MARSHALL: When people are young and free they have the dare and the dash to take chances. Some go into Parliament to be heard by the public. Every time a member goes past Parliament House he or she can look up from below and see how special he or she is. We never hear much from the member for Roleystone, so we forget who he is.

Mr P.G. Pandal: It is the bit about being middle aged that worries me. I have not heard of anyone who has lived to the age of 136.

Mr A.D. MARSHALL: Everyone is allowed to play a little with mathematics.

The flag inspires hope in me. All our forefathers who went into battle looked to the Australian flag to give them extra energy and dare. They fought for something that bonds the nation and they got us where we are today with our freedom and hope. Our flag gives us inspiration and a sense of belonging; it reminds us of who we are. Our flag tells us that we are truly Australians - we are special. Our Western Australian flag is similar. Young athletes cannot wait to have the crest of the black swan on their blazers. A footballer cannot wait to play for Western Australia and have the black swan on his guernsey. Our colours of black and gold with an emblem of the black swan are the envy of all the other States. We are proud of our colours when we are at a carnival; we stand out and are proud to be Western Australians - maybe sandgropers.

Mr J.A. McGinty: These days people would prefer to have an anchor on their jumpers.

Mr A.D. MARSHALL: I will come back to that comment. The Attorney General said that people of today are proud to have an eagle -

Mr J.A. McGinty: No, an anchor.

Mr A.D. MARSHALL: Well, an anchor or an eagle; the Attorney can take his pick. I will return to our education on that issue in a moment, because that is where we are missing out. Why are people desecrating the flag? I do not blame those people on their own, because they have not been educated about the importance of the flag. We in this Parliament are not only legislators. We should also be educators and remind people of the passion they should feel for the flag. The younger generation is not being taught at school about the importance of the flag.

In my opinion, people who burn the flag are similar to people who deface tombstones, because people who burn the flag are desecrating the lifeline and history of the nation in the same way that people who desecrate tombstones are desecrating the history and lifeline of those families. People who desecrate tombstones are penalised and are very low in the opinion of the community. I see no difference between those people and people who burn the flag, because the flag is the lifeline of our nation and should be respected. In 1985 I spent 15 weeks in America. I was very taken aback by the national pride that the Americans have in their flag. Every time the flag was raised they would stand up as a sign of reverence. It was fantastic. I came home, and as a one-eyed Australian I was coaching 3 500 pupils a week -

Mr R.C. Kucera: Is there a law in America against burning the flag? I do not think there is.

Mr A.D. MARSHALL: If there is not, there should be. That is what I am saying. Two wrongs do not make a right. We are one of the youngest and most successful countries in the world, and one of the proudest. If the Americans do not have a law against burning the flag, I shall be surprised. They should have such a law. However, if they do not have such a law, should we follow in their footsteps? Why can we not be a bit better and have more leadership? People out there believe in this cause.

Mr R.C. Kucera: I must say a lot of Australians are telling the Prime Minister that.

Mr A.D. MARSHALL: The minister should just sit back and daydream and I will come back to my speech, which is coming from the heart and with a passion, and is based on a lot more years of experience. I go to the Returned and Services League clubs and to retirement villages, where the people are aged 55 and over. Those people are the force of Australia, and they agree totally with the Leader of the Opposition in this Bill that the

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burning of the flag should be a criminal offence and attract a criminal penalty. The national pride in America is something that I had not experienced in Australia, and I came home determined to teach everyone in the schools and in the clubs that we should fly the Australian flag. I bought a flagpole and I flew the Australian flag. I still fly the flag from my electorate office and my home. It is interesting that a lot of people must like to do that too, because every time my secretary forgets to take down the flag at night the next day it has been pinched! That is how popular it is! Members may drive past my office and say, "He reckons he flies the flag but I did not see it on top of his office!" Do members know what happened? About three months ago someone pinched the flag and the flagpole too! How good is that! There are people out there who share my passion for the Australian flag, even though they cannot afford to buy their own flag; and so it should be. Everything that I have tried to do in my small way to inspire people to have pride in their nation was surpassed at the Sydney Olympics. We were all part of that, because the Australian athletes showed Australians what it was to be proud of their nation. Every time the Australian flag went up and the national anthem was sung, people practically jumped out of their seats to stand to attention and to honour those great athletes who were putting us on the map of the world. We should never decry the importance of the Australian flag.

The importance of the flag goes back to the days of the crusades. If someone shot an arrow and the flag master went down, someone else would pick up the flag and on they would go, because it was the flag that inspired the army. It was the flag that they were fighting for. The flag meant that they were fighting for their country. That has been the case throughout the centuries. Our fighting personnel all respect and fight for the flag. If there is so much respect and passion for the flag, why do we say it is okay to burn the flag? I cannot understand the reasoning of the Attorney General, who agrees with what we are saying but is not prepared to fight with more passion to ensure that we legislate for this tonight.

In my young days when we went away as international tennis players we were fortunately good enough to be accredited to have the word "Australia" after our names. When we went overseas we felt pretty good, because in those days Australians led the world in tennis. Australia had six out of the top 10 world-ranking tennis players. Our group of Australians were in the chopping-block class, but we could beat most of the other countries because Australians were so good. It was interesting that when we played in some of the bigger tournaments in Europe, such as in France and Italy, our names did not have the word "Australia" after them but had the flag of our nation. When we looked at the board and saw the Southern Cross and the Union Jack and the federation star, with the point to remind us that we were Western Australians, we all felt pretty special.

Mr C.J. Barnett: It might be possible to get the star back!

Mr A.D. MARSHALL: All the Aussies watched and supported all the other Aussies, and if we were down a bit the only words we heard were "Come on Aussie! The flag is flying for you"; and so it did. It was amazing the difference it made to have the word "Australia" after our name or the flag of Australia. The sports men and women of this nation of ours - the member for Albany would know all about this - are very passionate about their flag. I cannot understand why some people want to burn the Australian flag - the thing that means most to 95 per cent of our population. I cannot understand the intellect of those people. I wonder about their education. I was at the Perth Glory game last Sunday, along with about 35 000 other people. The two sides were lined up in the middle of the arena, along with the soccer officials. The Minister for Sport and Recreation was there too. Those 35 000 people were homed in on watching the opening ceremony, whether it was on the television sets in their boxes or on the big screens. When the national anthem was played, most of the people stood to attention and faced the Australian flag. However, our sports minister stood feet apart and arms dangling, with little respect -

Several members interjected.

Mr A.D. MARSHALL: I am telling the truth. In fairness to the minister, I saw him first thing on Tuesday morning and I said, "I might be old-fashioned and out of date, but for the sake of all of us who are supposedly setting the scene, particularly ministers in Western Australia, whichever side they are on, what is the right way to stand and show respect for the flag and the national anthem?" He said he did not know, and I said he should find out and let me know. To check myself, this morning I asked the Minister for Health, who is a former assistant commissioner of police, and he said of course we should stand to attention. I was very impressed with the vigour with which he said that, because he had been trained to stand to attention and face the flag. He mentioned also that he would have his hat on. Most people do not wear a hat these days. That is a very important piece of education and knowledge. We never see a senior person desecrate the Australian flag. It is always a young person - a freedom of choice, new-style young person who wants to be different. Usually they are about one per cent of the community. I do not blame them so much as I blame the educators.

Mr J.N. Hyde interjected.

Mr A.D. MARSHALL: I will listen to someone decent.

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Mr C.J. Barnett: He is in the one per cent!

Mr A.D. MARSHALL: The member for Perth is in the one per cent, so I will not take his interjection. I am talking about a very serious topic. If things are happening that we do not like, we have to ask who is at fault. If the pupil has not learnt, the teacher has not taught. Somewhere along the line, even in this House, we must learn more about protocols. It is protocol at a Governor's reception for no-one to leave before the Governor leaves. I am sure a number of members have erred because of their not knowing that protocol. A protocol for a decent person is to respect the flag. Why do I say all this? Abraham Lincoln once said, "You cannot further the brotherhood of man by inciting class hatred." What vision he had. The member for Kimberley knows what I am talking about: we must work together, and elements cannot be allowed to ruin all the visions of good for the general public. When someone burns the national flag, they should not be tapped over the knuckles and told, "You naughty boy - don't do that." We had double demerit points on the long weekend in an attempt to stop deaths on our roads. That was another example of trying to teach people to do the right thing.

The Attorney General said that the legislation is pretty good, but he will not do anything about the matter. He does not care. He may believe underneath that this measure does not represent the right thing to do, or, politically, it might give the Opposition a few ticks. I would be disappointed if he thinks that way.

Mr J.A. McGinty: Do you believe the Constitution should not be complied with?

Mr A.D. MARSHALL: Maybe the Attorney should review the Constitution if he feels passionate about it.

Mr J.A. McGinty: The Solicitor General advises that your Bill will offend the Western Australian and Australian Constitutions. You should show more respect for the Constitution.

Mr A.D. MARSHALL: Abraham Lincoln set up most of the constitutions we follow. He said that one cannot build character and courage by taking away a man's initiative and independence. No-one can build courage and character by burning the flag. Our flag must be treated with respect and dignity. Our flag depicts freedom and inspires hope. Our flag will last forever. My grandchildren will respect the flag. I hope my grandchildren never have to fight for it, but my grandchildren will be taught to be proud of it and never desecrate it. Anyone who desecrates a flag needs to be punished. I commend the Bill to the House.

**MR M.P. WHITELY** (Roleystone) [5.53 pm]: The member for Dawesville started by implying that the Attorney General had some enthusiasm for the Bill, but stated it was badly drafted. That was a misreading of the situation. The Attorney has a similar view to mine; that is, the proposed legislation is fundamentally flawed.

The right to freedom of speech exceeds any desire to protect the flag. The genesis of the legislation was the flag burning incident during the Iraq war protest that resulted in an understandable public backlash. I place on the record that I was mildly offended - although not as strongly as members opposite - to see our national symbol burnt. However, the idea that we should make it an illegal act to pursue this political action, frankly, is far more offensive than the act of burning. The right to free speech exceeds any desire to protect our national symbols. The Leader of the Opposition in his second reading speech referred to the WestPoll taken in 2002 indicating that 63 per cent of people believed that burning the Australian flag should be made a criminal offence. That may be the reality, but it does not make it right. This measure is poll-driven. It is an attempt by the Opposition to display itself as more patriotic than the Government. I am a proud Australian, and my patriotism arises not from a love of national symbols, but from a love and respect of national values. I refer to the values of tolerance, diversity, free speech and a fair go, the protection of which is far more important than the protection of any national symbol.

The last significant political figure in Australia to drape in the flag was Pauline Hanson, who did so on the cover of *The Bulletin*. Samuel Johnson said that patriotism is the last refuge of the scoundrel. That lady was an absolute scoundrel. She was the antithesis of all things I value and that make me patriotic about being Australian; that is, a respect for tolerance, diversity, freedom of speech and a fair go. A precedent exists. This Bill is a cheap populist attempt to somehow portray the Opposition as more patriotic than the Government.

I think the member for Dawesville used the argument that Australians fought for the national flag. My father and both my grandfathers fought in the armed services. I cannot speak for them now as they all passed on long ago; however, I would be disappointed to think that they fought for the national flag. Frankly, it is a bloody stupid thing to fight for. Fighting for a symbol is ridiculous. One should fight for the protection of democracy and the values of diversity, tolerance and free speech. I would like to think that my father's service, which was in the Japanese occupation forces after the war, was because of a commitment to democracy, not to a national symbol. Every nation has a national symbol. We would not praise the Iraqis for fighting for a national symbol or flag. One must fight for something more meaningful. The argument that people fight for a national flag is a little worrying.

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I place on the record again that I find it offensive to desecrate the national flag. However, the Attorney General hit the nail on the head when he said that such burning is inherently a political act. I was offended when I saw the young fellow burning the national flag during the Iraq war protest rally. I thought back to the time of the Vietnam war, when acts of flag burning would have occurred. I wondered what could justify such action. Maybe a parent whose son was drafted to fight in a compulsory war in which he did not want to fight would take that action. Would that justify a person's burning of the national flag or a national symbol? In my opinion, perhaps it would. Where do we draw the line? We have made a hue and cry. Maybe we are too precious. We passed legislation yesterday to remove some natural law rights of Australians. As was the case with all government members, I was not particularly comfortable with that move. It was one of those horrible situations in which a judgment call must be made. We made those changes with great reluctance, but did so because it was the right thing to do. If a member of the Swan Valley community went out the front of Parliament and said, "My rights and natural justice have been infringed upon," and that person burnt a national flag, I would have to say that that would be within the range of legitimate protest. We cannot be too precious about these matters and look at some isolated incident that causes some offence, and say that the action should be outlawed in all circumstances. There is something far more fundamentally important than protection of a national symbol; that is, the protection of the right to free speech, regardless of whether people find it offensive. The member for Kingsley drew an analogy between burning our flag and destroying someone's private property. I think the member for Dawesville referred to the flag that was stolen from the front of his office. If someone tore down that member's flag and burnt it, obviously he would be committing a criminal offence because it would impinge on the member for Dawesville's rights as an individual. However, if someone felt passionately about something and, rightly or wrongly - these are judgment calls - destroyed his own flag, that would be part of a range of democratic protests. I cannot support the legislation because my affection for democracy and free speech exceeds my affection for the national symbol, as strong as that may be.

**MR R.F. JOHNSON** (Hillarys) [6.00 pm]: I was hoping to follow my very good friend and colleague the member for Dawesville, who made an extremely good speech a short time ago.

Mr P.G. Pental: As long as you don't tell us you too are middle-aged!

Mr R.F. JOHNSON: No. I wanted to follow him because he made a very positive, passionate speech that extolled the virtues of the Australian and Western Australian flags. The speech I just heard from the member for Roleystone was negative. If he wants to get political, I could send his speech to all the Returned and Services League clubs throughout Western Australia. They would be appalled at some of his comments, so I will not spend any more time on what he said.

I appreciate the Attorney General's comments. As usual, he spoke reasonably and very knowledgably on many areas, although I do not necessarily agree with his legal advice. The Opposition received contrary legal advice about parts of the Bill being contrary to the Western Australian and Australian Constitutions. It is very difficult to get two lawyers with differing legal opinions to agree.

Mr N.R. Marlborough: We have a good lawyer you can use. We will give you his name afterwards!

Mr R.F. JOHNSON: Okay. It is a great pity. The Attorney General very often behaves in this House like a reasonable person. I mean that sincerely.

Mr J.A. McGinty: Cut the praise.

Mr R.F. JOHNSON: I can see him moving up a couple of seats in the not too distant future. I am told that he keeps Cabinet together, and I am sure he keeps most of the Labor Party together in the main caucus room.

Mr N.R. Marlborough: I am sure you could do with him in your room.

Mr R.F. JOHNSON: I was not there. He is a man of great influence and very wise on many issues. Although he has not practised law, he has a law degree and he has a good knowledge of law. I accept that. However, I had hoped that the Attorney General's reasonable approach would have allowed the Bill to be considered in detail, when the Opposition would have willingly accepted amendments to many of the problems he pointed out. As the Leader of the Opposition said, the Opposition accepts that the Bill is flawed. It is not the Bill that the Opposition intended to introduce. This is the original Bill. I am surprised it was introduced. After the Opposition received advice, it was changed. It is embarrassing that this Bill is before the House now. However, it could be amended at the consideration in detail stage. Some of the Attorney General's comments were valid.

I genuinely believe that this parliamentary system in Australia is probably the best example of a democratic system in the world.

Mr J.A. McGinty: If we had one vote, one value we would be closer to democracy.

Mr R.F. JOHNSON: Even the mother of all Parliaments in the United Kingdom has a weighted system.

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Mr J.A. McGinty: Not as bad as this with a 500 per cent variation between some electorates.

Mr R.F. JOHNSON: How much is bad? We must weigh the apples in one hand with the apples in the other. If we are a couple short in one hand, is that bad? That is the mother of the Westminster system and it is abused there. However, vote weighting is done to make sure that outer areas get what is known as fair representation.

The Attorney General has managed to divert me from the topic. That is another of his talents; he is good at that. He led me away from the topic when I was saying that Australia is one of the most democratic countries in the world. That is one reason that I came here. It is a great place in which to live and raise a family.

Mr N.R. Marlborough: We are glad he did.

Mr R.F. JOHNSON: I know that the member for Peel is glad because he is an ex-Pom, as is my good friend the member for "Swanbourne"! My mate from Croydon also took that view. There is no question that this is the best place on earth to live. I do not blame asylum seekers and illegal immigrants for trying to live here. Why would they not want to live in the best place on earth? However, I do not condone their attempts to enter this country illegally. Many thousands of people are waiting to get into this very democratic country.

Although this is a very democratic State, it is a great pity that sometimes the different political parties in this Parliament do not share the same notion about what is significant. We differ about what are significant national and state symbols; namely our flags. The member for Peel and I lived under the Union Jack for many years. It is a great flag from a great country. However, the flags I live under now are the Western Australian and Australian flags. Although I probably would not be accepted into the armed forces because I am no longer in my forties, I would fight for this country tomorrow to protect this way of life.

Mr N.R. Marlborough: Would you take my place as well?

Mr R.F. JOHNSON: I would probably have to.

Despite all the good things I have said about the Attorney General, I am disappointed in the Premier and the Gallop Labor Government as a whole. The last time an issue of significance was raised in this Parliament was when Australian troops were going to war with the United States and the United Kingdom against a tyranny in Iraq. I was disappointed that the Premier would not give unqualified support to our troops. He used a parliamentary trick through the Leader of the House to stop a motion of unequivocal support for our troops that was not political in any way. The Premier and his Labor Government are doing the same thing in this debate. We are debating the protection and sanctity of not only the Western Australian flag, but also the Australian flag. I hold them both very dear and I stand to attention whenever the national anthem is played because I am a very proud Australian. When I came to this country I waited two years and one day before applying to become a citizen. The mandatory waiting period is two years.

Mr S.R. Hill: Lucky we did not have a vote on that!

Mr R.F. JOHNSON: I wanted to be an Australian. I am not offended by the comments of the member for Collie. Some of those cockies from the country have had a go at Poms for coming here. I am not offended at the word Pom in the least, as long as it is not said in a derogatory sense. I would take offence at anything else that was meant in a derogatory way. This is a great multicultural country. When I was Minister for Citizenship and Multicultural Interests, I said many times that Western Australia was the best example of how a multicultural society should live, work and enjoy leisure time. I believe that Western Australians are tolerant of each other, understand each other and appreciate the many different customs, cuisines and cultures that make up Western Australia. I have been called racist in this Parliament, but I assure members that I do not have a racist bone in my body. Some members might have a different view, but that is up to them. I always say it is their problem, not mine.

If the Gallop Labor Government will not support this Bill, it should let it go through to the consideration in detail stage and allow it to be amended. We would be very happy to work in conjunction with the Government to make sure that our Bill or its amendments are good and that they work. It should be an offence to burn the national flag. It is in some countries but not in others. It has nothing to do with freedom of speech. People can say or write what they like and carry banners that say all sorts of things. They have every right to do that, but why would they burn a flag? I can understand people burning the Australian flag in Iraq or some other countries because they obviously oppose our involvement in the liberation of Iraq. I can understand people in other countries burning the Union Jack or the Stars and Stripes, but I cannot understand why an Australian would wish to burn the Australian flag in Australia. Not allowing people to do that is not denying freedom of speech. Burning the flag does not display how they feel. People display how they feel by what they say and what they write. To burn the flag is just a stunt - and a dreadful stunt.

Mr M.P. Whitely: As is this legislation.

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Mr R.F. JOHNSON: No, it is not. When the member for Roleystone spoke on this Bill, he made the worst speech he has ever made in this Parliament.

Mr M.P. Whitely: It was not as bad as your best one.

The ACTING SPEAKER (Mr A.J. Dean): Member for Roleystone!

Mr R.C. Kucera: I think the member was commenting that his worst speech was as good as your best one.

Mr R.F. JOHNSON: We have yet to hear the minister make a decent speech. The Minister for Health reads his out.

Mr R.C. Kucera: Will you take an interjection?

Mr R.F. JOHNSON: I will always take an interjection from the Minister for Health.

Mr R.C. Kucera: I do not recall that English legislation covers the burning of the flag. I do not think it is an offence there or in Wales or Scotland. I suppose one could call them the mothers and fathers of the Westminster system. Their Constitution -

Mr R.F. JOHNSON: They do not have a Constitution.

Mr R.C. Kucera: Their view of the world is such that they accept freedom of expression. Whether you disagree or agree with it, if those kinds of Westminster systems do not support it, why would we be any different?

Mr R.F. JOHNSON: Is the minister a republican?

Mr R.C. Kucera: I am not. As the member for Dawesville suggested, I am fiercely patriotic when it comes to the flag and every other symbol of our nationhood.

Mr R.F. JOHNSON: One of the largest republics in the world is France. It passed a law that makes it illegal to burn the French flag in France.

Mr R.C. Kucera: My objection to your legislation is that it is totally impracticable. From my experience of over 30 years of having to deal with people under circumstances in which they committed what you consider to be an offence, I know that what you are suggesting in this legislation is simply not practicable because there are so many ways around it that you would make a mockery of the law.

Mr R.F. JOHNSON: I disagree with the minister.

Mr R.C. Kucera: That is your right.

Mr R.F. JOHNSON: The Leader of the Opposition has offered to work cooperatively with the Government during the consideration in detail stage to make this even better legislation and incorporate the fact that we will have a Western Australian flag.

Mr R.C. Kucera: What I do not like about the legislation is placing our flag in a position where it will be made a mockery, which is essentially what you would be doing. You would be setting up our flag - an icon of our country - to be made a mockery of.

Mr R.F. JOHNSON: I took the interjection in good faith but the minister is going on to make a speech. He can do that later. I disagree vehemently with what he is saying.

I appreciate that it is an offence in some countries to burn the flag. The member for Dawesville raised the point during the course of his speech that people who indulge in flag burning are normally younger people. Middle-aged and older people do not generally do it. Unfortunately it is usually the university drop-out types - those lifetime students with studs in every orifice. If members have any time for those people, I do not. They normally align themselves with either the Labor Party or the Greens. Why would they burn the flag? They do it for attention and simply as a stunt - not for any good reason. They know that if they burn the flag, cameras will be locked on them and they will have their two or three minutes of attention.

The Attorney General drew our attention to a flaw in the legislation to do with the replication of flags.

Mr J.A. McGinty: I am happy to debate the legislation on the basis that provision is not there.

Mr R.F. JOHNSON: The Attorney General also raised the point of somebody in his or her own backyard burning the flag. I believe that a person's home is his castle in many respects. If people want to commit acts of homosexuality and do all sorts of devious things, that is up to them. I have no problem with it if they do it in their own homes. If they want to burn the Australian flag in their back gardens, that is up to them.

Mr J.A. McGinty: I am surprised you make that exception for homosexuality.

Mr R.F. JOHNSON: I am not homophobic. Burning the national flag in public is treasonable, because when people are in public they must behave according to certain laws, otherwise a police officer will come along and

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he or she will arrest them and they will be charged. The chances are that they will be found guilty and fined or sent to prison. If people break the law to some extent in their own homes, it is very hard to establish the facts unless they are involved in some sort of con job on the Internet or something like that, in which case they will get caught. However, when somebody does something that is an affront to the vast majority of Western Australians, as our polls have shown, this Parliament should do something about it.

We should be listening to the people and the Government should be listening to the people. The Government is not listening in this respect. It could have introduced the Bill and we would have supported it. That is why we are saying that the Government should amend the Bill if it thinks it is wrong and that it should let the Bill pass through this Parliament. It will establish the Western Australian flag once and for all. It will make it an offence to desecrate the flag by burning it in a public place. We could amend the Bill so that it refers merely to a public place. Anybody who might burn the flag in future would not be prosecuted for disorderly conduct, which is really a nothing offence. People can be prosecuted for disorderly conduct for doing next to nothing.

Mr R.C. Kucera: People can go to jail for that sort of thing.

Mr R.F. JOHNSON: When did someone last go to jail for disorderly conduct?

Mr R.C. Kucera: It depends on how offensive the conduct is.

Mr R.F. JOHNSON: Exactly; it would have to be vastly offensive to warrant that.

Mr R.C. Kucera: That is an impracticality of your legislation.

Mr R.F. JOHNSON: No, it is not. Someone who started to act in a disorderly way, such as by taking off his clothes and shouting and hollering about how dreadful something was or how terrible the Gallop Labor Government was and how dreadful were the laws it had brought in, could be charged with disorderly conduct. Members should forget freedom of speech because that would not come into it. That person could be charged with disorderly conduct by a police officer. However, this Government is not prepared to make it an offence to burn the Australian or Western Australian flags in public, which would put lives at risk.

**MR A.P. O'GORMAN** (Joondalup) [6.20 pm]: Using the words of Hon Peter Foss, the Opposition is using a sledgehammer to crack a nut. This legislation is pulling out the heavies just to try to pull a stunt, so that people do not burn our flag. As a new Australian - I have been here for just over 20 years - I am very proud of the Australian and Western Australian flags. I am also very proud of my heritage; I am from Ireland. I am very proud of the tricolour.

Mr N.R. Marlborough: I thought he was a Welshman.

Mr A.P. O'GORMAN: I am not a Welshman. I display both flags in my office indicating my heritage and my adopted country. The Opposition seems to think that the best way to deal with things is to use a big stick or a sledgehammer, rather than education. We should be educating our young people about our flags. A number of members of our Parliament also need to be educated on flag protocol. On the day that the Opposition took this legislation to the Press, the Leader of the Opposition draped the Australian and State flags across a park bench. The flags dipped onto the ground, which is not permissible. That is not done to a flag. I know that; I taught that rule to scouts for 16 years.

Mr R.F. Johnson: Which law says that?

Mr A.P. O'GORMAN: A flag that touches the ground is supposed to be destroyed. The Leader of the Opposition also draped both flags over the Table of this Chamber. I am not sure whether that is permissible, but, once again, the flags touched the floor. I have taught scouts for 16 years that that is not permissible. The member for Kingsley has held an Anzac service for schools in our region for 12 or 13 years. She should be commended for that; it is a great service. However, this year I noticed that the Western Australian flag, the Australian flag, the flag of the United States of America, a Cypress flag and a Union Flag were all draping on the ground. That is not permissible. Before we start talking about giving someone a criminal record for burning the Australian flag, we should teach ourselves how to treat our flags. That is important. It should be taught by example, not by telling people that they cannot do this and should do that. It should be done by example. When we display our flags, we display them with pride. We do not drape them across tables or park benches. When out in public, we do not allow them to stray along the ground in the wet and mud.

Mr R.F. Johnson: We will accept those amendments during the consideration in detail stage, because they are quite good amendments.



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Mr A.P. O'GORMAN: I am talking about members of this Parliament who should know better. Members of the Opposition want to put in place legislation that will hurt people and give people criminal records when those members do not know the basic principles of respect for a national or state flag.

Mr R.F. Johnson: I hope you don't condone flag burning.

Mr A.P. O'GORMAN: I do not condone flag burning. I would be very upset by that. I would not care which flag was involved. I would not care if it were a flag of a nation with which we were not friendly. I would not care that it was a Western Australian flag, an Australian flag or a tricolour; no flag and no country should be disrespected. The captain of the English soccer team recently pleaded with the supporters of that team to not boo when another nation's anthem was played, because that is what they have been doing. We need to educate our people so that they do not do those sorts of things. We need to teach them to have respect for other countries' flags, anthems and symbols and to respect our own flags and symbols. If a problem still exists after that has been done, we should perhaps consider taking stronger action. In the meantime, we should inform and educate ourselves on this issue and have proper respect for our symbols and flags.

**MR J.P.D. EDWARDS** (Greenough) [6.25 pm]: Our flag is our one constant. Dare I say it, but parliamentarians, even Governors General, come and go; however, the flag always remains. I agree with some of the comments of the member for Joondalup. I will go back to the history of flags and the reason for them. I suppose I must go back to British history for their beginning. Flags were used in warfare. They ultimately become regimental flags. They were probably used as far back as the time of William the Conqueror, but certainly at Agincourt and Waterloo, through two world wars, and during the Korean, Vietnam and Gulf Wars. Regimental flags have been around for centuries. They were a focal point for a soldier to find either the company or regiment for which he fought. I suppose the flag was sacrosanct inasmuch as those men died for those flags. Many regimental flags hang in regimental headquarters in not just Britain but also other parts of the world; they were used throughout the world. They can certainly be seen here in Australia. They hang in tatters in some of the great cathedrals of Europe. Men died for those flags, and the blood of some of those men is still on those flags.

Flags are a recognised symbol. Our national flag and the Western Australian flag are symbols. I do not agree with the Attorney General that our flag is a political object. It is the soul of our nation. It is part of how we are recognised as Australians. As somebody has already said, I am proud to be Australian. I came from another nation to become an Australian. I am very proud to be an Australian under the Australian flag. The flag is something that we should respect and view with pride. I believe that there should be some sort of recognised punishment for burning or damaging a flag. I agree that this proposed legislation does not have all the answers. Some amendments are needed. Having said that, I support the legislation. If it is thought necessary to impose a penalty for either burning or subjecting the national or Western Australian flag to some damage or whatever it may be, that penalty should be imposed only when an offence is committed in a public place. Obviously the practicalities of the flag being burnt in private would render it very difficult to penalise the act. However, there should be some penalty for the desecration of our national flag if it is reported on the nation's television screens and in the newspapers. In the analogy that I gave of regimental flags and the royal standards of the kings and queens of European countries under which people fought in the past, those flags were set up as recognised symbols of the authority of those countries and became much more than just political objects. I believe they are the soul of a nation. Let us face it: every nation has a flag and they are all different because they reflect the different nations' characteristics and what those nations represent. I repeat that our flag is something that is constant and that has existed for some 100 years. I think I am correct in saying that Australians designed it.

Mr A.D. McRae: That is wrong.

Mr J.P.D. EDWARDS: I am quoting from the Leader of the Opposition's second reading speech. I understand that it was designed by Australians for Australians and it came into being some 100 years ago. I may be corrected on that; however, it is a flag for our people and for the nation. As such, I believe it should have the protection of the law in one way or another, whatever kind of law that may be to protect it.

**MR R.C. KUCERA** (Yokine - Minister for Health) [6.31 pm]: I will speak very briefly on this Bill. I heard the member for Murdoch say that I am a flag man.

Mr M.F. Board: I said that I suspect you are a flag man.

Mr R.C. KUCERA: He is quite right, I am. Nobody is more fiercely patriotic than I am. I note the comments of the member for Dawesville when he chose to ask me today about protocols. I am a protocol person. I was also asked whether I am a republican. I am actually very much a traditionalist. I believe very much in the icons of our country and I believe very much in the symbols of Australia. Our flag is one of them. However, as I said to the member for Hillarys earlier, this legislation in its practicalities sets up the flag to be mocked. It sets up the

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flag to be used by every ideologue in this country as a symbol to mock and to mock Australia. Having worked in another life with such people for more than 30 years, having locked them up on many occasions for disorderly conduct and other offences when they desecrated the flag, and having seen them dealt with fairly firmly by the courts throughout the 1960s and 1970s, I can say that there is plenty of law to cover matters such as this when people are offended by the burning of the flag. However, I will talk about some of the practicalities of the legislation and I will give members a simple example.

Many years ago in the 1960s, when I walked the beat in Fremantle, I had to break up a fight between a group of wharfies and a group of Japanese sailors.

Mr M.F. Board: Who won that one?

Mr R.C. KUCERA: As a matter of fact, the wharfies did. The two wharfies who were involved in the fight were former prisoners of war who had spent a great deal of time in Changi, and anything Japanese to them was anathema. They were most offended when a Japanese tuna ship came into Fremantle harbour and, by protocol, hoisted the Australian flag. The fight broke out when they asked the captain of the ship to pull down the flag because it offended them to see it flown on a Japanese ship. This legislation refers to people being offended by the mistreatment of the flag. The member for Murdoch talked about being a flag man.

Mr M.F. Board: Absolutely.

Mr R.C. KUCERA: We see the flag depicted on our ovals every day. Will somebody complain when players run onto the flag painted on the oval at a grand final? Will people regard that use of the flag as offensive? There are many instances when the flag is used on such occasions. Members opposite must consider the sheer practicality of the Bill.

The member for Greenough correctly referred to the flag as a symbol of our country. Last year I was fortunate to visit my home town in Wales where I grew up. As I walked into the main museum in Cardiff I saw the banner of the Welsh regiment from Rourke's Drift. Many people died around that flag, but, by the same token, Welsh men and women have a right to protest about the flag and the right to say what they want to say. Nobody is more offended than I am when I see somebody burn a flag, particularly the Australian flag. However, I see no point in setting people up as martyrs to mock our country and our flag by enacting unnecessary legislation that, as the member for Roleystone said, was essentially introduced into this Parliament as a stunt. I do not agree often with the Prime Minister. I certainly do not agree with his views on health and what he is doing to our health system -

Mr M.F. Board: I knew that would get into the debate somehow.

Mr R.C. KUCERA: However, member for Murdoch, I agree with what the Prime Minister has said about the flag. The member for Joondalup spoke very sensibly today about education. Education on protocols is sadly lacking in this country. I have noticed that some members on both sides of the House are unaware of the protocols for honouring the flag and the national anthem. The member for Dawesville talked about members leaving the House before the Governor. Members should observe these protocols. It may be that the member for Dawesville's comments are a lesson to all of us in this place. However, protocols cannot be legislated for. Parliament has a right and an obligation to educate people; perhaps that is what this legislation is about. Much can be accomplished by example and by education, but that cannot be done by bringing into Parliament impractical legislation that will set up the flag to ridicule. This legislation will have the opposite effect from what the Opposition has set out to achieve. I do not have a problem with the Opposition's setting out to achieve respect for the flag, but we do not need to legislate for respect. My mother did not need legislation to instil respect in me. My mother taught me respect for my country and my flag, my school taught me respect for my country and my flag, and my scout group taught me respect for my country and my flag. I expect Parliament to teach us respect for the flag, not legislate for that respect. Some of the greatest Parliaments in the world have shied away from this kind of legislation because there is no need for it. If people respect and love their country, they respect and love their country. It is punishment enough for someone who has ridiculed the country's flag to be held up to ridicule; there is no need to legislate for it.

Much has been said about young people. It is very easy to criticise young people on issues on which we oldies hold different views. I have used this quote of Shakespeare's in the House before -

I would there were no age between sixteen and three-and-twenty, or that youth would sleep out the rest; for there is nothing in the between but getting wenches with child, wronging the ancientry, stealing, fighting.

I do not think much has changed, especially our view of youth - that is probably jealousy on my part!

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I return to the practicality of the legislation. Clause 5 refers to “any person who burns”, which is fine because burning is a very specific thing that we can perhaps deal with. However, the clause goes on to refer to any person who “damages” the flag. What about sky divers who jump out of a plane at a grand final and land on the flag; will someone be offended if they miss the flag? What about the flag that is painted on the oval at a grand final that the footballers run over; will someone be offended when they rip the turf to pieces with their studs? It all sounds ridiculous but, unfortunately, that is what this legislation is about.

Mr A.D. McRae: Just to indicate that you can't actually legislate for the establishment and preservation of icons, “damage” would include, for example, removing the Union Jack from the flag and replacing it with another symbol, which the majority of Australians regard as preferable.

Mr R.C. KUCERA: As I said, if this legislation is taken to its nth degree, the word “damage” would have to be removed from the Bill.

Mr M.F. Board: Why is it an offence then to write on a \$10 bill?

Several members interjected.

The ACTING SPEAKER (Mr A.J. Dean): Members, please make your comments through the Chair and do not have across-Chamber conversations.

Mr R.C. KUCERA: The member for Riverton made a very good point. Again I say to the member for Murdoch that the legislation can be taken to its nth degree. The second part of that sentence in clause 5 says “or otherwise physically mistreats”. Members heard the examples from the member for Joondalup about draping the flag on the seat or along the floor. All those issues are valid. That illustrates the ridiculous nature of this piece of legislation. I love my flag dearly. I love this country dearly. I came here as a teenager and this country gave me everything, including the flag. I think this is simply a political stunt. The matter was raised to be political. This legislation does not support the flag. It will set up our flag to be mocked and ridiculed by those people who want to make our flag a symbol of their disinterest in and disagreement with our country.

I again refer to the phrase “physically mistreats”. The member for Dawesville talked about his flag being stolen. I know many old soldiers who would be very offended if they saw the flag flying all night or hanging in tatters. Would they bring before the courts a charge of physically mistreating the flag? When this legislation is analysed, it can be seen as either a very naive attempt to legislate for people's anger or a political stunt. I am very proud to be an Australian. I am very proud of my Australian flag. This legislation treats it as a symbol of mockery, not as a symbol to be upheld. We have a fine Constitution. As the Attorney General said, the Constitution protects us, our country and our symbols. That is sufficient.

**MR P.G. PENDAL** (South Perth) [6.41 pm]: I want to make only a brief contribution. I thought that one of the more pleasant parts of the debate was an exchange I heard between the Leader of the Opposition and the Attorney General. The Attorney General made it clear that he was not amenable to the passage of the Bill because he saw as offensive the notion that offences would be created for those people who sought to in some way desecrate the flag. He is not alone in that. I was absent from the Chamber on other business for most of his speech. If I remember correctly, the Prime Minister has taken a similar view about the destruction of the flag. I was encouraged to hear that part of the exchange between the Attorney General and the Leader of the Opposition which effectively suggested that the Attorney General saw some merit in the half of the Bill that provided for the statutory creation or recognition of the flag in the first instance. The Leader of the Opposition teased out from the Attorney General whether he would be prepared to support an amended Bill that would create and entrench a state flag. That would involve a relatively simple process. The Bill would be renamed something like the state flag Bill, the short title would be simply amended, the reference in clause 3 to the Australian national flag would be deleted, and clause 5 would be deleted. We would end up with half a Bill. There is a saying that half a loaf is better than no bread at all.

Often in this place I get irritated that whatever one side proposes, the other side seems disposed to oppose. It does not matter who sits where. When we change sides, so does the behaviour. That is why it was refreshing to hear three or four minutes of repartee across the Chamber in which the Leader of the Opposition and the Attorney General could agree on that much, if nothing else. I see that the Attorney General is observing the debate from afar. He might consider his familial feelings. If he were to do what the Leader of the Opposition wants him to do, his former flag of Saint Andrew of Scotland would be embedded in the state flag. His wife's previous flag of Saint Patrick of Ireland would be ensconced -

Mr J.A. McGinty: She will be very offended by your saying that. Being from Northern Ireland, her flag is the Union Jack.

Mr P.G. PENDAL: As an Irishwoman, she will get it both ways. She will not be offended. From what I know of the McGinty family, she is not the offensive one! I am sure that when she reads this, she will understand that

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I said it with some jest. I know that she sits up late into the night reading *Hansard* to see what her husband has been up to for that part of the week. There is something in it for her as a Northern Irishwoman. The flag of Northern Ireland is, of course, the flag of Great Britain. The only people who should feel left out are the Minister for Health and the member for Greenough. They both own up - although I cannot imagine why - to being Welshmen. Saint David's flag is the only one not included in the Union Jack. Saint George of England, Saint Patrick of Ireland and Saint Andrew of Scotland are all represented.

Mrs C.L. Edwardes: Why is that?

Mr P.G. PENDAL: I think the reason is that when the Union Jack was created, Wales was a principality and not a country. Being of a lower status than those other three countries, which had Crowns, the poor old Welsh missed out. There is an opportunity for the Minister for Health to make a real impact on this place by doing something about that.

The Bill has evoked a number of good contributions. For some reason, I do not often agree with the member for Roleystone. However, he made very good points, as did others, from a totally different end of the political spectrum -

Mrs C.L. Edwardes: He is smiling; that is unusual.

Mr P.G. PENDAL: That was a mistake. He was not feeling well.

Mr M.P. Whitely interjected.

Mr P.G. PENDAL: The sun will still rise tomorrow and the economy will not be altered by this debate, but it was worth having. There are things that people in this place should spend more time agreeing with rather than finding reasons to disagree. I conclude my remarks by urging the Attorney General, if he cannot deliver the whole loaf, to at least deliver half a loaf to the Leader of the Opposition. Everyone can agree on half the Bill. I suggest that we amend it appropriately and pass it into law to establish the first state flag, perhaps in readiness for next year's one hundredth and seventy-fifth anniversary of the Swan River Colony and this State.

**MR A.D. McRAE** (Riverton) [6.49 pm]: I take my lead from the member for South Perth and focus on a couple of points on which we can agree before talking about why I do not agree with the broader thrust of this legislation. I agree with the member for South Perth who noted in the previous debate that there is no recognition of a state flag in Western Australia. Given that next year marks the centenary of this Parliament, it is absolutely appropriate that we take a moment every now and then in the hurly-burly of this Parliament to consider where our symbols are, what they mean, how they are being used and how they are responded to, adopted and embraced by the community. The state flag is one of those symbols to which we should give proper consideration.

The issue of the state flag arises as much by default as anything else. I draw that distinction between the state and national flags because debate continues within the community about the symbols that now represent modern Australia. I have not heard a word of dissent from members, nor would I expect there ever would be if every member of this Chamber spoke, that each of us acknowledges and respects the symbols of our nation and society as representing the things to which we aspire. There is debate about what those symbols should be and whether they represent the things at the core of what it is to be Australian. I put to the Chamber and to the people outside this Chamber who might be interested in this debate that some of those things go to the core of who we were, who we are and who we will become.

Who were we in 1901 around the time that the current flag was developed as a national flag? We were different from who we are today and who we will be tomorrow. Not long after the election I had the great honour of participating in the Centenary of Federation event in Melbourne in 2001. It was interesting to note that the images and symbols of the first federation event that brought the previous six colonies and the territories together as a united nation were all British. Those present at the foundation of this nation and the things that we aspire to did not sing *Advance Australia Fair*. They did not sing any anthem or popular song. They sang the British national anthem; that is, *God Save the Queen*. I do not oppose that. I understand the march of history, the march of time and the change of events. However, it is wrong for us to consider today that somehow the flags that we have established as a result of our colonial history are immutable, fixed in time and forever representing who we are and what we aspire to be.

I draw the Chamber's attention to an article that appeared in the *Sunday Times* on Australia Day this year, prior to the Leader of the Opposition's presentation of this Bill to the House, under the heading -

United under a divisive flag

After a century, Australia's blue ensign still stirs passionate debate

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We can see that passion again represented in this place today. Two arguments have been put in the flow of the debate: first, what are the symbols that unite us and that we adopt and how important are they as representations of us as a community? Secondly, is it an offence to damage, burn or in some other way belittle those symbols? There are two streams to this argument and I will deal with them separately.

The symbol of Australia is one that has worn its badge of honour very well indeed. However, we must understand its origins. The newspaper article states -

... a competition was staged to chose a national flag in 1901, ...

Five almost identical entries shared the prize. They were submitted by Annie Dorrington of Perth, E.J. Nuttall of Prahran, Ivor Evans of Melbourne, L.J. Hawkins of Sydney and New Zealander William Stevens, who perhaps disagreed with the Kiwis' decision not to join a federated Australia.

As an aside, I remind members that the dominion of New Zealand was included in the early drafts of the Australian Constitution whereas the colony of Western Australia was not.

Mr R.C. Kucera: Ivor Evans was obviously a Welshman and a good man.

Mr A.D. McRAE: Well, it does not say in the article that he was a Welshman.

This process involved the engagement of the community in the design of a flag. The design was sent to Britain in 1901. There was no parliamentary debate about the short list, and it is worth returning to this article to bring to the House's attention an important historical fact about the competition for the flag; how we came to have it and what the limitations - terms of reference as we would now call them - were for that competition. The article goes on to say -

... the flag competition was hardly a level playing field. One of the rules was that the design had to be based on one of the British ensigns - the plain red and blue flags incorporating the Union flag that were used for military and then naval purposes.

Firstly, there was a national competition for a flag for the newest nation in the twentieth century and the first term of reference was that it must incorporate one of the British ensigns; the red or the blue ensign. Secondly, members must understand that in the development of our flag, a national competition was held.

Mr M.F. Board: This is not about the design of the flag.

Mr A.D. McRAE: Yes it is. I just went through why I am talking about the establishment of symbols. The member for Murdoch was not listening when I gave an exposition as to why I would first talk about the creation of symbols and why they become important to society and, then, whether it should be an offence to damage those symbols. I am dealing with the first part of that question.

The article says that five out of the nine appointed judges in the competition were British naval officers appointed by the British Government. They were not appointed by an Australian or colonial administration. Therefore, two things constrained the terms of reference of the competition. First, the flag had to be based on the British blue or red ensign. Secondly, the majority of people in the selection panel who would short list the options were British naval officers.

Mr J.C. Kobelke: And how many of them were women?

Mr A.D. McRAE: I do not know for sure but I will bet London to a brick that there were zero.

Mr P.D. Omodei: How many were Afghanis?

Mr A.D. McRAE: Perhaps there were no Afghanis because that level of cultural diversity did not occur until later. I thought the member for Warren-Blackwood might have had the decency to interject and say, "How many were Aboriginal?" That might have been a more pertinent question and more relevant to this debate about the creation of symbols for the newest country in the twentieth century. The member was going nowhere with that question. He has reduced himself again. He should not do that. My grandfather used to say, "When you are in a hole, stop digging." The member should stop digging.

Mr N.R. Marlborough: I knew a sergeant major who used to tell us that when faced with an atomic bomb going off, you dig yourself into a hole and put all the earth onto the side where the enemy is so that when the bomb goes off, it just pushes the earth over you and you save everybody a lot of work.

Mr A.D. McRAE: That is brilliant. As the member for South Perth said, many interesting and diverse contributions have been made in the course of this debate. I am dealing with just one element of it; that is, the creation of symbols. How do we create a symbol, how do people come to love it and how does it represent what they aspire to? What is it about symbols in our society that cause people to act in a social and cooperative way? We must understand these things when we debate what it is to legislate behaviour with regard to those symbols.

Mrs Cheryl Edwardes; Mr Jim McGinty; Mr Arthur Marshall; Mr Martin Whitely; Mr Rob Johnson; Acting Speaker; Mr Tony O'Gorman; Mr Jeremy Edwards; Mr Bob Kucera; Mr Phillip Pendal; Mr Tony McRae

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If we do not do that, we have totally misunderstood the very core of what it is that we are trying to establish as a symbol of common purpose. We should not play politics with it. I am suggesting to members that this debate has two elements: first, how symbols are created and, secondly, what we do to enhance and protect them.

I note the time. I want to proceed with the second half of this discussion. The article from which I have quoted goes on to say -

Pointedly, the design was described as a “defaced British Blue Ensign”.

That debate is well behind us. Indeed, the Australian flag has come to represent much of what we regard as the very best of what it is to be Australian.

Debate interrupted, pursuant to standing orders.

*House adjourned at 7.00 pm*

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