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Mrs Cheryl Edwardes; Mr John Bradshaw; Mr Jeremy Edwards; Mr Arthur Marshall; Ms Katie Hodson-Thomas; Mr Rob Johnson

CRIMINAL CODE AMENDMENT BILL 2003

Second Reading

Resumed from 3 April.

MRS C.L. EDWARDES (Kingsley) [3.07 pm]: The lead speaker on this Bill is the member for Nedlands, but with the agreement of the House I will speak because she has been paired for the day.

This Bill could be regarded almost as an omnibus Bill. It seeks to implement several of the amendments that Mr Justice Murray recommended in his review of the Criminal Code prior to his taking the title of justice. From time to time, respective Attorneys General - Hon Joe Berinson, me, Hon Peter Foss and the present Attorney General - have sought to implement a number of these amendments. Although these amendments are not in the exact form recommended by Mr Justice Murray, primarily due to the effluxion of time, they essentially have their genesis in Mr Justice Murray's recommendations. The Opposition supports all but one part of the legislation.

The amendment to prohibit child sex tourism was first discussed when I was Attorney General in 1993. I had it included on the agenda at my very first Standing Committee of Attorneys General meeting in Darwin. Subsequent to that, in 1994, the federal Government introduced legislation dealing with amendments to the Criminal Code, which have been fairly successful in Western Australia and the other States. I think the legislation has been more successful in Western Australia than in some of the other States. We thoroughly support the amendments concerning child sex tourism. However, I note that the Law Society of Western Australia states that "the proposal is not objectionable", and further

> Except that the maximum penalty is slightly greater, it is not clear what the new proposed section 187 of the Criminal Code adds to Part IIIA of the Crimes Act 1914 (Cth.). In particular section 50DB of the Crimes Act read together with the remainder of that Part seems already to proscribe the sort of conduct mentioned. The definition of "encourage" in section 50DB(3) to include organising an arrangement that facilitates an offence or assisting a person to travel outside Australia to commit an offence already seems sufficiently broad to embrace this conduct.

We support the amendment and we will be seeking further advice from the Attorney General at the consideration in detail stage.

The amendments about public order are broad, and I will run through a number of those leading to a proposal that I will talk about shortly. Section 62 of the Criminal Code, dealing with the definition of unlawful assembly, will be amended. Sections 63 to 67 will be replaced and the Police Act will be amended. The offence of unlawful assembly is changed from a misdemeanour to a simple offence. I will talk about what that really means shortly. It is proposed that section 64 of the Criminal Code be renumbered as section 65 and a new section 64 be inserted. The amendment then states that an unlawful assembly may be ordered to disperse. We have some concerns about that. Proposed sections 65, 66 and 67 are headed "Taking part in a riot", "Rioters may be ordered to disperse", and "Rioters causing damage". I presume that a lot of those amendments are also to deal with the new - I suppose it is not quite so new - phenomenon of party gatecrashers and some of the problems the police have found themselves facing in that area. It is a parents' and neighbours' nightmare, and it has become a police nightmare as well. I take it that many of those proposals will provide for offences in that area. The amendments then refer to a person being armed in a way that may cause fear, forcibly entering land, forcibly keeping possession of land, and fighting in public causing fear. A challenge to fight a duel will change from a misdemeanour to a crime. The offence of prize fighting will change from a misdemeanour to a crime. Threatening violence will change from a misdemeanour to a crime. Some concerns have been expressed about how that is being achieved. The penalty for that offence will be reduced, which is not something that we generally support, but we are concerned about the process.

To a major extent these changes are welcome. Our concern is about the next part; that is, part 4 dealing with amendments about homicide. I raised our concerns about the changes to public order issues being incorporated in one Bill which contains a major change to homicide offences. This is ostensibly an omnibus Bill, pulling together respective offences and recommendations from the Murray report and the like, such as challenging someone to a duel and prize fighting. The proposal in this legislation is to remove totally from the statute books the offence of wilful murder. Therefore, wilful murder will become murder. At the moment under the Criminal Code there are essentially three stages of wilful murder, murder and manslaughter - although there is also manslaughter connected with driving. With wilful murder it has always been necessary to prove intent to kill. With murder it has been necessary to prove an intent to cause grievous bodily harm; that is, the offender did not mean to kill but he did intend to give the person a good bash around the head and create a great big headache - in other words, cause grievous bodily harm. Manslaughter applies when the offender did not intend to kill but the

victim died. The proposal to remove wilful murder from the statute books takes away from the jury the necessity to determine the serious nature of the offence and the charge before it. There are some serious differences between wilful murder and murder. The Attorney General is suggesting that juries are incapable of determining intent. I do not believe that is the case.

I believe the public would be more concerned about a greater level of discretion being given to judges to determine the seriousness, the nature and the aggravation of the circumstances of an offence and setting the penalty, than that discretion being given to their peers. Although most judges do select a jury, if given the opportunity, unless it is a simple offence and the penalties are lower - we will raise that issue during the consideration in detail stage concerning some of the public order offences - it is a serious issue to determine the difference between wilful murder and murder. For example, the Geraldton murders were wilfully committed and the person was convicted. However, a young man in his late teens could kill his stepfather on the basis that the stepfather had committed serious assaults - sexual and otherwise - on his mother, himself and his younger sister. The intent determined by the jury in that case could be that this young man went to the back of the yard, got a rope, brought it back and killed his stepfather, as against the spontaneous nature of perhaps standing behind a door and hitting him with a saucepan. There are various differences with all the offences that constitute a charge of wilful murder. It is absolutely necessary to keep that difference on our statute books. We should retain the serious offence of wilful murder - a murder that is carried out wilfully and intentionally to kill someone - rather than combine it - dealing more with the common law - to determine that the offender intended only to cause grievous bodily harm and the person died.

The proposal by the Attorney General is to raise the minimum penalty from seven to 10 years. The Attorney General is creating a greater range of penalties for the offence of murder. When considering the number of murders that have been committed in this State over many years, I believe the community would feel far more comfortable allowing the jury to determine whether a person intended to kill or cause grievous bodily harm. We will oppose the deletion from the statute book of the offence of wilful murder. In fact, we will be proposing that the Bill be split because, although we support all the other important provisions in the Bill, even though we have some queries about them, we do not believe there is any parity in deleting the offence of wilful murder at the same time as deleting the offence of challenging for a duel.

Mr J.A. McGinty: There is not, but it is nonetheless a very important issue.

Mrs C.L. EDWARDES: It is a very important issue. The splitting of the Bill will allow us to have a proper debate about the sentences that are appropriate for the wide range of homicides that occur. Two in five homicides in Australia are familial. We believe that this issue is too important to be included in a piece of omnibus legislation. Therefore, at the end of the second reading debate we will be moving that the Bill be split, unless the Attorney General agrees to do so prior to that stage.

Mr J.A. McGinty: But you will be supporting the Bill other than the amendments to homicide?

Mrs C.L. EDWARDES: Yes. We support the legislation, but we do not support the proposed amendments to homicide. The Law Society of Western Australia does not support the proposed amendments either, as it states in its letter to the Attorney General -

> Abolishing the offence of wilful murder is a matter of concern. The distinction between wilful murder and murder that presently exists in the Criminal Code is a sensible one.
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> It is important that the law distinguishes between actions carried out with an intention to kill and which causes death and actions carried out with the lesser intent that causes death. The law as it presently stands properly reflects the varying culpabilities depending on intent. Clearly it is more serious to cause the death of somebody with the intention of killing them than to cause the death of somebody with the intention of only doing them grievous bodily harm.

These are some of the critical things that we would like to have the opportunity to debate. The letter continues -

> If the amendments were passed then a judge sentencing an offender for murder would have a very wide discretion in setting a minimum term ranging from ten years to an order that the offender must never be released.
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> It will necessarily involve the judge during the sentencing process ranking the offence in terms of seriousness and determining the intention of the offender. This will no doubt lead to controversy that could be avoided by retaining the law as it exists at present.

There is already a debate in the community about sentencing by judges. I do not want to enter into the specifics of that debate. However, I was most concerned about that debate when I was the Attorney General, and I am sure the current Attorney General is also most concerned, because if the community does not understand the

sentences that are imposed it means that people lose confidence in the justice system and may be tempted to take the law into their own hands. That is not acceptable in our community either. By having the two separate offences of wilful murder and murder it means that the defendant's peers - the jurors - rather than a judge determine the seriousness of the offence. The Attorney General has said that this change has occurred on the eastern seaboard. In fact, Queensland and Western Australia are the only States that have a similar criminal law. The criminal law in Victoria and Tasmania is nowhere near the same as the criminal law in Western Australia, and the criminal law in New South Wales is based more on common law, which has always had the mens rea of murder incorporating wilful murder.

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

Mrs C.L. EDWARDES: It is no justification for the proposed amendments to our legislation to say that that has happened over east, because our criminal law has varied enormously over the years. We believe, and the Law Society of Western Australia also believes, that the abolition of the offence of wilful murder is serious, and we will not be supporting it.

We support the proposed amendments about endangering life or health, because they will modernise the law as we know it. The Law Society states in its letter that it has some concern that proposed new section 305(4), which creates criminal liability for a person who knows the existence of a dangerous thing that has been wilfully set and does not take reasonable measures to make the thing harmless, casts criminal liability too widely. Last week near Denmark a wire was spread across a road. Fortunately no incident occurred. I say fortunately because in the past these sorts of mantraps have been put in sand dunes and hills when people have gone out on their bikes for the day to get some enjoyment. I believe from what the police have said that this is the first time such a mantrap has been put across a road. This State has not had an offence under which people who deliberately set these sorts of mantraps can be charged. We therefore support that part of the legislation. However, the concern of the Law Society of Western Australia is that the criminal liability should be restricted to the person who has control over the property on which the dangerous thing has been wilfully set or over the person who has wilfully set the dangerous thing. I am sure the Attorney General will be able to highlight the sorts of circumstances that have occurred in the past few years that would need to have the criminal liability set wider than what is proposed by the Law Society.

We support the proposed offences in respect of genital mutilation. I should add the word "female" genital mutilation for the benefit of the gentlemen in this House. Female genital mutilation has long been of concern in this State. When I was Attorney General I met with many representatives of different cultures, both men and women, who were leaders in their communities and were concerned about the incidence of female genital mutilation in Western Australia. They said that they wanted education, not legislation, because that would give them the opportunity of being able to make a change themselves. However, it is now well known that education alone is not the solution. We know that female genital mutilation is still occurring in Western Australia, although we do not know the incidence. There is also a concern that legislation will actually send it underground. It has always been a concern among many cultures that that situation would arise. What are the Attorney General's proposals to ensure that this practice does not go underground? How will he endeavour to prevent that situation? This will be achieved partly through an education process, but not everyone will participate in that education process.

The issue of child protection is most important. Queensland introduced similar legislation only last year. A lack of child protection laws to protect young women was evident in this area. The Attorney General, after discussion with his ministerial colleagues, must advise the House what will be put in place for child protection. A concern identified in Queensland was that, as a result of the sensitive nature of the offence, sensitive community education and social work interventions were required, and these had to be tailored to the needs of children to ensure child safety. It was believed in Queensland - and this is probably still the case to date - that no specific child protection protocol existed to address the practice of female genital mutilation. Given that it has been recognised by practitioners in another State that only recently introduced the offence into legislation, I urge the Attorney General to give consideration to that aspect now. Resources are always an issue in this area. This is a very important issue, especially during Child Protection Week.

The only data on the ages of the women and number of such incidents of female genital mutilation refer back to 1991. The number would have increased dramatically since that time. The data indicate that 75 986 women reside in Australia who come from countries that practice some form of female genital mutilation, although that does not necessarily mean that these women practice FGM. Of these, 21 812 women were from African countries. During 1991-92 and 1992-93, a further 1 600 females arrived from African countries, 470 of whom were girls under the age of 16 years - the age at which female genital mutilation takes place. I urge the Attorney General to report to the House on some form of child protection to accompany the legislation in this regard.

For members' information, I indicate that the Family Law Council reported to the Attorney back in June 1994 on female genital mutilation. That remains a current piece of work. It will bring members up to date on this practice.

The penalty in this area, which is far from adequate, is another matter for debate, particularly as it relates to indecent dealings with people who are under age as well as this type of abhorrent behaviour. The two cannot be compared. The Chamber will explore further in the consideration in detail stage the comparative penalties provided for this offence.

Some concerns also arise regarding the changes for summary trials for indictable offences, and the Opposition will discuss the changes further. Opposition members firmly believe that people should have the right to choose a trial by jury. I seek statistics from the Attorney on this aspect. If people have an opportunity to have their offences heard summarily, they generally choose to do so. The Attorney will transfer an amount of work from the District Court down to the Court of Petty Sessions. I have no issue with that, provided resources are balanced between the two jurisdictions. However, it is a person's right to be able to choose a trial by jury, and that right will be taken away with indictable offences. I am concerned about that aspect.

The Opposition supports the amendment dealing with sexual servitude. The sexual slavery issue recently came to light in Western Australia when Parliament dealt with prostitution legislation. When charges were made on the eastern seaboard, the Minister for Police blamed a lack of prostitution legislation in Western Australia for hampering attempts by police to charge people with sexual slavery. That was nonsense. As members well know, the House is debating sexual slavery and sexual servitude offences in this Criminal Code amendment. Once this legislation is in place - it has nothing to do with the prostitution legislation - police will be able to take appropriate action to ensure that sexual servitude is outlawed. No-one in this State, let alone the rest of Australia, would support the trafficking of human beings; namely, the trafficking of young women from South East Asia to Western Australia for other people to earn money. Although these women before they leave home may believe they will be on a good thing, it is nothing more than slavery, which was outlawed many centuries ago. People can feel somewhat chastened by the fact that many women are still involved in sexual slavery in Australia. The Opposition supports these amendments.

The Liberal Opposition seeks the Attorney General's indulgence to separate the Bill. It supports all amendments bar the one dealing with homicide and the abolition of wilful murder. That issue is too important to be encompassed within an omnibus Bill. The Opposition would like to see that element separated from the Bill to enable the issues and penalties for the offences to be debated on their own. I seek the Attorney General's endorsement of that action.

MR J.L. BRADSHAW (Murray-Wellington) [3.39 pm]: Like the member for Kingsley, I believe that an issue as important as taking away the wilful murder offence should be dealt with in a Bill on its own rather than introduced as part of an omnibus measure. It is strange that the Attorney General decided to introduce it in this form. The Chamber may be told in due course why it was done in this way.

This is a very important issue. Taking the wilful murder offence out of the Criminal Code will result in a backlash in the community. People see wilful murder as the worst form of murder. This change will reduce the charge that will apply in cases similar to the Birnies. They certainly committed wilful murder. They carried out dreadful premeditated acts. I wonder what the community would think if such charges were reduced from wilful murder to murder. It is very important that the offence of wilful murder remains. It is debatable whether there is a difference between wilful murder and murder; however, the system seems to have worked for many years. I have difficulty with the idea of removing the offence of wilful murder from the statute books.

I refer to female genital mutilation. There should be laws to outlaw this hideous practice, which is undertaken by certain members of the community. It has been around for probably hundreds of years. The people within certain countries who carry out this dreadful attack on females are misguided. I am surprised that it continues in this day and age. However, it seems to be accepted by certain communities because it is part of their culture. Often even mothers are party to female genital mutilation. It staggers me that in this enlightened day and age, many of those people have not revolted against and stopped the practice. It seems that it is still practised, although I am not sure why it is carried out. I have an idea that certain males in our society continue to force this practice on others for purely selfish reasons. I do not know whether it is the result of their religious background or a misguided practice that has taken place in these communities over many years. However, the introduction of laws banning the practice will not necessarily stop it. Unless somebody comes forward and says that she has been attacked and had her genitals mutilated, no-one will be charged or taken to court over the issue. Currently we do not hear of anyone coming forward and saying that the practice must stop. I believe that as well as strong laws, an education program should be developed that is directed to the particular communities in which this outrageous mutilation of the body is practised to try to convince people - particularly the mothers and daughters -

that it is not in the best interests of females. I read that some mothers take their daughters to their native countries to have the circumcisions performed. I wonder about the mentality of those mothers who are party to it. Surely they must know the discomfort and unpleasantness of this practice, which has been around for some years. It seems to be entrenched in the nature and culture of these people and that position must somehow be broken. We need strong laws and penalties for those who are caught practising it; however, although we have laws to stop speeding, many people speed. Simply enacting laws will not stop the practice. It is important that a major education program be put in place. I would like to hear from the Attorney General about what education programs will be put in place to try to get through to the people in those communities in which the practice is performed.

This Bill also deals with duelling. When I think of duelling, I think of the 1700s and 1800s, when people would get out their pistols at a certain time and in a certain place, take so many steps back, turn around and try to shoot each other. I do not know whether that happens often in this day and age. I would like to hear from the Attorney General how much duelling takes place in Western Australia. I heard of a local member of Parliament who, in jest, offered one of his fellow members a duelling contest. I wonder about the change to the rules governing duelling in Western Australia.

Another concern with the Bill relates to trial by jury, which is a time-honoured system. From time to time I hear people say that they have been called for jury duty and that it is a nuisance and a pain. It is a person's responsibility to perform jury duty. It is a time-honoured part of our legal system and it is important that it be kept in place. Any changes to it would certainly not be a step in the right direction.

I refer to sexual slavery. There should be very severe penalties for such offences. It is sad; however, in this day and age there are always people who are willing to take advantage of opportunities to make lots of money out of others. People from South East Asia are enticed to Australia under the pretence of being provided with a nice lifestyle and plenty of money. However, when those people get here, they are forced into sexual slavery through intimidation and standover tactics. Many of those people are here illegally, have no money and are not able to speak English very well, if at all. They are intimidated and therefore do the things their standover bosses ask them to do. It is very important that we take on this issue with gusto and try to root out all those people involved in the sexual slavery business and ensure that such slaves are freed and provided with a proper standard of living rather than kept in the unpleasant situation in which they find themselves. It is a matter of people preying on others who are less fortunate. There are still many poor people in South East Asia. They are desperate to get out of their circumstances and often see a golden opportunity because they know that people in Australia, the United States and other western countries have good lifestyles and great freedom and live in nice homes etc. Those people see Australia as their future and are promised chances and opportunities. They come here only to find that they are browbeaten and ripped off by thugs who stand over and intimidate them to get them to work in brothels or massage parlours. They do not see very much of the money they earn. They get enough to live on and perhaps a room with a bed and very little else. It is very important that those practices be eliminated.

As I said at the start of my speech, the provisions relating to murder should be separated from the rest of the legislation. The issue should not be treated lightly and dealt with alongside things like duelling. It is important that we debate this issue. I do not think it is right to remove the offence of wilful murder from the statute books. It will send the wrong message to the community, and I do not believe the community will be prepared to accept it.

MR J.P.D. EDWARDS (Greenough) [3.49 pm]: Although I do not have a legal background, I do have some observations to make about this Bill. The amendments in it cover a diverse range of issues and, in the main, I support them. However, I, too, seek the Attorney General's explanation for his thinking on the separation of wilful murder and murder. Before I do that, I will comment on some aspects of the Bill. In fact, some of the amendments have quite amusing backgrounds. I am interested in the amendments to section 305 of the Criminal Code, which prevents the setting of spring guns, mantraps or other engines calculated to destroy human life or inflict grievous bodily harm. I am sure everybody understands the meaning of mantraps and spring guns, but I do not know how dangerous traps can be defined as engines. Obviously the Attorney General is very correct in articulating that section in easier language so that we can understand what mantraps and spring guns are in relation to engines. Obviously that amendment needs to be made. I understand that these can be pieces of wood on the other side of a fence that can harm people if they jump over it. I know an example has been set, so I understand the reason for that. The Bill also amends the section on challenges to fight duels. In the light of last week's debate on the code of conduct, perhaps we all would have been better off taking a brace of pistols into the courtyard, taking 20 paces and seeing how we went. That is another amendment for which I see very good reason. The same can be said for fighting in public so as to cause alarm and all the other issues under section 71 of the Criminal Code.

On a more serious matter, although I agree entirely with the Attorney General's direction on the mutilation of female genitalia, I wonder how it will be policed. I am aware of the culture of female genitalia mutilation as my brother lived in Africa for many years. It is probably more apparent in the northern frontier districts and the more Arab parts of Africa than in the southern part of Africa. My wife also came from that part of the world. Both my wife and my brother could describe how these occurrences took place. We in the western world are appalled by the practice. I note that it is still carried out in Western Australia, to our obvious discredit. We need to try to change that. It will be very difficult because it is a culture of fear perpetuated by family members on their children. As my colleague said, it has been going on for hundreds of years and it will be extremely difficult to change that way of thinking. Obviously I very much support that amendment to the Criminal Code and hope that somehow or other it can make a difference.

Child sex tourism is an abhorrent trade. Again, we are all very much aware of it. I know that not only Australia but also other countries in which it is happening must address this issue. Our Asian neighbours are obviously aware of it. It must be a joint effort. Western Australia needs to come down very hard on this trade. It needs to be stamped out and I certainly support the amendment. Sexual servitude follows on from that. I am aware that young women have been brought to this country under sufferance or a misapprehension and then coerced into prostitution or other sorts of sexual servitude, whatever that may be, and kept at the whim of certain people who take advantage of their situation. Again, I very much support that amendment.

I oppose the abolition of wilful murder. There is a necessity to keep a strong sentence that applies to the horrendous nature of a crime. I think of my own electorate and the Greenough axe murderer and the horrendous type of murder involved. Naturally, and rightfully so, he had the full force of the law thrown at him. I have a concern that if there is only an offence of murder, the force of wilful murder will be lost through watering down the provision in the code. I am sure the Attorney General is doing this with the best intentions and has some legal argument for it, which I profess not to be aware of. Murder is described as grievous bodily harm. My colleague the member for Kingsley probably described it better than I have. However, if there is an intention to kill, it must be left to a jury of the accused's peers to decide on the sort of sentence the accused will receive. The member for Kingsley described a situation in which a young man who had been abused all his life by his stepfather decided that he had had enough, got a rope from the bottom of the garden, walked through the door, wrapped the rope around his stepfather's neck and strangled him. I think that is wilful murder, but a jury should make the decision whether it is wilful murder and then make the decision on what sentence it will prescribe. I do not have any sympathy for the Greenough axe murderer. I think that involved premeditated murder and he got his just deserts, as did both the Birnies. That is the difference. That is the public perception. The community does not understand the difference between wilful murder and murder, so perhaps there needs to be a defining line so that a crime that is abhorrent and horrendous becomes wilful murder. Murder of another kind, which I think is described as grievous bodily harm, is another issue. I support separating wilful murder from murder. The community already questions the decision making of juries and judges on punishments. If we try to water this down any more - I do not mean to belittle it by using that expression - the public perception will be: "Here we go again; we are just letting the accused off the hook by making it a lesser sentence." I encourage the Attorney General to give the House the opportunity of debating the Bill in a little more detail. Whether that is done separately or during consideration in detail, I do not know, but I would certainly like the opportunity of debating those two issues because I believe there is an argument for keeping the offence of wilful murder separate.

MR A.D. MARSHALL (Dawesville) [4.00 pm]: I compliment the Government on putting together the various headings in the Bill, because nearly every one of them is important to the community. Although I agree with most of the headings, perhaps each section could have been split up and debated separately rather than en bloc. For example, anyone would be a fool to say that child sex tourism is acceptable to the community. It is shameful and people should be punished for it. The member for Murray-Wellington has mentioned sexual slavery, and I will not enlarge on it, but nobody would condone it. Although those provisions are set out in the Bill en bloc, they deserve to be debated separately. Most men might not want to talk about female genital mutilation, but the fact is it is practised in some religions. For Christian people it is unacceptable. Members might want to debate that, but instead it will be merely glossed over. It will be said that it should not be done, and that will be that. Perhaps those headings do not need to be enlarged upon but when these issues affect people differently, perhaps we should be debating them in more depth. It is also very important that we debate the retention of trial by jury, which gives independence of opinion.

People ask why duelling is in the legislation. I laughed about it this morning because last week during the debate on the code of conduct motion I felt like having a duel. Some members said things under parliamentary privilege across the floor that they would not say man to man, with all due respect to you, Madam Deputy Speaker. If they were said in a front bar or on a football field, people would say, "Cop this," and hit the person,

knocking him down. Once the person had shed a little blood, it would all be over. That form of duelling does take place. For example, I am still hot under the collar at one member who ruined my speech by his interjection. When I read my speech, I thought it was pretty good except for the member's stupidity when he interjected with something that was irrelevant to my speech. I wrote to him challenging him to a duel. How is that for this modern age? I told him to select his racquet, his time and his place. I said that he could pick second-hand balls or new balls. I said that on 15 November on the parliamentary tennis court we would have a duel. Of course, today he apologised. He said that his knee was crook so that he could back out. I told him that the duel is that he should stand on the T junction on one side of the net and I would stand on the T junction on the other side, and I would give him first shot at me. I said that I would not move but then we would go shot for shot. I believe that my accuracy is better than his, so I am sure that we would have squared up, blood would have been shed and we would have been mates, as we have always been in this place. With tongue in cheek, I believe that duelling may still be in the arena. In the context of the Bill it is a thing of the past. Although the Government might gloss over some of the headings, I believe they should be debated more seriously than duelling.

Bringing murder and wilful murder under one heading concerns me. The three categories of offences are manslaughter, murder and wilful murder. The differences are shown by this example: years ago a friend of mine went to defend somebody who was being attacked at a hamburger stall. As he pushed the two people apart, one man fell to the ground and hit his head. Unfortunately, he sustained a head injury and was disabled for life. The push could easily have resulted in manslaughter, because manslaughter cases do occur in such circumstances. My friend's life was ruined by doing the right thing in breaking up a fight and protecting someone who was being hit by somebody a lot bigger than he. Although he was cleared by the courts, he moved interstate because he felt so much shame. He had not intended to hurt the person he pushed aside and who became mentally retarded.

A person must have similar feelings when he is involved in a road accident, someone is killed and he is charged with manslaughter. Manslaughter needs a separate classification to be dealt with by the courts. I believe similar circumstances apply to the offence of murder. The intent may be to inflict grievous bodily harm in a fight in a pub, for example, but somebody might be felled and killed - or murdered - but that is different from wilful murder. Murder might result from grievous bodily harm, but wilful murder is premeditated and carefully thought out and is a different classification. I cannot see how murder and wilful murder can be brought together under the same heading. While the offences have different classifications, it leaves it open for a jury or judge to deal with them differently. When the offences are brought together under one heading, their differences can become confusing.

People who go through life being good citizens might not get to meet people who have been in jail or who are going to jail. However, to give an example of why I am concerned about the classification of wilful murder and murder, eight years ago, unbelievably, two of my good sporting friends found that both of their sons were sentenced to jail for a period of eight to nine years having been found guilty of attempted murder and wilful murder. I watched those lads grow up. They were well educated, good people who played sport fairly, but they had a split second of error in their lives. I believe that they were misjudged and sentenced incorrectly. If that is incorrect in the eyes of those who are close to those young men, how much more will that feeling be compounded when the offences of murder and wilful murder come under the same heading? In the first case the 21 or 22-year-old was in Kalgoorlie when his wife was allegedly playing up. He went to see the fellow she was playing up with. She was there. The young man was told to shoot through. Having been a mine worker and having had a few drinks that night, he said at some stage or another, "I am going to kill you." I have heard that on the football field. When I have been doorknocking, I have heard people shouting at their kids, "I will kill you if you do that again." That simple statement from a hardworking young man, who I believe is a good citizen, led to his being jailed. Later in the night he returned, seeking peace of mind with his partner, and drove his car into the fence in a rage. Unfortunately for him, a woman was feeding her baby on the other side of the fence where she was at a barbecue. The car stopped a few feet away from them. Although he was unaware that people were on the other side of the fence, he was charged with attempted murder. He sought to have his case heard in Perth, but it was heard before a jury in Kalgoorlie where all the jurors were well known to the Kalgoorlie family. As a young married man of 22 who paid maintenance for his two children, he was sentenced to two terms of 10 years and one of five years concurrently. He served his time and after five years was released on parole for two years. For the first time in my life I became involved with someone who was charged with attempted murder. Many people in the community said that the verdict was incorrect.

The other case, which came to light within three months of that case, involved a young lad we knew when he was growing up. His sister was going out with an Aboriginal man who was allegedly knocking her around. The older brother and an accomplice decided that they would meet the Aboriginal lad at a hotel and scare the living daylights out of him, which they did. After being provoked, they hit him with a baseball bat to teach him a lesson and knocked him out. In fact, they thought they had killed him so they took him to a forest and buried

him. A year later, the accomplice, who had been picked up for dealing in drugs, said to the police that if they gave him a break he would tell them where there was a dead body. A year later the police charged that young man with wilful murder. The discrepancy in the police case was that they did not find the body so it could not be proved that he killed the lad. He could have been charged with murder on the basis of death occurring as a result of the intention to cause grievous bodily harm. However, he was convicted of wilful murder and given a life sentence of 20 years. He served the mandatory seven years, plus remand and was released after eight and a half years to resume his life in the community. Until then, I had not known anyone who had been to jail; yet within six months two people who were the sons of people I knew well - I attended their weddings - were sentenced to jail, one for wilful murder and the other for attempted murder. Everyone who knew those people believed that they should not have been convicted of those offences and that their sentences were much harsher than they deserved, particularly the sentence given to the lad who drove his vehicle through the fence.

I find disturbing the part of the Bill that classifies both murder and wilful murder as murder. I cannot imagine that anyone would argue against all the other amendments. However, members should have had the opportunity to debate each amendment more fully. It would have been interesting to hear members' opinions about the child sex tourism industry. I am very naive about the issue and do not know much about it, although I have read the occasional article on it. People who indulge in such activities stoop to the lowest level in society. On the issue of sexual slavery, we hear about Asian girls marrying westerners. Are they marrying for the right reasons? Is it sexual slavery? Are they coerced at a later stage to leave the marriage and work in brothels? Who knows? It would have been interesting to hear of members' experiences in connection with the various issues.

No doubt most men cannot debate with any authority the issue of female genital mutilation, and I am one of those men. I would be interested to hear the female members' views on that issue. It cannot be good to mutilate any part of our body. It would have been interesting to debate the part of the Bill that will allow indictable offences to be tried summarily. The Bill, which contains a considerable number of pages, is being debated as though it were one amendment. Although the other issues appear minor compared with manslaughter, murder and wilful murder, they are all important in this community. A member who has been touched personally by one of those issues might want to share his or her experience with a view to ensuring that this is good legislation. I have related two of my experiences, which justify why murder and wilful murder should not be classified under the one charge of murder. When considering amendments to the Bill I hope that the Attorney General will take my comments into consideration.

MS K. HODSON-THOMAS (Carine) [4.16 pm]: I will speak very briefly on this legislation. The amendments do not relate to issues with which I have much experience on which to draw. I took a great deal of interest in what the member for Kingsley said. As a former Attorney General and a former practising lawyer she spoke with great authority and experience on the legislation. I was particularly interested in her view that the Opposition supports the sentiments of the legislation. However, she indicated that the deletion from the statute books of the definition of wilful murder should be a separate issue and the Bill should be split so that the Opposition can support all the other amendments. I hope that the Attorney General will take the member for Kingsley's comments on board. By and large, the community will view the deletion from the statute books of wilful murder as, in essence, a soft-on-crime view. As legislators, we should not send that message to the community. It is important that we retain the wilful murder definition. I heard other members who spoke before me describe some of their experiences. However, I cannot draw from any experiences in that way. I know no-one personally who has been charged with wilful murder, murder or manslaughter. However, I believe that, by and large, the community believes that the definition should be retained on the statute books. I do not want to send the wrong message to the community that the Opposition is soft on serious crime.

As the member for Kingsley indicated, many of these amendments have arisen as a result of Justice Murray's review of the Criminal Code. The member for Kingsley gave an outline of the history of and impetus for these amendments. I support the amendments that seek to prohibit child sex tourism and female genital mutilation. It is an abhorrent practice and we must ensure that the recommendations are implemented. We also need to ensure the protection of young women in our society. I was interested to hear that the member for Dawesville said he would be interested to hear what female members thought about that practice. I will not go into the detail, but I find it an abhorrent practice. I have always thought male circumcision is an abhorrent practice. Similarly, I recognise that for religious reasons some people believe it is an acceptable health practice, but we as a society have moved on. I would also like to see male circumcision banned -

Mr R.F. Johnson: Hang on! It is often done for medical rather than religious reasons.

Ms K. HODSON-THOMAS: I understand that, but it is also done for religious reasons. I know that the Jewish fraternity believes in male circumcision and many men support the practice, but as a female I am suggesting that there should be a level playing field.

Mr M.P. Whitely: A good choice of words!

Ms K. HODSON-THOMAS: As I said, I find the practice abhorrent, just as I do male circumcision. I have two young sons and I will not go into what happened to them. I support the amendments relating to child sex tourism, public order, endangering life or health, sexual servitude and sexual slavery -

Mr R.F. Johnson: I am a sexual slave; you ask my wife.

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

Ms K. HODSON-THOMAS: As the member for Kingsley stated at the commencement of her second reading speech, we believe the Bill should be split. I support that proposal. I hope the Attorney General takes those comments seriously. We support all of the other amendments.

MR R.F. JOHNSON (Hillarys) [4.21 pm]: I will try to be as brief as I can, obviously.

The ACTING SPEAKER: We do not want to cut you off.

Mr R.F. JOHNSON: No, please do not, Mr Acting Speaker, because I have a very important contribution to make on this Bill. As many of my colleagues on this side of the House have said, we support the thrust of the Bill and the majority of the legislation. However, my colleagues have already stated that the Bill should be split and one part should be dealt with in a separate Bill. That has not been suggested lightly. We have given it a lot of consideration and suggest it with only the best interests of Western Australians in mind. I will go into more detail about the areas of the Bill we support, but we have a problem with the legislation where the Attorney General is seeking to reduce the offence of wilful murder to that of murder, because that would be the outcome of the amendments contained in the legislation.

Members of the public say in general terms - and quite loudly at times - that they are not happy with the way the judiciary in this State, this country and many other parts of the world interpret the law. The public is very concerned about what appear to be extremely lenient sentences given to people who have committed horrific crimes. Murder is a horrific crime in any context. Wilful murder is a more heinous crime because it has involved a lot of planning and premeditation by the perpetrator. France has what is known as a crime of passion, which, for example, relates to a husband or wife who on the spur of the moment loses control and with a fatal blow kills his or her partner. That is not premeditated murder; it is treated slightly differently from murder in general terms, but it is different from wilful murder as defined in this State, where it is classified as premeditated murder. Many husbands and wives become frustrated with their partners. When one partner has been unfaithful and has flaunted that in the face of the other partner, it can lead to terrible distress and result in an act of murder. Often the person will not have intended to commit murder, but to simply inflict some pain and distress on the other person. Reducing the offence of wilful murder to that of murder, which is what the Government seeks to do with this Bill, will send out a signal to the general public that we are not taking seriously enough people who commit the horrific crime which is now known as wilful murder. That is not a good thing for this Parliament to do. We should debate that provision of the Bill as a separate amendment.

We should be looking not only at the definitions of murder and wilful murder, but also at the sentencing that occurs when people commit those acts. We have all heard of cases in which murder has occurred after many years of abuse. In the case of a married couple, a wife may have suffered horrendous physical abuse at the hands of her husband or partner. One has some sympathy when, on the spur of the moment, after years of horrendous pain, that person resorts to some means of revenge to stop the misery. If it is done on the spur of the moment it should not be wilful murder, it should simply be murder. I think juries would reflect that in commiserate verdicts. Juries would take those things into account. Many people also feel that if somebody has wilfully murdered one, two or three people, after long and premeditated planning, that is a heinous crime. I know the Attorney General shares that view, as do most if not all members in this House. Some people would call for capital punishment in such cases, and I am one of those. If a person commits multiple murders, he or she loses his or her right to life. I do not see why people should have to pay to keep in prison, at enormous expense, somebody who has committed such heinous crimes. However, that is an argument for another day. At the moment we are debating the difference between wilful murder and murder.

I hope the Attorney General will agree to split the Bill so that we can have some sensible debate and input into that part of the Bill, because there is general support for that from the Opposition and the vast majority of Western Australians.

Mr J.A. McGinty: I think that is right.

Mr R.F. JOHNSON: That is why we do not oppose that part of the Bill. For instance, one would be hard put to find more than 100 people in the State who oppose the amendments about child sex tourism.

Mr J.A. McGinty: And they are most probably in prison for related offences.

Mr R.F. JOHNSON: Unfortunately they are not. I would like to think they were, but they are not. There are child sex offenders out in the community and they need to be caught, dealt with and put in prison where they will not cause this sort of harm to our children and grandchildren in this great State of Western Australia. The people who are involved in sex tourism and who go abroad for the specific purpose of having sex with under-aged children are the lowest of the low. Some of these revolting paedophiles will have sex with children as young as 10, or even younger than that. It is hard to find words to describe these people. I think I can say with conviction that every member of this Chamber would agree with those comments. If we can do anything to strengthen the punishment of people who are involved in this dreadful industry, we will obviously give that absolute support.

We support the proposed amendments about public order. Clause 8 proposes to repeal section 68 of the Criminal Code and insert a new section 68 that creates the offence of being armed in a way that may cause fear. The explanatory notes state on page 3 that the new section changes the offence from a misdemeanour to a crime, no longer requires the person to be in public, and uses the broader expression of being armed or pretending to be armed "with any dangerous or offensive weapon or instrument" found in various other Criminal Code sections. If I were not in public but were in my own home and were to secret a baseball bat, a pickaxe handle or even a knife in my bedroom in the event that an intruder came into my house who might well be armed, would I be guilty of contravening that new section? Under the legislation that we enacted, a person is entitled to defend himself by whatever means he deems necessary. The proposed amendment no longer requires that the person be armed in public with any dangerous or offensive weapon; the person can be anywhere. I want to know, and I am sure the people of Western Australia want to know, whether under this proposed new section people will be committing an offence if they simply arm themselves in their own home.

Mr J.A. McGinty: The answer is clearly no, because a person must still be armed in a way that may cause fear. A person may be in his own home armed with a gun and threatening people in the public. The current offence is being armed in public to cause fear. In the example you are talking about the person is not in public but is in his own home.

Mr R.F. JOHNSON: Yes, but a person who is armed in his own home may still cause fear to a burglar. I am not a gun owner, although from time to time I am tempted to be one when I hear of the horrific increase in crime, particularly home invasions, in Western Australia. If I were a gun owner and heard someone breaking in my back door, my natural reaction would be to get my gun out of my safe and get my ammunition out of another safe and load my gun. If I were to point that gun at a person who was coming at me with a knife, I think I would put the fear of bejesus into him, so technically I would be committing an offence under that proposed new section.

Mr J.A. McGinty: I do not think so, because the purpose is to control people who in the old terminology walk down the street spraying bullets left, right and centre or cause panic in the community. This is not aimed at a person who encounters a burglar or intruder in his own home and causes a certain amount of fear. I will deal with this more when we get to consideration in detail.

Mr R.F. JOHNSON: I would appreciate it if the Attorney General could find out from Crown Law whether that is the case, because this proposed new section may cause a lot of concern in the minds of Western Australians who wish to arm themselves in their own home. Some horrific crimes have occurred recently in which people have been attacked with a screwdriver or a baseball bat, which can kill someone, particularly if the victim is an old person. I would not blame any senior citizen who wanted to arm himself within his own home with a gun, a long sword or a knife from the kitchen. However, if we are relying just on the fact that fear may be imposed on another person, I think the Attorney General needs to make that clear. Perhaps there is room for an amendment to provide that this proposed new section does not apply to people who are protecting themselves in their own home.

Mr J.A. McGinty: You may find the answer in proposed section 68(2), which states -

> It is a defence to a charge under subsection (1) to prove that the accused person had lawful authority to be so armed in such circumstances.

A person may have lawful authority to be armed in his own home, but he does not have lawful authority to brandish a weapon and cause panic as he is walking down the street.

Mr R.F. JOHNSON: No; if a person were doing that I would agree entirely. Under our legislation, we ensured that a person's own home covered his backyard as well. I hope that will continue to be the case, because if it will not we will be winding back something that people now enjoy and believe that they have a right to enjoy. I believe that some of the clauses in this Bill conflict with provisions in other legislation, and that matter needs to be addressed to make the matter crystal clear, otherwise there will be some indecision in interpreting the Bill in its true context. If the Attorney General could provide that information, it would be very useful.

I turn now to the matter of female genital mutilation. I think most people would agree, certainly in this country and I think in most Christian countries, that the mutilation of female genitalia is a disgraceful and very injurious way of inflicting a belief on young females, if I can put it that way. I have never found any logical reasoning for that custom that is followed by certain religious groups. Some of my colleagues have said that we should have a level playing field with regard to males and females. I disagree. There is a vast difference between female genital mutilation and male circumcision.

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

Mr R.F. JOHNSON: Although it is commonly known that in the Jewish faith and in certain Arabic nations as a matter of religion -

Ms M.M. Quirk: Culture.

Mr R.F. JOHNSON: Okay - culture and religion. I suggest that in the Jewish faith it is probably religion as well, because it is normally the rabbis who perform circumcision; they seem to be experts at it. While I do not agree with circumcision being a necessity for religious purposes, many young boys need to have a circumcision operation for health reasons. That is often the case. I thought I heard somebody jump when I said that! We must all have operations throughout our lives that we may not enjoy or necessarily agree with; however, those operations must be carried out as a matter of hygiene or for absolute health reasons. That is poles apart from the situation in the amendment before the House. I will not get into discrimination between males and females. If a female had to have a similar circumcision operation for genuine health reasons, it would be done. Therefore, I draw the distinction between male circumcision as a health issue and the issues before us today.

I am told female circumcision causes extraordinary and excruciating pain to the young female it is performed on. I am glad that the Western Australian Parliament is dealing with that matter, as female genital mutilation is not part of the custom, culture or religion of this State. There are no good reasons for it to occur in Western Australia. The Muslim community in particular has been reminded that this act is not part of our culture in Western Australia and is considered to be inappropriate and even against the law. Frankly, I suggest that it can be deemed an assault on somebody who is normally not in a position to defend herself. I am led to believe that this practice continues in Western Australia in certain areas. As I have said to the Attorney General, the Opposition very much supports this part of the Bill.

In fact, the Opposition supports all of the Bill apart from the change to wilful murder. Some changes are long overdue. Clause 13 will amend section 73 of the Criminal Code to change the offence of prize fight from a misdemeanour to a crime, and to increase the penalty on indictment from imprisonment for one year to imprisonment for two years. This will maintain consistency with other offences in that chapter of the code. It will provide a summary conviction penalty of $6 000, which is very appropriate. Prize fights are a disgraceful way for people to carry on. Money is involved in prize fights by definition. If people want to take part in such activities, they should join a boxing club and see how well they do with Queensberry rules, medical supervision and a referee to properly ensure that people are not unduly injured. That is then not a problem.

Another part of the Bill is to make challenging somebody to a duel an offence. I do not know when that last took place in Western Australia. I cannot remember whether I have ever challenged anyone to a duel. I believe the member for Dawesville has challenged someone to a duel - this was not in the sense before the House, but as a sporting duel. He did not propose using pistols or swords, but sporting implements. That is fine. However, one must ask whether it would be an offence to challenge somebody to fight a duel. Would people be fighting a duel if they used a couple of tennis racquets, which could be used to bash opponents on the head rather than for playing the game of tennis? This area is a little unclear. Is the offence challenging someone to fight a duel? I assume there would be something in the definition, which I have not had an opportunity to look at yet. I am sure the Attorney General has on the tip of his tongue whether the offence will be the act of challenging to a duel or the act of the duel using particular weapons. Swords or pistols were favoured very much in France and England many years ago. I do not know whether we have had a duel in Western Australia. Perhaps the Attorney General, who is a history buff, might know.

Mr J.A. McGinty: There were some early criminal cases.

Mr R.F. JOHNSON: How many years ago?

Mr J.A. McGinty: I can't remember - although I remember it was in the early colonial days.

Mr R.F. JOHNSON: It must have been a couple of Poms who wanted to carry on the old traditions. We have come a long way since then. One assumes that the intention is that the provision will apply to a person who challenges another person to a duel with weapons. It is not normally with fisticuffs, which is a fight, not a duel. A duel is normally considered to be a challenge for combat with all sorts of weapons. It is intolerable that

somebody might challenge another person to step outside for a duel with a couple of pistols or sabres with which enormous injury could be inflicted on another person. The Opposition is happy to support that part of the Bill.

The Opposition is happy to support virtually all the provisions of the Bill. Sections of the principal Act are in need of change, so the Attorney General has included those matters in this amendment Bill. Clause 9 will amend section 69 to change the offence of "forcibly entering land" from a misdemeanour to a crime, and to increase the penalty on indictment from imprisonment for one year to imprisonment for two years and to insert a penalty of a fine of $6 000. That is absolutely right. No-one would disagree. If somebody forcibly enters land, Parliament would not be doing its duty if it were not to increase the applicable penalty. Fines of yesteryear mean nothing to people today. Fines must be made relative to income. I do not refer to the Greens (WA) suggestion that individual fines in each case should relate to people's income. One fine of X number of dollars or X amount of time in prison should be imposed. However, the penalties should be brought up to date probably every 20 years to keep pace with inflation. One does not want to downplay a crime by having a pittance of a sentence that was relevant 30 or 40 years ago. The penalties must be relative to the crime and to today's monetary values.

[Leave granted for the member's speech to be continued.]

Debate thus adjourned.