

SITTINGS OF THE HOUSE - EXTENDED AFTER 10.00 PM

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [5.35 pm]: I move -

That the House continue to sit beyond 10.00 pm.

It is my intention to proceed now with debate on the Criminal Code Amendment (Abortion) Bill. To give us the flexibility that we were able to use so well last night on this debate, I seek the approval of the House to sit beyond 10.00 pm. It will provide us with a few options at that time of the night. I assure members that no other business will be discussed, except a message if one should arrive.

Question put and passed.

CRIMINAL CODE AMENDMENT (ABORTION) BILL*Second Reading*

Resumed from 17 March.

HON DERRICK TOMLINSON (East Metropolitan) [5.36 pm]: I support the Bill introduced by Hon Cheryl Davenport. In particular I support her motion to repeal sections 199, 200 and 201 of the Criminal Code. I listened carefully to Hon Tom Stephens' contribution yesterday afternoon. It was lengthy, but it contained a great many of his thoughts and a great many of our thoughts. This whole debate must stimulate a great deal of thought. We have not only had to come to terms with the conflicting values which argue on the one hand the sanctity of life and on the other hand the rights of women to choose, but also to internalise our own values. Some of us may have resolved a personal conflict of values relatively easily. Others of us had to do some considerable soul searching on the issue.

I was rather intrigued to hear Hon Tom Stephens say that one of the effects of his own intellectualising of the Bill and the issues involved was to make him realise that every piece of legislation entails some moral judgments and some value orientation on behalf of individuals and Parliament, none more so than a Bill of this kind. In the argument on the sanctity of life, it amounts to a fundamental perception of humankind and our place in the scheme of things, balanced with the pragmatic view - which is much more difficult for the male members of the House to reconcile than the females - about the right of women to choose. We heard a great deal of what this Bill was about and what it was not about. In internalising our own values we have been subjected to a rather interesting, and in some respects entertaining, campaign. We have been inundated with mail presenting views from both sides. However, it is fair to say that the pro-life campaigners outnumber the right to choose campaigners by about 5:1. They are well organised and are running a very effective campaign. We have been subjected to inducements and if members are like me they have been subjected to threats. I have had the threat of a future electoral campaign against me and a threat even from one of my own branch members of a future electoral consequence. I can only assume that that threat is to my endorsement if I do not vote according to his pro-life position. So be it.

Hon Ljiljanna Ravlich: Good on you.

Hon DERRICK TOMLINSON: That is a proper part of the political process. One thing of which I am confident is that there is life after Parliament. If they want to throw me out because of my personal views, so be it. I have also had the wrath of God levelled against me. I have always taken the view that for every decision I make I am accountable. There could be a time when I will account to God. That is between me and God and nobody else.

I was rather interested in some of the points Hon Tom Stephens made. His speech is very interesting because much of it is what the Bill is not about. Reconciling the argument of a woman's right to choose is much more difficult for me than for the women who presented their point of view to the House. I have listened to that argument for a long time: I am married to a very intelligent feminist.

Hon Ljiljanna Ravlich interjected.

Hon DERRICK TOMLINSON: I am not married to Hon Ljiljanna Ravlich. Although I listened to the argument, I could not understand it because I see the world from the male point of view. The sum total of my social and intellectual conditioning is a male point of view. I heard the argument regarding the fear of pregnancy being put honestly and frankly last night. Hon Helen Hodgson talked about that time between the missed menstrual period and the results from the toad test. She talked about the awful uncertainty of not knowing whether she was pregnant or not. I have never faced that uncertainty, and I never will. Therefore, I cannot understand it.

Hon B.M. Scott: There is no guarantee that you never will!

Hon DERRICK TOMLINSON: I can guarantee that it will never happen.

In her presentation, Hon Cheryl Davenport pointed to excellent references. One, unfortunately, I have not had the

chance to read, but I am determined to do so. It is *The Abortion Myth: Feminism, Morality and the Hard Choices Women Make* by bio-ethicist Leslie Cannold which was launched in February. As it turns out, an article in *The Bulletin* of 17 March 1998 referred to that publication, under the heading "Abortion - The debate re-ignites". The article by Diana Bagnall which reported on Cannold's book was an interesting revelation to me, to put it so simply. Diana Bagnall says -

In the real world, women faced with the consequences of an unplanned pregnancy (and two out of three pregnancies in Australia fall into this category) don't focus on rights - either the rights of the foetus or their own rights to control their bodies. They think about what it means to be a mother, and it is their awareness of the overwhelming responsibility of motherhood that counts for most as they decide whether to continue or terminate their pregnancies.

I can relate to that. I cannot relate to the time between the missed menstrual period and the toad test results. It is foreign to me. I can relate to the concerns about motherhood. The interesting point about the Cannold hypothesis was that the catalyst was reported to have been an argument by ethicist Peter Singer and co-author Dean Wells. They argued that the gestation process of foetuses in artificial wombs - a process called ectogenesis - would resolve the conflict surrounding abortion. The authors proposed that when the ectogenetic womb made it possible to end an early pregnancy without killing the foetus, it would be unethical for a woman to make the latter choice. That is an interesting proposition.

Cannold's response was interesting -

"I was nearly paralytic with confusion and outrage . . . the problem with the Singer and Wells ectogenetic solution is that it is perfectly logical. I was struck by the possibility that the inevitable advance of technology could lead to women losing the capacity to decide if and when they would become mothers.

She put that ectogenesis argument to 45 women of child bearing age - one-third of whom had had abortions, some on the pro-life side and others on the pro-choice side. All rejected the ectogenesis proposition, which led Cannold to conclude that the abortion decision is not essentially about ending a pregnancy but about choosing or not choosing motherhood. Abortion, she says, represents the right to say no to motherhood - a right that makes anti-choice campaigners nervous. I will not talk about the anti-choice campaigners' nervousness because it goes to the heart of the argument of the value of motherhood. If the pro-choice campaigners demonstrate that choice is really all about the fundamental value of motherhood it destroys the argument of the pro-lifers.

One of the women interviewed by Cannold put it in this way -

A woman who wants an abortion doesn't want to kill a baby. She doesn't want the product of conception to *become* a baby.

I found that a very interesting article. It stimulated me to seek out *The Abortion Myth* to read the argument for myself. It points to the question of what this Bill is all about. It is not about the law allowing or not allowing the killing of an unborn child.

Here is an interesting intersection of moral values and the law. The unborn child in fact does not exist as a person at law. Section 268 of the Criminal Code, headed "Killing of a human being unlawful", reads -

It is unlawful to kill any person unless such killing is authorized or justified or excused by law.

Section 269 reads -

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

We cannot kill an unborn child, because the unborn child does not exist as a person at law. That is the legal position.

Let us move to the moral, ethical position, which provokes a series of rather interesting arguments. It begins with those who argue that life begins at conception. It extends to the argument which wants to distinguish between the moment of conception - whenever that might be - the zygote and the foetus. It is an interesting argument. In physiological terms it is probably important, but for this debate it does not progress very far. I have written to people and stated that that argument is about as meaningful for the purposes of this debate as the medieval argument, "How many angels can stand on the head of a pin?" A nice, philosophical disputation can result from that, but it does not advance the argument very far. No matter when life begins - at conception, or 20 days after, or whenever - the termination of a pregnancy at five to nine weeks or whenever, is the termination of a life. That life has within it the genetic inheritance of all mankind. When one terminates a pregnancy - abortion, if one wants to use the word - that

is the termination of life. If that life has the genetic inheritance of humankind one is, on a moral argument, terminating a human life. The thing aborted is a human life. Abortion is the abortion of a human life.

We have a rather interesting moral paradox. Hon Tom Stephens said to us that the argument is full of paradoxes - he did not use the term conundrum. How do we resolve those paradoxes? For the mother cited earlier, it is not the ending of a life; it is the prevention of the product of conception from becoming a baby. It is not the killing of a baby; it is the prevention of the foetus from becoming a baby. That is the sort of resolution that people must make. That is the sort of resolution that a woman who chooses an abortion must make. Anybody who tells us that that is an easy decision does not know what he or she is talking about.

Very few women who decide to have an abortion make the decision easily. For most of them it is a moral dilemma. It is the prevention of that foetus from becoming a baby. It is the question of choosing to be a mother. That is fundamental to their *raison d'être*. If making that decision is not easy, why do we all turn around and call them killers and murderers? Why do we add to their trauma by saying under the Criminal Code that they are liable to imprisonment? I would have thought we would be more compassionate than that. I would have thought the God to whom they are accountable would be a compassionate God.

This Bill is not about making lawful those things which are unlawful. Abortion in this State is lawful. Let us look at the sections that we are about to repeal. Section 199 of the Criminal Code states -

Any person who with intent to procure the miscarriage of a woman, whether she is or is not with child, -
They do not have to be pregnant -
- unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a crime, and is liable to imprisonment for 14 years.

In order to do this unlawfully, any person who does these things is guilty of a crime.

Hon J.A. Scott: Even on the morning after.

Hon DERRICK TOMLINSON: It does not matter. In order to do this unlawfully, any person who does these things is guilty of a crime. The converse must follow.

Hon Tom Stephens: Did it refer to a woman with child?

Hon DERRICK TOMLINSON: Send the man a copy of the Criminal Code! The converse must be that any person who does this to procure this lawfully is not guilty of a crime. We could follow the same argument in sections 200 and 201 because in each the operational adverb is "unlawfully". It is unlawful under certain circumstances to procure a miscarriage, to perform an abortion, for a woman to perform or to procure her own abortion, or to provide anything which is intended to procure an abortion. If it is unlawful under certain circumstances, therefore it must be lawful under other circumstances.

The law in Western Australia says that under some circumstances abortion is lawful. What are those circumstances? We have heard the argument that under section 259 it is lawful only under these circumstances -

A person is not criminally responsible for performing, in good faith and with reasonable care and skill, a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, -

Hon Tom Stephens: Is that a reference in the Criminal Code to an unborn child - the person who does not have any status at law?

Hon DERRICK TOMLINSON: Yes. Section 259 continues -

- if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

Those who are opposed to the proposition of choice say that the only circumstances are those governed by the words "for the preservation of the mother's life." The preservation of the mother's life is a contentious issue because in a narrow reading that is clearly the prevention of death or the avoidance of imminent death: The mother either has the abortion or she dies. Life has other meanings. This is where the so-called Davidson test based on Bourne's case becomes particularly significant. We have heard a great deal about the Davidson test and the Bourne case.

One very important issue in Bourne's case, upon which the Davidson case was built, is that one of the points at issue is the meaning of the preservation of life. Mr Justice Macnaghten in Bourne's case focused attention on the Act called

the Infant Life Preservation Act 1929. Section 1(1) of the Act provides that -

any person who, with the intent to destroy the life of a child capable of being born alive, by any willful act causes the child to die before it has an existence independent of its mother, shall be guilty of a felony, to wit, of child destruction, and shall be liable on conviction thereof on indictment to penal servitude for life.

Sitting suspended from 6.00 to 7.30 pm

Hon DERRICK TOMLINSON: Before the dinner break I recited section 1(1) of the Infant Life (Preservation) Act 1929 of the United Kingdom, and indicated that the section creates a crime of child destruction, liable for a penalty of penal servitude for life. The section provides a defence and states that no person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

The phrase "preserving the life of the mother" is very similar to the phrase contained in section 259 of the Criminal Code: "for the preservation of the mother's life". When Judge Macnaghten instructed the jury in Bourne's case he gave the following direction, and I quote from *All England Law Reports Annotated*, volume 3, page 619 -

As I have said, I think that those words ought to be construed in a reasonable sense, and, if the doctor is of the opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor, who, in those circumstances, and in that instant belief, operates, is operating for the purpose of preserving the life of the woman.

Preventing the woman from becoming a physical and mental wreck is a much more liberal interpretation of preserving the life of the mother than that narrow interpretation of the avoidance of imminent death. That was the direction Justice Menhennitt gave in the Davidson case, and that case has been assumed by some to apply to Western Australia's law. It is certain that the case law in Victoria is established by the Davidson case. It applied in Wald's case in New South Wales, and the Levine ruling gave an even more liberal interpretation than Menhennitt's ruling in the Davidson case. The Davidson principle is assumed to have applied in Western Australia for the past 25 years, but it has not been demonstrated to apply, because it has never been tested. However, the law has operated on the assumption that the case law applies. It is not everybody's assumption. In June 1983 crown counsel, Michael Murray QC, now Mr Justice Murray of the Supreme Court, offered the following opinion at page 126 of the Murray report -

The abortion sections may be, and are often said to be, much disregarded in the community. There is of course a legal argument as to whether the exculpation provided by the common law in relation to abortions following Bourne's Case applies to the Code offences. I would think it does not, but in any event it is clear that even that limited form of protection to medical practitioners would be exceeded in what are euphemistically called therapeutic abortions.

That was the advice given to the then Attorney General, Hon Joe Berinson, in 1983. That seems to be the opinion of the Director of Public Prosecutions. I have never heard him express an opinion on this matter, and I have not read an opinion by Mr John McKechnie supporting the Murray opinion. I have read newspaper accounts in the past few weeks that say it is McKechnie's opinion, and I must take those reports in good faith. Therefore, Mr Justice Murray, if he still holds the position he held in 1983, and the DPP now hold the opinion that the Davidson principle does not apply in Western Australia, even though for the past 25 years the law in Western Australia has operated as though it does. According to that interpretation, abortions have been lawfully performed on the assumption that the Davidson case applies. A prosecution has now been brought before the Supreme Court to test that. I do not know why that has occurred after 25 years. I could speculate, and I have heard the speculation, but that is irrelevant. It is relevant that for 25 years an assumption has been made and abortions have been procured in Western Australia on the assumption that the Davidson case has applied. Instead of Parliament making a decision on what the law might be, we were confronted with the possibility that only the Supreme Court would interpret the law. Why did this Parliament wait for a charge to come before the Supreme Court? It is because this Parliament was suffering from moral and political paralysis. If nothing else, we should be grateful for the charges brought against Dr Chan and Dr Lee because it has shaken this Parliament out of its paralysis and now it must make a decision. The decision members must make is to take this out of the Criminal Code and confirm that what is assumed to be the law, and has been for the past 25 years, is the law.

I will return to Mr Justice Murray's opinion in 1983. Having dealt with the application of the Bourne case to Western Australian Statute law - the Criminal Code - Mr Justice Murray went on to state -

If the law is being regularly contravened then that may be because the present formulation of the law is out of step with current community attitudes and requirements. As a matter of policy I think it is generally a bad thing to have a law evidently out of step with a substantial part of the community practice.

Let us consider the phrase "if the law is being regularly contravened". In an information paper on the termination of pregnancy in Australia published in 1996 by the Australian Government Publishing Service on behalf the National Health and Medical Research Council it was estimated that in 1990, 79 338 terminations had been procured in Australia, and in Western Australia, 8 417 had been procured. It was estimated that in 1996 more than 9 000 terminations were procured. Mr Justice Murray said that if the law were being regularly contravened - it is being regularly contravened and it has been - then it may be out of step with current community attitudes and requirements.

We have heard a lot of debate and many figures have been bandied about showing that this opinion poll and that opinion poll indicates that somewhere between two-thirds and four-fifths of Western Australians regard the law as being out of step with community attitudes and they are asking for it to be changed. I am saying that we should not change it but confirm that that which has been the law in practice is the law in fact. The only way we can do that is to repeal the offensive sections of the Criminal Code. Mr Justice Murray said that if the law is contravened, it is generally a bad thing, and if it is out of step with a substantial part of community practice, it is a bad thing.

Every day the President prays on our behalf for guidance to make laws for the good order and government of Western Australia. Here we have bad law and our responsibility is to turn that into good law.

In doing that, we then expose some very real problems. Hon Tom Stephens, at the peroration of his speech, referred to some of them. He talked about the need for counselling. He said that legislation requires and encourages good decision making. I am not quoting him verbatim because I am reading from notes but, if I am incorrectly paraphrasing what he said, he should correct me.

Hon Tom Stephens: Everyone else does, so I don't see why you shouldn't.

Hon DERRICK TOMLINSON: I do not think it is proper, so I ask the member to correct me.

The member said that legislation requires and encourages good decision making. He referred to an insistence on informed consent - consent given after counselling - counselling considering the consequences and the alternatives, and being separated from the practitioners carrying out the procedure. Those things exist already. They are available, and I am sure use is made of them.

Let us consider the listing for "pregnancy" in the Western Australian telephone directory.

Hon Tom Stephens: But they are not mandatory.

Hon DERRICK TOMLINSON: Of course not; neither is abortion.

Hon B.M. Scott: Thank God!

Hon DERRICK TOMLINSON: The member may.

We find listings for Pregnancy Assistance, Pregnancy Counselling and Family Planning Services, Pregnancy Lifeline, Pregnancy Problem House and Pregnancy Support and Post Abortion Helpline, all with a telephone number and address. We turn to "women" and we find -

Several members interjected.

Hon DERRICK TOMLINSON: I was looking at "WI". We find under a listing for women's health: ISHAR Multicultural Centre for Women's Health; Women's Health Care House, 100 Aberdeen Street, Northbridge with a freecall telephone number; Women's Health Care Place, Midland; Women's Health Centre (Multicultural), South Fremantle; Women's Health (Rosalie Gollan Centre for Women's Health) and so on.

Under the listing for "family" we have the Family Planning Association of Western Australia, at 70 Roe Street, Northbridge. The address is in the telephone book! The Family Planning Association has 18 000 client contacts annually. It is available, but there is not enough of it.

We must look closely at the regulation of abortion services and termination of pregnancy. However, we will not and should not regulate women's sexual and reproductive health by resort to the Criminal Code. We should not regulate women's sexual and reproductive health by threats of imprisonment. Those sections should be removed from the Criminal Code and be properly regulated through the professional and administrative structures of the health system, where they belong. There is no place for them in the Criminal Code. I urge members to support the Bill.

HON JOHN HALDEN (South Metropolitan) [7.48 pm]: I do not think anyone will be surprised that I support the Bill before the House. I tried to consider what would be appropriate to say here tonight and I came to the inevitable conclusion that I must take a historical perspective of how this Parliament and society treats and has treated women. That might appear to diverge from the issue, but at the end of the day hopefully it will not.

This Parliament and our society have been very good at discriminating against and marginalising minorities. However, their greatest success has been the ability to marginalise the majority - women. In our society and in this State, from white settlement onwards, it is women who have continued to be underpaid compared with their male counterparts. It is women far more than men who have had to bear the burden of doing boring and repetitive jobs.

It has been a perception in our society that if women are raped they must have been provocative - they wore clothing that was provocative or their behaviour was such that it encouraged the assault. This is a strange analogy, but comments made by the police recently suggested that women have in some way encouraged such attacks.

It was suggested that they should dress down; that they should be careful about where they walk in our streets at night or should not walk in our streets at night so that they are not raped or assaulted. The irony is that the Commissioner for Police has called for clarification of this matter, as he should. If women are bashed at home it has been said in our society that they provoked it because they nagged too much. If women enjoy sex, they are referred to as nymphomaniacs; if they do not, they are referred to as frigid. If they expect child care, they are selfish and poor mothers who do not want to expend their time in their natural role of child carers in our society. If they cannot get safe contraception, they are made to feel guilty about not wanting another child, absolutely irrespective of their health, the number of children they have, their financial circumstances and a whole array of other matters. They, as the majority in this community, have been made to feel guilty about wanting some quality of life, no matter how many children they do or do not want.

I could go on with this list forever but I want to add one point to my argument that makes it contemporary. I refer to *The West Australian* of today, which reads -

They think they are the centre of the universe and will abort a baby just because it is inconvenient or because summer is approaching and they want to wear a bikini.

Those comments have typified the attitude of our society. They are comments, thoughts and beliefs that marginalise, discriminate against and dehumanise women. I have never held the former Hon Iain MacLean in any respect whatsoever. I make no bones about it. I do not think that anyone in this House who was here when both he and I were, would in any way think that I hold him in any respect. However, the scintilla of some sort of human decency went absolutely out the window when he made that comment. I have no respect for the person at all. The issue of a termination is not one, as Hon Derrick Tomlinson has said, which will affect me in the sense of having to make a decision.

Hon B.M. Scott: Not even if you are the father?

Hon JOHN HALDEN: I will disregard that.

I have had a number of relationships with women. The lateness of their menstrual cycle has been an issue from time to time. The issue of whether they will wear bikinis in the summer has never entered into it. It is a disgrace to women in our society that some individual who purports to represent anybody should make that outrageous comment. I know of the emotion in this argument and I accept the rights of people to have different views. However, when some flea gets up in the other place and makes such outrageous comments, he deserves to be flicked. I am about to flick him. It is about time that nonsense in our society is dispensed with. It is outrageous to women; it dehumanises women and the majority of people in our society. To be honest, it is a disgrace. I could add a few other adjectives. How dare anybody trivialise such an emotive issue to that extent? It is almost beyond the realms of possibility. Among all the people with whom I have had a relationship or I have met and with whom I have discussed this issue, I do not know anybody who has trivialised it to the point of absurdity. This debate is too important and too significant to trivialise with such garbage, because that is what it is. When I wrote my speech the first time, I did not intend to be emotive. I did not think it was appropriate for somebody who, as Hon Derrick Tomlinson said, does not have to make the critical decision, to get emotive about it. However, there comes a point where one has to draw a line in the sand and say, "You cannot go any further than this" because this is an outrage and over the top. Somebody has to get up and say, "This is not acceptable."

Last night I heard the comments of Hon Tom Stephens, the Leader of the Opposition. Hon Derrick Tomlinson and I on this occasion will be as one. Hon Tom Stephens presented a view with which I disagree totally but he presented it with some degree of tolerance, reasonableness and a desire to make us understand his view of this issue. As I say, I disagree with him but I can accept his need, his desire and his want to put that perspective. I will not accept the view, and nor should anybody in this society, that a woman will terminate a pregnancy on the basis that summer is approaching and she wants to wear a bikini or because she thinks she is the centre of the universe and the baby will be inconvenient in her life. Whether or not members support my proposition in this debate, that sort of flippancy deserves absolute scorn and to be shown up for what it is - claptrap and nonsense.

As I said earlier, we have been very successful in our society and in this Parliament in marginalising women and in

discriminating against them, even though they are the majority gender group in our society. Can you imagine, Mr President - and I tried to think of it today - what the male psyche would be like if it had been put through the trauma of what has happened to women in our society? I have read the list and do not propose to do it again, but it is a list where the woman must be ultimately responsible for everything, no matter what, but can never win. I concede that I am probably the worst example of the male psyche, but it makes it difficult to know how to feel about football, meat pies and going to the cricket on Saturdays, because that is all insignificant when one has been pounded, discriminated against, marginalised and abused by society and this place.

Before I read today's *The West Australian*, I tried to write a speech on a very objective and narrow basis. I tried to write a speech in which I was very tolerant - and I still am - of the many people who hold views that are different from mine. However, I will not - and I think most people understand this, or I hope they do - tolerate stupidity and moronism from anyone, whether or not a member of this place. I will not subject people to the vile accusations of anyone without correcting the record. The comments not only of that member but also of one or two others should be corrected.

The PRESIDENT: Order! Before the member begins correcting, I remind him of Standing Order No 94 in respect of alluding to debate in the other House. I am sure that the member was about to move on.

Hon JOHN HALDEN: I have alluded enough to that debate, Mr President, and I think everyone would understand that.

I have been complimentary of Hon Tom Stephens for the reasonableness of what he put in this debate. However, the point that I struck on, and that I note with some significance Hon Derrick Tomlinson also struck on, was that Hon Tom Stephens perpetually referred to the rights of the unborn child. Having gone through some analysis of this issue, I am led to the inevitable conclusion: What rights? I say this from the perspective of a person who has for a long time held the view that is typified by the comment of being pro-choice; but what rights? Many arguments can be put for and against granting a foetus legal status from the moment of conception. Some people argue that life begins at the moment of conception, therefore the foetus should have the same rights as the child from that point; while others argue that it is not until the foetus is born that life begins and rights are acquired.

The question of when the foetus gains rights is as important a legal argument for the foetus as it is for the mother, because if the foetus has rights, it has enormous consequences and creates the potential for enormous conflicts. It is probably not ironic that the greatest consequence of granting the foetus rights from the moment of conception impacts upon the woman, the mother.

It has been only in recent times that Australian courts have approached this matter. According to tort law, the awarding of damages to children for injuries while they were in utero did not commence in this nation until 1972 in the case of *Watt v Rama*, which was heard by the Victorian Full Court. In that case, a child sued for damages for injuries received as a result of a motor vehicle accident that occurred while she was in utero.

In order to claim damages for negligence, it is necessary to show that a duty of care is owed. A duty can only be owed to a person who has legal rights. Under Australian case law, it has been determined that a foetus does not have legal rights and is not a person. This is not my view; this is tort law that has developed over decades in this nation. I do not want to have an argument about my perception as being pro-choice. I want to have an argument about the perspective of our learned colleagues in the judiciary.

In the case of *Watt v Rama*, the court found that, by applying the principles of tort law, the foetus could sue for damages provided two tests were met. The judges applied the principle in *Donoghue v Stevenson*, which found that the breach of duty of care can occur prior to the injury being suffered; that is, that the accident or the breach can happen while the foetus is in utero. The judges found that the potential plaintiff did not need to be in existence at the time of the negligent act so long as the victim was a member of a class which might reasonably and probably be affected by the act of carelessness. The judges determined that in order to be able to sue for damages, the foetus must be born and live to become a child who has legal rights. In short, a duty of care to a living person can exist while a person is a foetus, with a duty materialising upon birth.

As a result of case law and common law in Australia, a foetus has very few rights, and what rights it does have usually apply after it is born alive and is defined as a living person. Foetal rights differ between nations, with the rights of the foetus in the United States of America being different from the rights in Australia and the United Kingdom.

People generally, and we as legislators, need to be very clear about what we are doing. If we ascribe legal rights to the foetus, we embark upon a course of action which will have enormous unforeseen consequences. I suggest to members that some people know those consequences and are quite deliberate in their actions in this matter; other people are not. If we ascribe to the foetus certain rights and say it has life from the moment of conception, because that is the argument that I have heard, and if we legislate on that basis, where will we end up? I am about to speculate

on where we will end up; and I do not think I will be too far from the mark.

If there is life at conception, what do we do about contraception? What is the penalty for contraception? What is the penalty for using the pill? We know the physiological consequences for women of using the pill. Does that mean taking the pill is murder, manslaughter or abortion?

Think about the silliness of the nonsense that has been put before us. Most of us have some idea about contraception. Most of us have used it at one point in our lives. Is that what we really want? Are we about to proceed down a path where we define the rights of the foetus at the point of conception and after that it has every right available; or do we then go back from that position and say it has some rights and not other rights?

Hon Simon O'Brien interjected.

The PRESIDENT: Order! I do not want any interjections. We have not had them to date. Every speaker has been heard in relative silence and that is the way we will continue.

Hon JOHN HALDEN: It is an interesting dynamic because that is what is advocated by a significant proportion of the people who oppose this proposition. The foetus has rights from the moment of conception. If we do not think that proposition is reasonable, we will get to the point where contraception places us against the law because the foetus will have rights. Hon Tom Stephens said the foetus has rights. Under present law in this nation the foetus does not have rights, or it has very limited rights. If we give the foetus rights, then we must say that contraception results in an offence against the Criminal Code. We are going to have a real problem then. By the time we work out who is responsible for what criminal act, the Minister for Justice will have a real problem about overcrowding in our gaols. I suggest that the persons with whom we have a current relationship will be in gaol and so will we, assuming that we all are equally responsible for the act of sex.

We have had a silly law for 25 years. It has been breached, and everyone knows it. We as a community have tolerated the grey areas because, in essence - whether those who oppose my position in this debate like it or not - the majority view is that we must have this opportunity available to women and their partners.

Although I have been asked not to mention too much in this debate about my own circumstances, we all have decisions to make in this process. I have never seen mine as a primary decision, but the decision nevertheless rests with one person principally, and secondarily with another. It seems to me that with 9 000 abortions a year, with no significant difference between this State or any other where abortions are easier to obtain, we have gone down a path where we have condoned the process but not wanted to legitimise it. It is time to come to grips with the problem. It is time for the State to remove itself from this moral issue.

Hon Derrick Tomlinson described it very well. If there is a God, I will probably go to Her and I will have to account for my actions in life, and so will each of us. However, if we have to do that, that is our business with our God, if there is a God. Ultimately it is more important that the State remove itself from this issue. As much as I may disagree with comments that may have been made in the other place, and in this place - not so violently - this is not an issue about the Criminal Code. Whether or not we agree, this is an issue that women decide themselves, with their doctors, their families, and whoever else they choose to discuss the decision with.

Why should we inflict such an enormous penalty upon people in our society at this very difficult and vulnerable moment in their lives? Why should we have a situation in which they are put to the point of 7 years' imprisonment? This is nonsense in respect of an issue in which the foetus has no rights and has no standing under law. What are we doing? If we give the foetus rights under law, it presents some very dangerous propositions. We then open up a whole can of worms as to who can sue the person responsible for the foetus - the mother. If the mother has a natural miscarriage, can it be alleged that natural miscarriage was a result of her horse riding the day before, or having a bath the night before, or whatever spurious reason? We expose the woman to claims of negligence. This is nonsense the Government is proposing; this will make the law an absolute ass.

If the foetus has rights, unless we go backwards from there and disregard those rights, they are the rights of a child. Understand this - and I do not think people do, because we are all guilty of throwing around glib phrases about rights: The great tragedy in this is that the majority are left with the burden. They are the most disadvantaged, discriminated against, and sometimes dehumanised group in this debate. It does not stop there. What about the issue of wrongful action? If we give the foetus rights, we again put the burden of decisions on the mother. Should she or should she not have terminated; should she have gone to the doctor; should she have a form of intervention in the pregnancy? Where does it stop? Where do we draw the line when we give the foetus rights?

We will be legislating forever and a day trying to draw up such parameters. I do not suggest that I know the answer. I suggest that many people from many different positions have looked at this issue in a clear, legal perspective and they know the difficulties which will confront our society if we reach the point of prescribing the rights of the foetus.

This is not an issue only in Australia. The case law in the United Kingdom is much longer and more extensive than ours. All of the judges and lawyers, in a profession one would not consider to be radical, over many decades - centuries, in fact - came to the same view as I espouse on this matter. We must not get to the point where we make life impossible for ourselves and, more importantly, for women and potential mothers. That would be outrageous.

Perhaps my line of argument became a little lost in my anger at a comment expressed by another member. Abortion is not a matter for the Criminal Code; it is not a matter for the State at all. It is a matter for people and their God, if one exists. The day we prescribe the rights of the foetus, as advocated by sections of the community, Parliament and legislators will have enormous problems.

As has been said before, this is not an issue that should necessarily be concentrated on women. As members understand, I have equally strong feelings about this issue. I have enjoyed the opportunity to put my views to this place. Ultimately, let us treat the matter with some human dignity and all make choices. It is choices and the ability to make choices which makes us all equal. If people cannot make choices, we cannot be equal before the law, which is our role as legislators. If I have that wrong, the electorate of Western Australia, God willing, may find somebody other than me to represent it.

HON KIM CHANCE (Agricultural) [8.24 pm]: A little after 5.00 pm yesterday I heard Ms Cheryl Kernot on ABC radio describe her experience in the Public Gallery in the Queensland State Parliament a little more than 25 years ago when that Parliament debated a matter of this nature. Ms Kernot said the impression she took away from the debate was that of a succession of men in suits telling women what they could do with their bodies. Not much has changed.

Hon Giz Watson: Except the suits!

Hon KIM CHANCE: Indeed. When I look around Parliament today and observe the gender balance, something has changed as we have progressed a little; however, we still have a long way to go. It was that experience, Ms Kernot said, back in 1971, or thereabouts, which ignited her desire to take part in the process of change.

Hon E.J. Charlton: Ms Kernot has changed?

Hon KIM CHANCE: She has indeed - and for the better.

This issue relates to the way in which women's voices are heard in the formation of our society. This is a classical issue of that type. Do I feel uncomfortable as a male legislator speaking on an issue of this type? Certainly I am a man, and also a man who has never had to face the trauma faced by women when deciding whether or not to be mothers. I cannot possibly understand what that trauma would be like. I have come to the view that I do not have the right to make that decision as a legislator.

If we were talking about adding to, or in some way amending a sanction within, the Criminal Code which related to the practice of termination, I would absent myself from the vote. But that is not what we are doing here. If the Bill before us sought to make further changes in the way Parliament interferes with personal decisions, again I would absent myself. But that is not what we are doing here. The function of the Bill before us today is to establish whether this medical procedure should be in the Criminal Code. My view on that matter is unequivocal: It should not be, and has no place, in the Criminal Code. No logic in law or public administration supports that matter residing in the Criminal Code. Therefore, I find no difficulty in voting for this Bill.

I understand and respect the legitimate arguments, mostly moral arguments, although some legal, heard from both sides of this dichotomy. In our assessment of that moral argument, we must make a judgment about whether the moral argument itself justifies the otherwise completely irrational inclusion of this intensely important choice within the Criminal Code. What medical procedures which men undertake are a matter for the Criminal Code? Why should any medical procedure be a matter for the Criminal Code? Of course, medical procedures are regulated by law, in the Medical Act for example, but why in the Criminal Code? What logic is there for the inclusion of such a procedure in the code? In my judgment there is no reason for it to be there at all.

The morality argument is a fair one. I think Hon Tom Stephens made the argument quite well that the collective morality of our society is the very basis and code of our civilisation. However, our laws serve an entirely different purpose; we can look at our Statutes as a component of our civilisation. One cannot have a civilisation without some sanction-based regulation. Our collective morality serves a different purpose. Collective morality is about the quality of civilisation.

Laws are about regulating for the good order of society. They have wholly different purposes. Although an immoral act may offend our code of civilisation, an illegal act offends society's concept of good order. Sometimes there are crossovers; for example, murder, which offends the code of behaviour of almost every civilisation we are aware of and it is also against the law. It is against the law because it offends against the maintenance of the good order of society. It also happens to be immoral. However, adultery, which perhaps offends moral codes, in this country is not an illegal act.

It is certainly not a novelty to confuse the two. Western medieval societies did confuse the two because they talked about the parallels between God's law and the King's law. The fundamentalist Islamic societies still confuse the two, but neither of those societies, with due respect to the Islamic countries, represent my view of an ideal or a free or fair society. In my view - it is a simple arguable case - it is necessary to separate the functions of the moral codes and the laws designed for the good order of a nation.

The continued infusion of a moral issue - in this case, the right to choose to terminate a pregnancy - in the Criminal Code is an anachronism in 1998. It has no place in a Criminal Code. Its continuing presence is a gross insult to women. Frankly I am surprised that more is not made of this paternalism flowing down from Legislatures around the country that women cannot make their own decisions about how they will conduct their own health. As I said, it is a gross insult to women. It is also a hangover from our days as a theocracy. We have shed the shackles of the theocracy in almost every other respect. I have been searching, but have been barely able to find a single law on which we can predicate a singularly moral base. These days we have shaken off all the shackles, except for abortion. Why is that so?

At the end of the day - people may disagree with the way I have arrived at this conclusion - the argument is whether this is a criminal issue. There is nothing whatever to prevent the guardians of our civilisation - that includes some churches and some secular groups - from vigorously pursuing their opposition to abortion, to what they see as an immoral act. They have that right. Strangely it is a right they have as individuals or as groups, that I do not think I have as a legislator. It is a right that belongs to people, not one that belongs to the Parliament. It is not my place to enforce any moral standard which I think is worth treasuring by using the privilege I have as a legislator.

If I oppose abortion as a medical procedure, for either a specific or general purpose, I do not have the right to try to influence people by the use of my vote in this place. I have every right as a private citizen to go out and try to influence the views of people, but not in here. In any case, I am pro-choice, and I have been for a long time. This Bill is not about so-called abortion on demand, any more than it is about multiple amputation on demand. The Bill is asking us to decide whether a voluntary decision by a woman to terminate her pregnancy should be a crime. It does not ask us to make any judgment other than that.

We have heard some impassioned debates about whether the right to choose to terminate is a good thing or a bad thing. I must say that some of the arguments on both sides are powerful. At this stage I may be pro-choice, but I am certainly not pro-abortion. When I think about it, I do not know many people who are pro-choice and also pro-abortion. It is almost a different issue. Choice is about the law, about whether it remains in the Criminal Code and whether women shall have the choice. It is not about abortion per se. Whether this procedure remains a criminal act has nothing to do with the practice of abortion.

Members should look at the statistics that are available. I will not quote them en masse, but in some States of Australia abortion was effectively legal while at the same time it was illegal in other States. One would expect that the States where it was illegal would have a lower rate of abortion, but not so. The non-criminal status of the right to terminate pregnancies has nothing to do with the number of such procedures which occur. One can be anti-abortion, but on the figures, if people are anti-abortion they are probably better off getting it out of the Criminal Code. It has nothing to do with the law. At one end of the argument it is a moral issue.

At the other end of the argument we might be able to say that it is a medical issue, and I tend to agree with that. If a medical procedure is overused, it can lead to problems. There is a risk with abortion, as there is with any other medical procedure; however, if the argument is to be based on whether we want abortion to cease, to increase or to stay the same, we should not muck around with the Criminal Code. We should get it out of the Criminal Code and deal with it as it should be dealt with - as a moral issue. Some of the pro-life arguments could convince me. I am not a pro-abortionist, but I am damned if I want abortion in the Criminal Code. I am damned if I want women in Western Australia to suffer the stigma of a possible criminal record simply because they made the toughest decision women must ever make - to terminate a pregnancy. I will be supporting this Bill.

HON TOM HELM (Mining and Pastoral) [8.38 pm]: I am proud to support this Bill. I feel embarrassed that I, too, am a male who is putting forward a view on this issue. I will present an angle in this debate that is somewhat different from views presented before. I remind the House of my background. I was born in Liverpool of an Irish Catholic background. I lived in an Irish Catholic neighbourhood. I have no Irish heritage and I am not a Catholic. However, at an early age I was exposed to the effects of backyard abortions in my neighbourhood, from my friends and from what I read in the newspapers in the late 1950s and early 1960s about the horrendous effects of backyard abortions. It would be difficult for me to make any statements that did not reflect my feelings: I will do all I can to make sure we help women to make the choice about whether to have an abortion in a clean, hygienic, sensible, medically supervised way, or go to a backyard abortionist.

I would follow the same course concerning indigenous or suppressed people regardless of where I was. I join many

people, particularly on this side of the House, who have a proud record of supporting oppressed people who do not get a good shake out of life. However, I doubt that many people in this Chamber have been exposed to this issue in the way I have. Of course I have not had to make a choice. I was mortally offended yesterday when the so-called pro-life brigade outside the Parliament described an abortion in detail.

One of the reasons I am a member of Parliament is because of my daily experience with women who had to attend hospital after trying to abort themselves. The pro-lifers may like to talk about the damage caused to a foetus by the vacuum method, but can members begin to imagine the damage caused to women's bodies by darning needles used in the backyards of houses in the slum area of Liverpool? The damage is exacerbated when it is done to part of a woman, over which she has complete control and responsibility, when she is trying to comply with state law, let alone theological law. For 20-odd years that state law has been conveniently ignored. The situation in Liverpool did not affect all women. Almost exclusively they were working class women who did not have the education or the funds to get a dilatation and curette. We talked about D and Cs the other night - another method of terminating a pregnancy, which I found out about when my ignorance saw the light of day. It is a wealthy woman's way of having an abortion. We must address this issue in the light of that hypocrisy. I respect people like Hon Tom Stephens who argue that their morals and religion are offended as a result of the position I hold. I hope he respects my view.

However, with all due respect, he has not seen what I have seen. There is no way I could possibly go through the trauma women have been through. This dilemma is highlighted by the prosecution of the two Western Australian doctors. In addition to being poor, uninformed and holding very strong religious beliefs, women could be found guilty of a criminal offence. This situation occurs time and again among young girls who have "made a mistake". As a result of their mistake they miss a couple of periods. It becomes decision time which is not just about terminating a pregnancy.

A range of choices contain elements of deep shame because of their strong Catholic beliefs. The only woman who went to gaol was a Catholic doctor who lived in Birkenhead on the opposite side of the Mersey to where I lived. She said publicly that she would flout the law and help women terminate pregnancies. She went to Walton Gaol, where the last hanging occurred in the UK. It is a high security gaol which houses Irish Republican Army prisoners. She served sentences as a result of her illegal activities. All the time she knew that D and Cs were taking place in Rodney Street, the Harley Street of Liverpool.

Hon Cheryl Davenport said that it must be a matter for the medical fraternity. It should be; it is unfair to put pressure on a woman who is faced with the decision of continuing or terminating a pregnancy by forcing her to face criminal sanctions.

I will not go into depth on the moral, legal and life forming arguments because it is not something in which I am skilled. I have read all the correspondence and note with interest that the people who call themselves pro-life have gone to town distributing books and videos and a lot of other information which looks expensive. When I received that information from the so-called pro-life group, I was tempted to bring the attention of the House to the amount of money they are spending on their campaign. A reporter of some repute from Wyndham in the north west, Felicity Arbuthnot, sent me an article called "Dying of Shame". She wrote that one million children - children who have already been born - have died in Iraq as a result of the sanctions placed on Iraq. I worry about Saddam Hussein all the time. He could be an international criminal; I do not know whether charges have been laid against him. We do not want to get to Hussein through the generation of the children who may be dying. Felicity Arbuthnot says that not only the sanctions are killing those children. Therefore it is okay. I am starting to worry about Hon Eric Charlton. He should keep his mouth shut and keep his ears open.

Hon E.J. Charlton: You are blaming someone else.

The DEPUTY PRESIDENT (Hon J.A. Cowdell): Order! Hon Tom Helm would not have to worry about Hon Eric Charlton if he addressed the Chair rather than the honourable Minister.

Hon TOM HELM: I would not worry about the Minister for Transport.

I remember when somebody referred in this House to the abortion statistics to which I think Hon Kim Chance alluded. I am grateful to Professor Straton who provided me with some facts. She wrote a letter which reads -

In view of some of the information being circulated to members of Parliament about the frequency of late abortions, it is important to set the record straight about what has been happening in Western Australia.

One side effect of the uncertain legal situation has been the lack of proper statistics about abortion in this State. However, in 1985 I carried out a detailed study of all terminations of pregnancy in WA in a three month period, which was published in a report for the Health Department of WA in 1987. This is the only detailed information available about the duration of pregnancy (gestation period) at which abortions are carried out in this State.

These are the key findings of my research:

The crude abortion rate for W.A. (19 abortions per 1000 women aged 15-44) was comparable with other States where abortion was legal (e.g. NSW 18 per 1000).

It was comparable with other States where abortion was legal; for example, New South Wales, where the figure was 18 per 1 000. The figures showed that 83 per cent of abortions were carried out in the first eight weeks of pregnancy; 96 per cent in the first 12 weeks; and 1.4 per cent were carried out after 16 weeks - approximately 100 per year. Almost all of them were for congenital abnormalities of the foetus. In 1997, 15 terminations in Western Australia were carried out after 20 weeks' gestation, almost all at 20 or 21 weeks. All were carried out at King Edward Memorial Hospital and all were for major congenital abnormalities. Some members will have received this information and I am grateful to the professor for providing it to me. It is a matter of getting the facts straight and on the record. If there is evidence to suggest the facts are something else and someone wants to argue with them, they can do so.

Hon B.M. Scott: Did she explain the unclear legal situation?

Hon TOM HELM: Did she need to explain the unclear legal position?

Hon B.M. Scott: I thought it was clear. I asked whether she explained it.

Hon TOM HELM: To an ignorant person like me the uncertainty arises as to the legal position. It is an offence under the Criminal Code but no-one has actually been charged until recently. That is the uncertainty. Everyone may assume it is not an offence under the Criminal Code because no-one has been charged for 20 years. What do we do about that? It becomes clear, yes. It is uncertain because although it is an offence, no charges have been brought against anyone since the 1980s.

I know I am guilty of displaying my male arrogance, like most male members in this House, in thinking I can speak on this matter. I am trying to explain to members about a situation that hopefully they will never see and I will never go back to. There is certainly better information now and we hope that the incidence of ignorance and poverty has been lowered in this State. We hope as a result of that we will never go back to having backyard abortionists; but we are heading in that direction if people feel threatened. If those vulnerabilities arise because of an unexpected or unwanted pregnancy and the threat of the Criminal Code being used, I suspect many women will not be able to use the legal loopholes which may exist. Women who want to have abortions may not be able to afford to go through the formalities. It was suggested in the media today that a woman should consult two doctors and there should be a cooling off period. I suspect some women will delay a decision for as long as possible and hopefully find someone to counsel them, but it is unlikely that the women I described in the lower socioeconomic group would want to go to two doctors.

The Poms had that situation in the early 1970s. People came from France to Harley Street, paid cash, got the advice and also had the abortion. However, the women in my neighbourhood were still dying or damaging themselves and becoming sterile as a result of going to inexperienced and unhygienic backyard abortionists. In some cases they tried to do the job themselves with darning needles.

Hon B.K. Donaldson: How many years ago was that?

Hon TOM HELM: In the late 1950s and early 1960s. It is a long time ago, but I was there. I must say that the people in the pro-life group in Western Australia are not as bad or as vicious as the crowd in Liverpool. They were really mean and I am glad I was as big then as I am now and could defend myself.

We have kept the debate on a reasonably even keel and it is not as bad as it was at that time in Liverpool. However, I will fight and use whatever method and means I can to convince people that we should all support this Bill to take abortion out of the Criminal Code.

HON MARK NEVILL (Mining and Pastoral) [8.55 pm]: There should be only one ground for abortion and that is whether the woman wants one. It should be a woman's choice alone. It should definitely not be subject to the current criminal sanctions. In my view each case should be worked out between the woman and her doctor and whoever else she wishes to consult, whether it be her partner, friends, religious confidant or confessor. I do not believe that is quite the same as abortion on demand. Those of us who support women and choice recognise that termination is the worst choice as far as contraception is concerned and few women would undertake the task with pleasure. For some women the procedure may be the least unacceptable of several bad options.

I live with some of these issues daily. My wife is a midwife who works in both the labour ward and the theatre of a public maternity hospital and previously worked in the neo-natal ward at Princess Margaret Hospital, where there are some children with horrific birth defects. I have discussed the issue with her quite a bit. Only one matter really

concerns me and that is multiple abortions. Abortion causes physical damage to women. One of the distressing features is that a small percentage of young women return for multiple abortions. Later in life when these young women are trying to plan a family they have difficulty in conceiving and sometimes cannot conceive at all because of the damage caused by multiple abortions. I am not sure what the solution is. I thought of some means whereby they should contribute to the costs after the third, fourth or fifth abortion, but I think that would be very difficult to implement in practice. Some of these young women are not well informed and ultimately education in the home and at school may be the best approach to reducing the problem. I believe the woman concerned is the only person who can make the decision to terminate her pregnancy. Women already experience enough trauma in making that decision and I do not believe a woman should be subject to criminal sanctions in that situation. Therefore I support the Bill.

HON MURIEL PATTERSON (South West) [8.58 pm]: I am very pleased that we live in a democracy where we can have a choice as to how we vote. I am the first woman in this House to say she will oppose the Bill. The attempts to control population by abortion go back into the mists of antiquity. As far as we can retrace it, they go back to 2737 BC when the Emperor Shen Nung is said to have devised a prescription to induce abortion. The encyclopaedia states that the practise of abortion, spontaneous and induced, is nearly as old as the social life of man, so today's debate is nothing new at all. We are informed that the pro-choice numbers in our community are 82 per cent.

Despite the prominence of this debate on television programs, my correspondence supporting the pro-life view is five times that for pro-abortion. I have received a lot of correspondence, and I have read every letter. I have been contacted by many people who have verbally encouraged this stance. They have said that they wish me to vote against the Bill. At this stage, I must apologise to some people because I have not been able to answer their letters. The volume of mail eventually beat me, and I just did not have time.

One of the most compelling and justifiable arguments used by the pro-abortionists is that a foetus cannot survive without the mother's body. This is true, but I wonder how many members in this House alone, could survive without outside assistance or life support. I am talking about medication for heart defects, blood pressure, insulin, cholesterol levels, thyroid deficiencies and other life threatening complaints. We depend on each other. What about our aged parents? They too need our assistance and support.

The crux of this argument is whether we believe in life at conception or life at birth. I believe the discovery of ultrasound introduced a new era for pregnancies. What many people thought happened, ultrasound has proved. Now that the foetus is visible, people can see what is happening. My message to the House tonight is that a baby is genetically complete at conception. Its heart is beating by the eighteenth day, and by the tenth week all limbs and organs are established; it can turn its head, frown, and bend elbows and wrists independently, and it is sensitive to touch. By the twelfth week, the foetus can swallow, fingernails have started to grow, and ribs and vertebrae have turned to bone. At the sixteenth week, it is half its birth length; eyebrows and eyelashes have begun to grow. By the fifth month, it turns, kicks and sucks its thumb. Birth, four months later, is simply an incident in an already advanced process. If it is wrong to kill a child at birth, it must be wrong to kill a child during these nine months.

One doctor wrote that, unlike members of the lay public, all doctors and paramedical staff who have carried out or observed an abortion are in no doubt that the foetus is alive. He said that freedom of choice by the individual is a legitimate concept, but in this very special instance it is a choice between preserving life or terminating it.

With the indulgence of the House, I would like to quote portions of some of the letters I have received from doctors. I am using the doctors' quotes for the simple reason that the argument tonight is a medical one, and people are saying that the lay person does not understand. I would like members to know that the World Federation of Doctors, which has 250 000 members, put out a media release yesterday, 17 March. It reads -

The press release yesterday from Stanley, Straton and Cohen - threatening "women will die" if abortion is restricted - is again misinformed and must be corrected. They have had the chance to answer our critique, and have simply avoided the challenge.

... Consider the hostile witness of an abortion supporter, leading Washington bureaucrat Candace Crandall, writing in Winter 1996 in "The Women's Quarterly" (a publication of the Independent Women's Forum, Washington).

She has the integrity, despite her pro-abortion position, to acknowledge the irrelevance of legal changes in dropping maternal death rate: *"In fact, it wasn't Roe v Wade that made abortion safe: it was the availability of antibiotics beginning in the 1940s."* She acknowledged the tactical fact not lost on Stanley et al that *"the most powerful of the pro-choice arguments was the claim that any infringement of the right to an abortion would return America to the dark ages when thousands of women died because of unsafe, back-alley abortions"* -

She continues -

In Australia the pattern is the same - a heartwarming triumph of medical care that makes even the smallpox vaccination victory pale into insignificance. In Australia in 1940, on the eve of the antibiotic era, 115 women died obtaining illegal abortion, most of them (100) victims of infection. But that carnage, which had been steady throughout the 1930s (between 70 and 120 deaths per year) and was admittedly paralleled by carnage due to childbirth and miscarriage, plummeted as antibiotics etc were introduced, so that by 1958 (the last year the ABS specified "criminal" abortions as a separate category) we had dropped from 115 deaths to 8 deaths. There was one death that year in WA . . . By the year of the first liberalising abortion law (the Victorian Davidson case in 1969), before there was a single legal clinic anywhere, there was only one death in the whole of Australia, and even that was not specified as from a "criminal" abortion. And note that, in 1995 alone, there were two deaths in our "safe, legal clinics", with the previous year yielding one brain damaged Asian girl and one dead Aboriginal woman from one Brisbane clinic alone. There has been no relevant improvement in death rates attributable to the legal status of abortion in Australia; it all levelled out prior to liberalisation thanks to medical advances alone.

And one more point from the honest Ms Crandall: *"Nor were the abortionists of the 1950s and 1960s the untrained butchers of legend: Dr Mary Calderone, a former medical director for Planned Parenthood, estimated (in the American Journal of Public Health) in 1960 that ninety percent of all illegal abortions were performed by qualified physicians."*

Even in the US way back then, with its black and Hispanic ghettos of poverty, only 10% of abortions were done elsewhere than a qualified doctor's rooms. The "backyard" was in fact the "back room" then, and would be again if abortion was truly limited.

A Perth paediatrician wrote to me saying, in part -

The misrepresentation and selective reporting in the media on the issue is concerning as well as the soft language to cover what is a horrific act. The abortion debate is not about choice, as if anyone has the right to choose to take innocent life, it is about right and wrong and whether we as a nation wish to go down the path of an increasingly self-centred and selfish society where moral values, personal responsibility and the sanctity of human life are increasingly devalued with consequences that are already evident for all to see.

As doctors we are called to serve life, to heal and strengthen, to ease pain and give comfort. Despite the actions and opinion of a few prominent doctors who favour legalised abortion I believe I am one of many doctors who firmly reject this view point and consider the practice of terminating the lives of unborn children as incompatible with the medical profession and the Hippocratic Oath.

Part of the Hippocratic Oath states -

I will give no deadly medicine to anyone if asked, nor suggest any such counsel; and in like manner, I will not give to a woman a pessary [a device inserted in the vagina, thought erroneously to initiate an abortion] to produce an abortion.

Another doctor wrote to me and said -

The Royal College of Obstetricians and Gynaecologists in the United Kingdom has issued recently a report on Foetal Awareness. Prominent abortion advocates, such as Professor Peter Singer, have begun to contend that some consideration should be given to the pain experienced by the foetus *in utero* in the course of abortions, especially since no anaesthesia or analgesia is customarily given to the foetus prior to an abortion procedure, be it drug induced or surgical. Similar studies on foetal sentience have been carried out by research physiologist, Dr Peter McCullagh of the John Curtin School of Medical Research, Canberra. Those studies are readily available.

Another doctor wrote -

I am a medical practitioner and wish to object in the strongest possible terms against the possibility of overthrowing the existing legislation on abortion in order to make abortion easier to obtain in Western Australia.

I consider abortion to be intrinsically evil and is no more than an obscene method of killing an unborn child. I want to put it on record that Dr Scott Blackwell, the President of the AMA, is not speaking on my behalf, nor presumably on behalf of the AMA, of which I am a member, when he appears to be giving the impression that the AMA officially sanctions abortion.

There are many ways of dealing with an unplanned pregnancy but butchering an unborn child is not one of them.

A letter from a consultant psychiatrist reads -

In response to the recent developments about abortion and the debate regarding its legislation, I write to express my view that I consider abortion should not be legalised because it involves the taking of a life, albeit as yet unborn. I am certainly happy to raise my voice as one who is opposed to any changes in the law which would lead to "legalised abortion".

I have received many other letters but one letter gives the overall view of many Western Australian doctors. This doctor is a general practitioner of 44 years' standing. He states -

With the advent of IVF programmes the concept that life does not start with fertilisation has been destroyed. Test tube babies are now a very common factor in our lives, and we are approaching the situation where the boundaries between the viable baby and a non-viable baby are becoming smaller.

He continues -

As politicians you have the right and the duty to look after the full Australian community, from its smallest to largest member from the youngest to the oldest. The youngest and the smallest members of your electorate are the unborn person slowly growing to maturity in the safe haven of his or her mother's womb.

We do not live in a perfect world. Therefore, reluctantly we must compromise on some matters when we would prefer not to. I do not want members for one minute to misinterpret my feelings or think that I am unsympathetic to some of the cases for abortion. Some women have been horrendously treated and I am not unaware of child abuse, incest, and domestic and other rape. For 10 years I worked in the areas of native welfare and child and family welfare. I was greatly moved by a sad story contained in a letter to the editor of *The West Australian* on Thursday, 12 March. S. Power of North Lake wrote -

There was a part of my life where I didn't have a choice and I suffered enormous pain and guilt when it was out of my control. I was molested when I was 8. I managed to conceal this ugly part of my life for many years but I was finally confronted with all the emotions a year ago.

I am an adult who has managed to survive child abuse. I am one of six girls this animal victimised. He still walks the streets and you people have the nerve to call me a murder. Instead of all you do-gooders worrying about a foetus that can't survive without the incubator (the mother), put your energies into protecting the children who are living and breathing on their own. While you show so much anger at women like me and protest outside the abortion clinics nothing is said about the men who put women in the position of needing a termination.

That is a sad situation and my heart aches for people who have suffered like that. I believe our laws and justice system must look at much stronger penalties for people who mistreat and criminally assault women. Amendments will be introduced during the Committee stage to cater for choices.

I contradict a point made in yesterday's debate that adoption was not a good alternative. In some cases adoption would be the answer for an unwanted child. I have been critical of my own and past Governments - I continue to be - for the great obstacles that are placed in the way of the adoption of a child. Something is wrong when last year Western Australia had over 9 000 abortions of unwanted babies and only 13 adoptions. Why is adoption not promoted as an alternative option? Hundreds of couples in this State alone would be willing and dearly love to offer their homes and lifestyle to a child and would consider themselves honoured by the privilege, yet repeatedly we are told that so few babies are available for adoption. All members will know that I am the parent of four adopted children and several grandchildren. I can truly say without a doubt that they are some of the most loved children that any family could have.

Several years ago a young couple I know was asked by a young unmarried woman who had become pregnant to take her expected baby. She did not want an abortion and had no intention of keeping the child because her partner was not the father and would not accept the child, and she already had a child but she wanted to choose the parents. She went to her mother and asked whether she knew anyone who would be a suitable parent. The mother introduced her to this young couple. I will not go into that long story tonight. It is an amazing story. The young couple and the young lass went to Family and Children's Services and told them what they wanted to do. This young couple had never before met this young girl. The social worker threatened the young unmarried mother and these two law abiding citizens with gaol and accused them of arranging the pregnancy. When I was told of this case I was outraged. The Minister for Family and Children's Services and the Director General of Family and Children's Services heard

from me. If ever we needed a select committee in this place I suggest it should be one on adoption.

Yesterday a well organised demonstration took place at the front of Parliament House, and a very courageous young woman stood on the steps and spoke of her great love for her birth mother who gave her up for adoption. She said how grateful she was for her life and how happy she was. She appeared to be a delightful young woman, and I caught only her first name which was Kylie. I wish I had caught her surname. In yesterday's demonstration I was amazed by the considerable number of young women, some of whom spoke of their experiences. If the publicised figure of more than 9 000 abortions performed last year in this little corner of the big world is true, either it is a service that is desperately needed or it represents an unfathomable loss of innocent life. It seems absolutely incredible to me that the unborn child is the only member of the human race who is denied the most basic fundamental right to choose its own fate. Not only has it no inherent right to live, but also it has no opportunity to seek natural justice. It is a wonder that someone has not been sued for deprivation of an unborn child's liberty.

It is inconceivable to me that many people fight vehemently to save flowers, natural bush, insects, birds and animals, go into freezing cold water to try to push whales back into the sea to save them, and work with seals, because they say they are beautiful creatures, and with so many other things in nature that we all admire and have great affection for. I cannot help but wonder that people feel like this and yet they believe in abortion on demand. Is it because the child is faceless, silent and hidden from view?

Anyone who has a copy of *The Hand of God* by Dr Bernard Nathanson should read this powerful book. I thank Maurice Brockwell for sending a copy to me and to many other members of Parliament. This book did not change my view about voting on this Bill, but it certainly strengthened it. I will give a little of the author's background. He worked hard to make abortion legal, affordable and available on demand in the United States, and in 1968 he was one of the three founders of the National Abortion Rights Action League. He ran the largest abortion clinic in the United States and, as its director, oversaw tens of thousands of abortions and at that stage had performed thousands himself. He tells how the manipulation of the media was crucial but easy with clever public relations, especially with a steady rate of press releases dispensing the dubious results of surveys and polls that were in effect self-fulfilling prophecies.

In the late 1960s in America the media was alive with young, cynical, politically hardened and well educated radicals who were only too happy to upset the status quo and rattle the sabres of authority. But then came the ultrasound procedure and doctors saw pictures of the foetus. That had a strong impact on Dr Nathanson. He found himself bonding with the unborn child. He continued with abortions but no longer felt certain that abortion on demand was right. In 1974 he wrote an article for the "New England Journal of Medicine" stating that he had presided over 60 000 deaths, and that the foetus is life. I quote from part of his book at page 128 as follows -

I continued to do abortions through 1976. I was doing abortions and delivering babies, but increasingly I found the moral tensions building and becoming intolerable. On one floor of the hospital we would be delivering babies and on another floor doing abortions. Because *Roe v. Wade* didn't set any restrictions, we could do abortions into the ninth month, before the first labour pain. At this writing, there are at least fifteen thousand abortions after the twenty-first week every year. Today, at twenty-one weeks, the baby is considered viable. These are not even abortions; they are murdering premature babies. In the mid-seventies, I would be up on one floor, putting the hypertonic saline into a woman twenty-three weeks pregnant, and on another floor down, I would have someone in labour at twenty-three weeks, and I would be trying to salvage this baby. The nurses were caught in the same bind, the same moral whipsaw. What were we doing here, were we saving babies or were we killing them?

I finally restricted my abortion practice to those who I judged to have a compelling need for an abortion. This was in the late seventies. I included rape and incest as compelling reasons. During this period, I wrote a book called *Aborting America*. In my book, I listed a lot of medical conditions that would justify abortion. I did two or three abortions in 1978, and then in 1979 I did my last one. I had come to the conclusion that there was no reason for an abortion at any time; this person in the womb is a living human being, and we could not continue to wage war against the most defenseless of human beings.

His decision to cease abortions was scientific. Years later he had his spiritual experience of God. A number of people writing to me opposing the Davenport Bill have said they do not have a spiritual faith but that they object to the Bill for humane reasons.

I am sure many members saw the Alston cartoon in *The West Australian* on Wednesday, 11 March. It showed a graveyard with tombstones inscribed with the words "unborn baby". They say a picture paints a thousand words. I certainly agree with Alston.

Only this morning I visited my doctor and when I was speaking to her as a friend, she asked how the abortion debate

was going. I said I did not think we had the numbers to defeat the Bill. She said that I should not compromise and that I should not support the Bill. She again quoted the oath she had taken as a doctor. She is a mother.

In 1993 I visited Israel and while in Jerusalem I visited the famous Holocaust Museum and other galleries and museums. The one that remains most vivid in my memory was the children's museum. It is built in a most unusual way. People enter the enclosure, which is pitch black so that it is necessary to hold a rail while walking through it, and the enclosure is lit by millions of twinkling stars. That effect is achieved by using three strong lights with a special reflector. That was all the museum contained apart from a plaque stating that the museum reflected the memory of children of the Holocaust who had been murdered and of future unborn generations. I had never previously thought about the unborn generations.

Some would argue that conception has the potential of human life. Would it not be more to the point to say that this is human life with potential?

I believe in God, who is the giver of life, and only he has the right to take life. Perhaps it was said better by Mother Teresa in a press release, in which she stated -

The child is the most beautiful gift of God to a family, to a nation. Let us never refuse this gift of God. My prayer for each one of you is that you may always have the faith to see and love God in each person including the unborn.

Let us pray. God bless you. Mother Teresa.

HON M.J. CRIDDLE (Agricultural) [9.31 pm]: We have had a wide ranging debate in which members have canvassed most of the options and done it well. It is difficult for me to come to terms with this issue, and I make my comments after serious consideration.

In dealing with this Bill I would like to think that I am responsible and pragmatic as a lawmaker in pursuing this task from a community point of view. We have the clear choice of refusing any reform of the law or passing this Bill, which gives a legal right to abortion so that doctors and women have the choice of abortion. Doctors and other medical staff must still be professionally just.

Every day women fall pregnant and face the biggest decision they will ever make - whether to keep their baby. Of course, in most cases, women will keep their baby. However for others, whether the pregnancy be a result of failure of the pill, stress, violence or rape, there is a number of options: To go through with the pregnancy and become a mother, have the baby adopted, or have an abortion. This decision is made a lot harder because one of the options is illegal and could lead to the woman and her doctor being in trouble under this law. Fear of prosecution could lead her to a backyard abortion. I accept that people oppose abortion, as I do. It is their right to have that opinion. However, these women have the right not only to their opinion but also to make decisions for themselves regarding their body and their future.

My understanding is that the sections of the Criminal Code dealing with grievous bodily harm and the exclusion of people who conduct medical procedures without qualifications would remain. Of course, the doctors have their own oath.

I understand the wide-ranging views of my colleagues on the issue that have been highlighted recently by the charging of the two doctors. A diverse range of approaches has been put to me by mail, telephone, video and other means advising me how to vote on this issue. However, I have always believed that abortion is primarily a decision for the woman. I live in a house full of women - I have four daughters.

Hon Ljiljanna Ravlich: You lucky man! You have been blessed.

Hon M.J. CRIDDLE: I believe that the woman should make the decision with advice from her doctor and in consultation with her partner if he is around. The trauma and pain of abortion is obviously horrific. However, we must deal with what is happening in the community. We all know that 9 000 abortions are carried out, apparently illegally, across all ages and socioeconomic groups in our society. There is no legal protection for the unborn, the mother or the medical staff. There is a danger that medical services may not be fully available to women requiring abortion. Practically that is not a desirable situation.

There has been much talk about services for women in these circumstances, such as counselling, care after the abortion and, if the person keeps the baby, after birth. These are all essential. Education is also essential in relation to sex and contraception and we need not to underestimate that necessity.

This Bill is not the best option, but the practice is being carried out for a wide range of reasons, all dealt with in this Bill. Under the circumstances, I do not believe that sections 199, 200 and 201 should remain in the Criminal Code.

Their removal will mean that women will have a choice, albeit a very difficult one. Put simply, I believe that abortion should be removed from the Criminal Code. If changes to the Health Act are desirable, they can be dealt with later. That choice, if taken, should be safe.

HON E.R.J. DERMER (North Metropolitan) [9.38 pm]: I know that a child is child before birth; I know that it is a human from the point of conception, and for that reason I oppose the Bill. Obviously, if I believe that, I am opposed to abortion.

The knowledge that a child is a child before birth does not depend on any theological precept - it is inherent in modern biology. According to biological science, each of us is a product of our genetic code and the life experience that has followed us since we were conceived. That genetic code determines how we interact with our environment to make us what we are. That code is fixed at the time of conception. Everything else that has happened since has been interaction of that genetic code with our environment. Of course, our first environment is our mother's womb.

The accumulation of life experiences that makes us what we are is a continuous process from conception to death. Our plan of life, our blueprint, our immutable core of self and genetic code is fixed at the time of conception. The continuous journey of life's experience begins with conception. Conception is the point of life's beginning; life begins with conception; human life begins with conception. To take a life at any point after conception is to kill.

The first responsibility of the State is to defend the lives of the people within it. For this reason, we should vote to defeat this Bill.

A difficult question presents itself in this debate: Why do good people - people of good will and intent - advocate the availability of abortion when it amounts to the destruction of human life? Hon Cheryl Davenport, who introduced this Bill, is an example of an honest and hardworking member of this House with a record of dedicated service to the welfare of Western Australians, yet she advocates the availability of abortion. In her introduction of the Bill, the member made reference to her son Ross. Anyone who has enjoyed a conversation with him will understand that he is a positive and well adjusted young man. Clearly the member is an excellent mother - I hope she does not mind my saying so. There are many loving and dedicated parents who will advocate the availability of abortion. I find that hard to understand. How is it that people of good will and intent can advocate the availability of abortion - that is, the availability of a procedure that will kill children? Clearly, there is only one explanation: They cannot know that a child before birth is nevertheless a child. With the occurrence of approximately 9 000 abortions in this State each year, the comfortable assumption would be that the unborn child is not a child. Of course, that is a delusion.

Knowledge that the unborn child is a child cannot be reconciled with the advocacy of the availability of abortion. The thought of the advocacy of the availability of abortion by those who know that an unborn child is a child is too terrible to contemplate. Advocates of the availability of abortion in the belief that an unborn child is not a child may puzzle over the motivation of people like me who are totally and implacably opposed to abortion. A common mistake is to conclude that our opposition to abortion is an idiosyncratic Catholic thing or an idiosyncratic obsession held by other Christians, many Muslims and people who do not have a religious belief. People who do not believe that a child is a child before birth may wonder at our motivation. Our motivation quite plainly is the absolute knowledge that a child is a child before birth. If people wonder what this obsession is because they do not recognise that a child is a child before birth, they may become exasperated at the endeavours of people like me who oppose abortion and seek to counter abortion through the process of the law. Those who know the truth and know that an unborn child is a child will fully understand the importance of the law and its role in the protection of human life. It is very difficult for me to understand the position attributed to Mario Cuomo. He appears to understand that an unborn child is a child and that abortion amounts to killing the unborn child but he does not advocate the extension of the protection of the law to the unborn child.

My knowledge that an unborn child is a child contains no element of conjecture. The knowledge is much deeper than any biological understanding. Life is much more than the study of life by way of biology. Knowledge of life is certainly a much deeper truth than biology or any other that intellectual consideration can achieve. How is it that I know that an unborn child is a child? The overwhelming joy of witnessing my own unborn children by way of the modern scientific marvel of ultrasound left me with absolutely no doubt that that living, moving being in the safety of the womb was a child. There was no room for doubt. As certainly as I know I am standing in this House speaking tonight, I know that an unborn child is a child. Ironically that same knowledge that came by way of ultrasound has been further enhanced by the experience of horror which accompanied the reading of the following three accounts, which I wish to share with the House. *The West Australian* of 9 July 1994 reported the result of British medical research in an article entitled "Unborn babies feel pain". It reads -

New research published in the *Lancet* British medical journal yesterday suggests that a semi-developed foetus may be able to feel pain. The researchers found that unborn babies released stress hormones when doctors pierced their tissue for blood transfusions.

The report questions the view that a foetus cannot experience pain until well into the pregnancy. It suggests that distress might be relieved if painkillers were given before a transfusion.

A team from Queen Charlotte's Hospital and Chelsea Hospital in London measured stress hormone levels in babies at between 20 and 34 weeks of gestation when doctors took blood samples from the umbilical cord and the foetal abdomen.

When the needle was inserted through the abdomen and left for 10 minutes or more, as in a blood transfusion, the babies released stress hormones associated with the sensation of pain. The longer the needle stayed in the abdomen, a greater concentration of hormones was produced.

When blood was taken from the site in the umbilical cord which is nerve-free, no such stress response was recorded.

You will need to forgive me, Mr Deputy President (Hon J.A. Cowdell), because I do not find this a cool and measured subject. It continues -

The data suggested that the foetus mounted a hormonal stress response to invasive procedures, Professor Nicholas Fisk and a team of researchers wrote in the journal.

It raised the possibility that the human foetus felt pain and could benefit from anaesthesia or analgesia for invasive procedures.

Dr C. C. Fisher, director of obstetrics at the Royal Hospital for Women at Paddington, said the finding was not surprising. "If they are born at that time they feel pain, so why would they not feel pain inside the womb?"

Professor Brian Trudinger, a Sydney University professor of obstetrics and gynaecology based at Westmead Hospital, also said there was an intuitive belief among his colleagues that foetuses of the ages mentioned felt pain, but the opportunity to study this had only emerged in the past five years.

The merest understanding of physiology would suggest that any being who has a central nervous system will feel pain. At a very early stage in the gestation period of a human being essential systems are developed. The pain referred to involved a blood transfusion. How much more pain must be inflicted on the unborn child by the great violence of an abortion procedure? The reception of the research to which I have just referred led to calls from people for the application of an anaesthetic to a foetus prior to abortion. I do not know if this call has been heeded by those who practise abortion. Any sense of humanity demands that this application of an anaesthetic to the victim of abortion be done. However, heeding the call for the application of an anaesthetic to the victim of abortion would mean that the doctor must confront the fact that the foetus is a living human being - an unborn child. Because I imagine that that confrontation would be very difficult, I fear the very worst. I fear that the children will continue to die in the most agonising pain.

The clearest description I have read of the pain suffered by a child subjected to abortion was contained in a letter from Helen Ng that was published in *The West Australian* on 16 February 1998. The letter is entitled "The Silent Scream". It reads -

How many people realise who the real victims are in backyard abortions - the victims of all abortions?

We are dealing with babies that have hearts that are able to beat three weeks after conception.

They have eyes, fingers and toes by five weeks. Even to the atheist, is that not human enough?

There is a video called *The Silent Scream* which shows on ultrasound a 10-week-old baby girl being aborted. It is the real thing. The abortionist, Dr Bernard Nathanson, produced the ultrasound out of curiosity.

The baby was moving around sucking her thumb with a normal heart rate of 120. Then the instrument got the baby by the spine, then a leg and so on with the baby thrashing about in pain.

The heart rate went higher than 200 and you could see it beating. The video gets its title *The Silent Scream* because the baby is observed during this stage to actually throw its head back and open its mouth.

The killing process is ended when forceps appear and are used to crush and remove the head because it doesn't fit through the suction tubing. It took about 12-15 minutes to kill the baby.

When Dr Nathanson saw the film he walked out of the clinic never to do another abortion.

When I was small I used to turn to my mother for love and security. It is overwhelmingly sad to know that so many babies are being killed, on their own, with the consent of their very own mothers.

It is very clear that if the question is the humanity or otherwise of an unborn child, Dr Nathanson came away from his horrific viewing of that video of his actions with the clear knowledge that a foetus is nothing other than an unborn child.

The third chilling report which undeniably illustrates that a foetus is an unborn child was published in *The West Australian* on 10 January this year. The title of this article was "Outrage as baby survives abortion". It states -

A late abortion which went disastrously wrong has reignited a passionate debate in Germany, with doctors calling for a ban on abortions of foetuses more than 20 weeks old.

The abortion law currently allows abortion on medical grounds at any point during the pregnancy but the case of a baby which survived an abortion at 25 weeks has horrified the country.

This week, a German MP brought charges against the doctors who failed to abort the baby and allegedly left it for 10 hours after birth wrapped in a blanket "under observation" but without giving it any help.

The doctors then decided in consultation with the parents that they would give it medical assistance.

Those doctors literally decided the arbitrary point at which that foetus was a child and at which it was time to offer that child the assistance that any human being would naturally offer. It continues -

The baby, who weighed 680gm and was 30.5cm long, is still alive in hospital in Oldenberg but was severely damaged at birth and has had several operations.

The MP, Hubert Huppe, a member of Chancellor Kohl's Christian Democratic Union, believes the doctors failed in their duty to care for the child after it was born alive.

He wants to establish whether it was permissible to abort the baby because it was thought to have Down's syndrome, and whether it really has this condition.

I suggest that anyone who believes it is appropriate to abort a Down syndrome child meet a Down child. I have enjoyed that experience and getting to know them. They are universally happy and positive individuals, with a worthwhile life to lead. It is not our place to judge the quality of their life or their right to life. It is our place to do all we can to foster them and give them the opportunity to have the most fulfilling life possible. That formula applies to every child and human being.

This Bill will make abortion available at any time in the course of a pregnancy. The circumstance which arose in Germany would have every prospect of arising in Western Australia if this Bill were carried into law. That article raises grave questions about this Bill. Under this Bill, what would be the status of a child who presented live after an abortion procedure? Is the abortionists' answer to this eventuality to ensure that the abortion procedure is sufficiently violent to preclude the possibility of a child who presented live? Is the abortionists' answer to this eventuality to make sure that the child is dead in the womb prior to the abortionists' operation? These are important questions, because the effect of carrying this Bill into law will be to allow abortion into the ninth month of pregnancy, because it will remove any prohibition on abortion at any stage of pregnancy.

We need to think about these questions. How can we consider the thought that abortionists will need to apply enough violence to make sure that the child is dead in the womb before they deliver it and not know, as I know, that an unborn child is nevertheless a child?

An unborn child is a member of our community. The State of Western Australia has a clear responsibility to protect each life within our community. Surely this responsibility must extend to the most defenceless in our community. It must extend to the defence of the unborn. Of course, in a number of circumstances a mother's decision to continue with a pregnancy requires great courage. It is very important in such circumstances that that mother receive every possible support from the child's father, who shares a responsibility for the conception of the child, and from family, friends and others. I am pleased to echo the sentiments of Hon Muriel Patterson about the State's responsibility to provide practical support for any mother who needs help to confront the challenge of continuing with a pregnancy in circumstances that make that pregnancy difficult for her.

In reflecting on the arguments presented in support of the legal availability of abortion, as weighty as some of these arguments may be, particularly in distressing circumstances for the mother, the fact that the unborn child is a child means that these arguments can never override the responsibility of this Parliament to protect the life of that unborn child.

In closing, I will share with the House a number of thoughts which arose from the pro-life rally that was conducted yesterday at the front entrance of this Parliament. I was impressed by the number of excellent contributions made by young women at that rally. One woman explained the emotional trauma with which she had lived since procuring an abortion 10 years ago, a decision that she had made under intense pressure from her then fiancé. It cannot be assumed that the availability of abortion will ensure that all women have a free choice. In many instances, women face emotional pressure, or pressure from partners, parents and other people, to have an abortion, a decision which they then have a lifetime to contemplate, and in many cases to deeply, in the core of their heart, regret.

The incidence of abortion in our society, along with the increased incidence of suicide, reflects a serious malaise in our society. In many situations, men are responsible for abortions and women are the innocent victims, such as the former fiancé of the woman who spoke yesterday, who pressured her into having an abortion, or such as a woman in the sad situation of being financially dependent on her husband and having to face the terrible dilemma that her husband's financial support for her other children is such that she must have an abortion. Abortion on demand, as proposed in this Bill, will open up even wider the possibility of a male achieving two victims: The death of the unborn child, and the woman who is forced, or who faces enormous pressure, to have an abortion against her will.

During the rally yesterday, Sarah Oh explained with great courage her love for the unborn child that she is carrying which suffers from a grave syndrome that will sadly shorten its life after birth. She and her husband are committed to love and support their child from conception through to the time when it will die from that syndrome.

Another speaker at the rally yesterday drew a strong analogy between slavery and abortion. Legal slavery and abortion both entail a law which withdraws the human rights from a proportion of humanity. Abortion withdraws the right of the unborn child to life; slavery makes a human being chattel to another and there are many sad instances during the centuries when slavery was legal where demonstrably slaves had no status and they could be killed at the will of their masters. Reference was made at the rally to the great work of William Wilberforce in the British Parliament to achieve the abolition of slavery in that nation and set an example to many others. There is hope in this analogy for the future life security of unborn children.

At this rally I saw a photograph of a child's face whose life was extinguished by abortion. This face will haunt me forever. More articulately than any number of words, that child's face expressed the great sadness that is abortion. It is not possible to express in words the quality of that child's face. The child's expression was that of tired anguish. His hair was wet, matted and clinging to his brow. The most obvious expression on that child's face was exhaustion; exhaustion from an uneven struggle that I hope and pray was mercifully short. I implore the members of this House to vote against this Bill.

HON B.M. SCOTT (South Metropolitan) [10.01 pm]: I would like to introduce my comments this evening by pointing out firstly that I do not consider the fact that I am a woman gives me any more right to have an opinion on this matter than anyone else. I find the concept of any one group considering it owns the particular issue totally alien to our way of life. In a democracy everyone has the right to be heard. I stand in this Parliament supporting the view that I be considered as someone who stands for the rights of women and the rights of children on many occasions, and with that view I respect the right of Hon Cheryl Davenport to put her views to the Parliament and have great respect for her as a person. However, this is not a political issue; this is not a women's issue; this is not a legal issue nor a moral issue; this is a question of human rights.

Human rights are given to people by their Governments and their Governments cannot take them away. However, many Governments do violate human rights, just as we in this country have violated the rights of Aborigines in the past. We are now considering violating the rights of the unborn child. Today we are debating a Bill that would enshrine those violations even more. Australia and other nations in the world have signed agreements that enshrine human rights. I refer now to the Universal Declaration of Human Rights and the Convention of the Rights of a Child. Article 3 of the International Bill of Human Rights states very clearly -

Everyone has the right to life, liberty and the security of person.

Article 5 states -

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6 states -

Everyone has the right to recognition everywhere as a person before the law.

Article 7 states -

All are equal before the law and entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

It would be no surprise to members in this House that I am standing to defend the rights of children. My maiden speech included a commitment to work for and improve the lot of children in Western Australia and tonight I feel that my stand on this abortion issue is in line with the stand I have previously taken in this Parliament. I will quote from the Convention of the Rights of a Child, of which Australia is a signatory. Article 6 states -

1. Parties recognise that every child has the inherent right to life.
2. Parties shall ensure to the maximum extent possible the survival of the development of the child.

Article 18 states -

1. Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

Therefore we have enshrined in both of those treaties the rights of the child to life. They clearly enshrine the responsibility on government in a civilised society to protect our children. I have said in this Parliament before and I repeat it tonight that any community that does not protect its children cannot claim to be a civilised community. I have supported the establishment in this State of an office for children. I have received acknowledgement and support for that from both sides of the House for the very reason that most people agree that children have rights and they need to be protected and we, as a community, should be in a pro-active way looking at how our community deals with our children. The debate that has gone before would raise in some people's minds the issue of what are we talking about when we say children.

In relation to this abortion debate, I believe that life begins at conception; that it is life, it is a baby, and that baby needs to be protected. Most members received an educational pack that is used in schools to teach young children about where they come from. Those packs show that from very early in a pregnancy we are talking about children. I share the belief that has been expressed by a number of people in this Chamber that life begins at conception. I share also the belief that the sanctity of life ought to be a priority in a civilised society.

Like most members in this Chamber, I have been heavily lobbied and have received hundreds of letters and dozens of phone calls on this topic. I thank the people who have taken the time and effort to express their views on this issue, whatever they may be. I support their right to be heard.

I stand in this Parliament to speak for those people in the community who do not have a voice, and will never be in this Parliament; namely, unborn children. I now read one of the letters I received from a person who for many years was the head radiologist at the leading teaching hospital in Western Australia. He is now in private practice. This letter sums up my views about the inherent deep sanctity of the life from conception, and the right of protection that our children should have. This letter from Dr John Glancy reads -

In every conflict and in every state of deprivation the welfare of the children seems to be paramount; we have UNICEF and the United Nations Declaration on the Rights of the Child as just two examples of the concern for children in a civilised world. Those of us who can remember are still appalled at Hitler's attempt to breed a super race and at his elimination of "unfit" children. More recently, it happened in communist Rumania. It can happen anywhere in the world and no doubt happens incrementally.

At this time any newborn child in this country is, rightly, the object of every assistance that it needs, even if it is likely to be significantly handicapped or from a deprived family. Nor does it matter whether or not the family wants it or can afford it. Why should a baby be treated differently after it is born than it is treated just a few weeks earlier? Viability can't be the issue. A foetus is now considered viable at just 26 weeks - the end of the second trimester - yet abortions are done in the second trimester - just a few weeks before the baby can be supported outside the womb. The stage of development cannot be the issue. By 12 weeks - and most abortions are performed about this time - all the baby's organs are formed. They are not fully developed but nor are they at 12 months or 12 years after birth. At 12 weeks even little fingers are formed.

If the killing of such an individual is to be sanctioned now why not sanction infanticide? A malformed newborn is surely as legitimate a target as a normal unborn. If the world is to remain a civilised place we can't kill our children, born or unborn. If the parliament does approve of abortion will this be the whole journey or the first step of a longer journey and be followed by similar treatment of the infirm, mentally ill or those who might be thought to have lived too long? Will we follow China into forced abortion?

If the matter comes before parliament please vote for civilisation and not for the disposal of the innocents.

I know the man personally who wrote that letter. He pioneered the latest of the best technology now utilised in ultrasound technology in the radiology field.

This leads to the basic question we face tonight on the abortion issue, and many members have spoken about it before: Is this human life? Some people believe it is. This question is the very essence of the debate. If it is human life, should we give equal protection under the law to every individual in this nation from the beginning of life to each individual's natural death?

Never in modern times, except by a small group of physicians in Hitler's Germany and with Stalin in Russia, has the price tag of economic or social usefulness been placed on individual human life as the price of its continued existence. Never in modern times, except by physicians in Hitler's Germany, has a certain physical perfection been required as a condition for the continuation of that life.

Much of the debate on this Bill has referred to the intrinsic nature of whether we are talking about a human life. Also much debate has ensued about choice for women. The pro-choice people, such as Hon Helen Hodgson, have raised the issue of the empowerment of women through the right of women to control their fertility. I support choice for women. Women do have a choice in forms of contraception. However, I do not believe that women control their fertility, otherwise all those people unable to have children would be able to have the babies they desperately want. We do not control our fertility, although we have some control over conception and contraception.

I take exception to the suggestion by Hon John Halden that numerous undefined debates will ensue about whether conception takes place if a contraceptive pill intervenes in fertilisation. Conception is the beginning of life, and we prevent that by contraception with the pill and other methods. I found to be rather futile his argument that an enormous amount of work for lawyers and lengthy legal debate would take place about whether conception takes place in that circumstance.

I find irrelevant the concept that Hon Jim Scott raised that abortion could be used for population control. It was a red herring as it is a separate issue. People having abortions are certainly not thinking about world population as they have more serious things on their mind.

Hon Ljiljanna Ravlich: It might be in China, though.

Hon B.M. SCOTT: Women are forced to have abortions in China, which takes away the choice of women.

Hon Ljiljanna Ravlich: They do not have a choice here.

Hon B.M. SCOTT: They have a choice here because women can choose contraception. I now deliberate a little further on the ability of women to have choice. We have powers over the reproductive parts of our bodies and the cycles. Choice is available and artificial forms of contraception are available. Mechanisms can be put into a woman's body to prevent conception.

Hon Cheryl Davenport: What if they fail?

The PRESIDENT: Order! We will not have any interjections.

Hon B.M. SCOTT: Women's choice is taken away in certain cases; namely, rape, inside or outside marriage; incest; and a genuine break down of responsible prevention of conception. These matters should be considered seriously in this abortion debate.

I question whether the women in the ethnic communities in Sydney and Melbourne who are forced to abort their female babies, have a choice. Someone else is forcing them to make a decision to ensure that male babies are the first born. I find this unacceptable and it removes choice for these women.

On the topic of choice for women, I talked, in particular, about their contraceptive choice or their choice not to have intercourse when they are fertile; the fact that they do not have control over their fertility; and where someone else interferes with their right to choose. Many years ago I was taught a theological argument: If we wish to question the existence of God, we ask who is the prime mover. Nowhere more relevant is the conception of the child epitomised than in the existence of God. When my colleagues spoke about the rights of women to choose, often those words are coming from women who are empowered.

I turn now to the House of Lords inquiry headed by Lord Rawlinson and the report presented in 1994. It states -

The philosophy of choice is, however, flawed where all the options are weighted in favour of abortion. Women who now regret a previous abortion might have taken another option if alternatives, and the necessary support to take one of those alternatives, had been offered. The Commission received evidence from many of the witnesses and from the case histories of individual women indicating that far from being a choice of several alternatives, the decision to have an abortion often appeared to be the only "choice" available to them. Such a decision does not represent a free choice.

In the commission's survey, the most common reason listed for abortion by nearly half of the women was either

partner pressure or unstable relationships with the partner. Since abortion was legalised in the United Kingdom nearly two million women have been forced to have abortions that they did not want to have. Is that what we want in Western Australia? This Bill takes the position of women in society back thousands of years when the tribal elders, who were all men, would force a mother to abandon her child for the good of the tribe. Not since then have men been able to force women to kill their children until today - that will be so if this Bill is passed.

The most misleading aspect of this Bill is that we legitimise men's dominance over women. I reiterate that so Hon Cheryl Davenport can appreciate my point. Her arguments have been based, in the main, on the fact that this is about a woman's choice and decision. Let us look at the result of those two million forced abortions. At the beginning of March 1976 - this is referred to in the report by Rawlinson - a symposium was held in Westminster Hospital on investigations into 1 000 attempted suicides which had occurred in the hospital attachment area during 12 months, mainly among young people. Researchers reported that the only common factor they found was that nine times as many women who attempted suicide had had abortions as had the general population. The survey found that not one woman who attempted suicide was pregnant. The representative from the Royal College of Psychiatrists said that it would not be routine or even likely that someone being treated for attempted suicide would be asked about any history of previous abortion. Furthermore, no further investigations into this link had been instigated by the psychiatric profession.

One of the reasons I cannot support this Bill is that I believe that women should have a choice in almost everything. I support choice for women, but choice must be given with the ability to make it in total freedom. No person can make a proper decision until he or she has all the information. When we talk about informed consent, surely we must be talking about women, in this instance, having all the information available before consent is given. In life generally, it is very easy to make a quick decision and later decide that things would be different if we had done this or that, or perhaps another view had been presented. An informed consent can be given only when full information is available. If amendments could be made in this House that would not cause appropriation, I would consider agreeing with that and putting amendments to make sure there were provisions so that women could make an informed decision. Perhaps those provisions would involve ensuring that women go to two doctors, perhaps their general practitioner and an obstetrician or psychiatrist, so that all the procedures could be explained adequately and in detail and then, after proper counselling, a decision could be made. An informed decision cannot be made without proper information.

It is very important to reiterate that when we speak about human rights we acknowledge that all people in this community, including women, have the right to make a choice - but they do not have the right to choose life over death of another person. One of the letters of the many I received talked about the fact that we do not own another person. We do not own our children, our husbands or our partners. Nobody owns me. I am not the possession or chattel of anybody. I do not think any woman would want to be, so why should any man or child? What is in a woman's body is another human being and that woman does not own that person. Therefore, I do not support the fact that the choice to kill that other person belongs to a woman.

Before Hon Derrick Tomlinson was called away on urgent parliamentary business, he talked about the rights of the unborn. There was much legal debate prior to the preamble being put in place for the Convention of the Rights of a Child. Lawyers had to decide whether they would put in a clause about the legal rights of the unborn. We have had cases cited this evening, and I will leave it to my legal friends to go into detail of the case law in other countries, where the rights of unborn children have been established in law.

Hon Derrick Tomlinson stated very clearly and correctly that, in law, before they are born children have no rights. However, I suggest to him that most people in the community accept that their babies have some rights before they are born. I ask him to consider the much publicised thalidomide cases, where children took their parents to court because they had taken a pill that was commonly prescribed when I was bearing my children to prevent morning sickness. In another case in the United States a mother was on cocaine and the baby was born with serious conditions. There are many other cases in law in other countries. I have received letters from doctors asking me to clear up the grey areas in the law. I have sought legal advice and talked to legal friends. There is no grey area in the current law. It is very clear. There is a discrepancy between the law and practice. However, woe betide anyone who takes the risk of practising something illegal under the current law.

One of my concerns about this Bill is that it contains no mechanisms for counselling women or providing any information to enable them to make informed consent. Although the Bill proposes to place abortion under the Health Act - I do not disagree with that - in this House we are unable to move amendments which would build in some protection for women and children if it involves appropriation.

I reiterate that I talk about the protection of women and children. We need to protect women in that vulnerable situation when they face probably the most difficult decision of their lives. We must make sure they have all the information so that they understand the procedure. If I were to have a gall bladder removal the doctors would be

obliged to make very clear the medical procedures involved to cover themselves. If this repeal Bill is passed tonight there will be no guarantee that qualified medical practitioners will carry out terminations. There will be no guarantee that women can be properly counselled or advised of other procedures or their effects both physically and psychologically. There must proper be counselling.

I have not come into this debate without speaking to a range of people in the community. I have spoken to the people involved at abortion clinics. I am told that counselling is available, but it is not mandatory. The only reason counselling is available now is that the law is clear and doctors want to cover themselves. However, it is not independent counselling. The sentiment of having ombudsmen in this country and an office for children is to ensure that somebody outside the group delivering the service gives advice. If a counselling service is attached to the person doing the termination there is no guarantee that it is independent advice. Hon Ljiljanna Ravlich said that no counselling was available. People connected with the abortion clinics told me it was. I will support the amendments to the Foss Bill if and when it reaches this House. I cannot endorse or support this Bill because we are here to defend basic human rights.

In this community in Western Australia, I believe that there are a few opinions on the far left and a few on the far right. In all the hundreds of letters and telephone calls I have received and from the people to whom I put the question - not the same question put to them in the polls - the responses were: Repeal the Bill to allow abortion in some circumstances. I asked if they believed that anyone who wanted an abortion should have one. They said no. The letters prove that. The numbers are contrary to the evidence in the poll. The people who fit into the silent majority in this State are, in the main, compassionate if the life of the woman or the child is in danger or other grave concerns are involved. Many people agree with abortion in some instances. However, the majority to whom I have spoken and the letters to me say that they do not want abortion on demand. The overwhelming number of letters were against abortion.

I cannot support this Bill because it does not set in place provisions to allow women to make a real choice. It does not protect women and it does not protect the unborn child.

I make a plea this evening to the Government of Western Australia to set up a major inquiry irrespective of the way either Bill goes. It is the responsibility of this Government to do what the English Government did in the House of Lords. It should establish an inquiry to investigate all aspects of abortion.

Hon E.R.J. Dermer: Hear, hear!

Hon Tom Stephens: Hear, hear!

Hon B.M. SCOTT: I agree with Lord Rawlinson that abortion is an important issue that generates much debate and discussion and touches the lives either directly or indirectly of many thousands of people. He also said that there was an urgent need for further comprehensive, balanced, long term research to be carried out into the effects of abortion on those directly involved; that is, women.

This Bill protects neither women nor unborn children. It is not in the common good. As legislators we are in this Parliament to deliver to the people of Western Australia good laws that make a civilised community a good community.

And finally, a note from the philosophical tradition: Christian (Thomas Aquinas) and non-Christian (Aristotle) tradition alike affirms that the principal object of law is for the common good of the State.

Mr President, I oppose the Bill.

HON NORM KELLY (East Metropolitan) [10.37 pm]: I support this Bill. My position on the issue of legal, free access to abortion was the opposite 15 years ago. However, as my life experiences have accumulated I have increasingly seen the absurdity of maintaining procurement of abortion as a criminal offence. A law that cannot be legitimately enforced is a bad law. Sections 199, 200 and 201 of the Criminal Code are bad laws.

The long stated policy of the Australian Democrats party states that although abortion should not be used as a primary means of contraception it must be freely available and a legal procedure. It expresses support for the repealing of all state abortion laws and making abortion subject to the same standards and safeguards as any other medical procedure. This is further supported by increasing funding for sex education programs in our schools, increasing funding for services and providing information about contraception and increasing funding for research into contraception.

Although I am not compelled to vote according to my Party policy on this issue, as I have stated, my views are in line with those of my party.

The third strand of my position is to represent the views of my constituents. To ascertain their views I conducted a survey throughout the East Metropolitan Region on whether current abortion laws should be maintained or changed. The preamble to the question was that the current debate on abortion would most likely result in a Bill being introduced to Parliament to change the law. The question is: Do you support changes to the law which would make abortion freely and legally available? It is broken down into three circumstances - in all circumstances; in special circumstances; or "I do not support any change at all". The results of this survey show that only 19 per cent of those surveyed support the retention of the current law; 81 per cent either totally supported this Bill or supported conditional change. I also support conditional change of our current laws. I will also argue later that those conditions should not be contained in amending legislation but in the existing medical framework in this State. That medical framework is inherent in the Medical Act and the Health Act.

These survey results closely correspond with most public opinion polls conducted in recent years. Part of the consultation process also involved having discussions with female friends and acquaintances of mine, who related their experiences, which have been many and varied. As a man debating this issue I place very high importance on their opinions and thank them for being so frank and open. Some previous speakers have mentioned it is important that men take to heart women's opinions because they open us up to a physiological world we can only begin to understand.

In representing the views of my electorate, the policy of my party and my strong personal beliefs, I stand united in my support for this Bill. I take exception to the comments made last night by Hon Tom Stephens, who said he found it galling for this Parliament to be dealing with issues such as voluntary euthanasia and abortion. We would be negligent in our duty if we did not confront such issues, which are ever present in our society. As members of Parliament we must show leadership. That is why we have been elected to this place and it is what our constituents expect and demand of us.

I would like to give a short historic perspective on this issue because it is important to understand where our laws emanate from. Until the eighteenth century the treatment of women's health in western culture and most eastern cultures was the domain of midwives and female practitioners of traditional medicine. Women were the healers in what was an otherwise patriarchal society. This healing and medical knowledge was passed by word of mouth on a generational basis. However, in the eighteenth century a significant shift occurred from this traditional or religious knowledge and belief to a domination of scientific rationale. This also meant that knowledge shifted from women to men because men had the economic, educational and political power from which the medical power emerged to disfranchise women from any decision making process. Men constructed medical theories to explain the cyclical nature of women's health and at the same time, on the economic front, medicine was being commodified to fit the shift to capitalism. To ensure that traditional women healers did not continue their work, their practices were outlawed by the political power of men.

I make these comments to highlight the origins of our current laws, which are based on the medicalisation and commodification of the female body. These laws were made by men to exercise control over women, and they are the same laws with which we are confronted today. They are laws based on the nineteenth century concept that the main purpose of women is to bear children. Fortunately, the Bill before us recognises that abortion has no place in the Criminal Code. Pregnancy termination is a health issue, not a criminal offence. This Bill seeks to restore abortion as an issue between a woman and her healer doctor. Alternative legislation which has been put forward in the other place and in other States, which places conditional circumstances on when an abortion would be available, still leaves the decision making process beyond the power of the woman involved. The decision whether to abort essentially belongs to the woman and history shows she will make that decision irrespective of the law.

As a compassionate and caring society, we should support women in their decisions and provide free and easy access to all relevant information and counselling services. An environment of open, informed choice can be achieved only by removing abortion from the Criminal Code. The alternative, as suggested in other places, where abortion can be had only by proving the risk of injury to the woman's mental or physical health, means the onus is switched to one of fooling the doctor or undergoing further duress in finding a sympathetic doctor. In this type of environment, where the onus is on committing an illegal act, it is impossible to have the welfare of the woman and the potential child uppermost in the decision making process.

Statistics from South Australia, where such limitations are required, show that 97 per cent of abortions are conducted on the basis of the woman's current psychiatric disorder. This is a ridiculous and highly suspect figure and suggests the legislation is being conveniently side-stepped. The introduction of such conditions in this State would undoubtedly meet with similar evasive measures. Once again a woman's primary concern would be about evading the law rather than making an informed decision in a supportive environment. History shows that when abortion is removed as a crime there is no increase in the number of abortions performed. One wonders how many women may decide to continue with pregnancy when supportive, informed and non-judgmental counselling is available.

The situation in Western Australia - until 10 February this year - has been a tenuous dependence on legal case history from the eastern States. This has given a false sense of security to practitioners in this State and the recent experience has shown how false and impractical these laws are.

I mentioned earlier the need for some conditional restraints on the practice of abortion. However, such restraints should not be imposed by legislation decided by members of Parliament who, in the main, are largely ignorant of the complexities of pregnancy and neonatal care. I realise it has been suggested the Health Act should be amended to place such restrictions on the practice of terminating pregnancies. The suggestions include imposing waiting periods and I have heard that a seven day waiting period may be suitable. I am surprised the proponents do not suggest a three month waiting period or longer!

Another option is to consult a range of medical practitioners before an abortion is allowed. These restrictions are all meant to interfere with the process of allowing a woman to make a free personal choice - without duress, which is not possible in these situations. A woman should not need to work the system, negotiating hurdles or tests to be able to express her free choice. We must listen to the experts in the fields of public health and women's health. Regulations are best decided by those people and organisations such as the Royal Australian College of Obstetricians and Gynaecologists.

Once the three offending sections are removed from the Criminal Code those organisations will have the power to develop principles and guidelines for the practice of terminating pregnancies. Whether it is best to require consultation with a number of doctors, as suggested by Hon Barbara Scott, guidelines can be determined by the experts. Guidelines for registering terminations, codes of best practice, and so on, must be highly commended. Unfortunately it is impossible to develop guidelines while abortion remains an illegal practice. Only when the practice becomes legal will we be able to ensure that the safest, most supportive and practical application of procedures are adhered to.

I appreciate and respect the personal beliefs that some members have expressed in opposition to this Bill. I appreciate the conflicting views expressed regarding when life begins. It is a question that we will never resolve in this place. However, we must also respect the opposing personal beliefs of others. In this current environment of conflict, the tenets of compassion and tolerance take on increasing importance and should be uppermost in our minds.

The central issue of this debate is not whether we are pro-abortion or anti-abortion; it is whether we are pro-choice or anti-choice. Unfortunately this issue is surrounded by emotive hype designed to distract some of us from the realities of the issue. That hype includes reference to terminations that occur beyond 20 weeks' gestation, as if this is a regular and common occurrence. In fact, in Western Australia less than 0.2 per cent of all abortions are carried out beyond the 20 week stage.

I would like to quote from a letter that I received today from the department of public health at the University of Western Australia. The letter emanates from a discussion about when terminations occur, and reads -

In 1997 there were 15 terminations in WA carried out after 20 weeks' gestation -

From a total of approximately 9 000 terminations. It continues -

... almost all at 20 or 21 weeks. All of these were carried out at King Edward Memorial Hospital and all for major congenital abnormalities. With rare exceptions, these abnormalities are incompatible with life, so the mother is not forced to carry the foetus to term knowing that it will die at birth. There was only one termination later than 24 weeks, and that was done at 26 weeks for multiple major congenital malformations incompatible with life. Termination is carried out by inducing labour. The so-called 'partial birth extraction' for late terminations is not carried out in WA.

In those instances, we are not talking about saving lives.

I listened to some very emotive hype last night when Hon Eric Charlton, by way of interjection, brought out the old hoary chestnut that in some cases women have children just to draw on welfare benefits. What a load of hypocritical rubbish that was! Social stigma through negative stereotyping, such as those remarks, are reflective of the attitudes that are common in our society. Parenting has been devalued and is classified as non-productive labour. Economic values continue to outweigh social values. Until we begin to address issues such as these, women will continue to seek pregnancy terminations.

The people who oppose this Bill would have us believe that they would encourage and support women to carry full term with a pregnancy, but how will society do that? It will not be done with financial support, because those close-minded people will call those people bludgers.

I read with interest an article on the front page of *The West Australian* yesterday, 17 March. According to the story,

Dr Sarah Oh is due to give birth to a child who will be severely disabled and will live only a few months. The story reads -

Dr Oh said the pain of carrying a child who would die was bearable and probably easier than the pain many women who had aborted a child felt.

I disagree with that assumption about the level of pain people may or may not feel. However, I admire people like Dr Oh and her husband who have made their decision in extremely difficult and complex circumstances. Dr Oh is exercising her choice but unfortunately she does not empower other women to have that same power to choose, based on their personal circumstances. I am sure that many other women would seriously consider a similar option to that chosen by Dr Oh, if only they were faced with the same economic and supportive circumstances. The story highlights the unfortunate contradiction that exists in our society. While we outlaw the practice of abortion, we do not provide a sufficient support structure for women - not economically, socially or spiritually. Viable alternative choices to pregnancy termination are not readily available to the majority of women in our society.

Irrespective of whether or not this Bill is successful, history indicates that about the same number of abortions will continue to be performed in this State. Therefore, I urge my colleagues to face squarely the reality of our society, to be compassionate and wise legislators and to vote for abortion to become a health issue.

HON J.A. COWDELL (South West) [10.57 pm]: I support the Davenport Bill. This is indeed the time for me to place my views on the record and, in so doing, to answer all the correspondence I have received in recent weeks. I am not willing to embark on a course of charging 9 000 Western Australian women each year with murder. Nor am I willing to try 9 000 women on the charge of murder in Western Australia. Nor am I willing to contemplate the imprisonment of up to 9 000 Western Australian women, by the enforcement of current sections of the Criminal Code.

Many of the issues in this debate have been thoroughly canvassed. Perhaps some have been over canvassed. I shall not impose unduly upon the time of the Chamber this evening. However, I wish to refer to some good intentions and some bad consequences. Firstly, to the good intentions: I cannot deny the noble goals and sentiments expressed by many who support the right to life. I have considered the opinions put forward by members in this Chamber - some very well thought out and very well argued. I have read most of the correspondence that I have received in recent weeks. Some of that correspondence, such as the letter from the Millers in Geraldton, should be placed on the record. One paragraph of that letter reads -

Could we just once, go against world trends and show ourselves to be a caring society? Why are our politicians promoting secularism, hard heartedness and a society devoid of real love. Mother Teresa of Calcutta achieved because she valued more than anything else God's gift of life. And look how blessed she was, her order growing in numbers and reaching into every continent. If Australia became a safe haven for the unborn innocent lives of little children, God would bless this country abundantly too. . . .

I sincerely hope that you will aspire to building a society where children are safe and valued even from their smallest beginnings.

A range of sentiments are expressed in these letters which concur with the sentiment from one other letter -

I will however pray to God, whoever you conceive that to be, for you that you may show "The wisdom of Solomon".

I would consider that you would be "gutless" if you abstain from voting. I would consider you "unworthy" if you voted as to represent any single group of your personal persuasion.

Various letters refer to our obligations as legislators, of government's role to protect every citizen and to secure human rights. There are commendations of the biblical tenet "Thou shalt not kill" and other principles that are noble and cannot be objected to.

I read very carefully the pronouncement of the Anglican Bishops of Western Australia in their statement of 15 March and the pastoral letter that Archbishop Hickey put out for 21 March. There were various other views put from right to life pressure groups that contained a range of half truths to say the least. I will not go into these in great detail but they were of the order of the press release of Women Hurt By Abortion under the heading "Coalition Government proposes forced abortions" which states -

The Attorney General Peter Foss is proposing forced abortions and the dramatic lowering the standard of informed consent as enshrined in common law which is required to be given by a doctor before performing any surgical procedure.

It then goes on to denounce the Attorney and the coalition Government for bringing in forced abortion. There were a range of other communiques of this nature that were less than truthful in many respects. I consider that many who are committed to the right to life campaign have the best of intentions. However, I sound this warning and I recall in particular the eighteenth amendment to the United States' Constitution passed in 1920 and repealed in 1933. I note the best of intentions of the prohibitionists who achieved the success of that piece of legislation. I also note the catastrophic results of that experiment. I refer to one quote from Melvin Kofsky's book *A March of Liberty*, a constitutional history of the United States of this particular law. Page 602 reads -

Prohibition reflected the progressive faith that law could be used to transform public morality, and it failed miserably. Although law can certainly be an instrument of reform, as in the struggle for civil rights in the 1960s, it can only be successful if it coincides with prevailing public opinion. A number of people supported prohibition, and because many of them came from the articulate middle classes, they generated an impression of approval far greater than that which actually existed. As many, or perhaps more people either opposed prohibition from the start or came to oppose it within a short period of time. To them the law seemed perverse, and so they ignored it. It is hard to think of any law of this century that has been so ridiculed, so violated, so despised, and that has led to so much lawlessness.

I suggest that were we to allow the enforcement of the sections of the Criminal Code that the Davenport Bill seeks to repeal we would have a situation in a short time where the law seemed perverse and was ignored, ridiculed, violated and despised and led to much lawlessness.

The parallel is clear that there are bad consequences to flow from the enforcement which seems to be happening in Western Australia with recent judgments based on these sections of the Criminal Code. It means a practical ending of termination services. We have all seen the newspaper reports. Each of us as members of Parliament has received, for example, advice from the Australian Association of Health Promotion Professionals. I quote from Dr Ray James' letter of earlier this month in which he informs members of the WA Parliament that failure to decriminalise abortion will leave members of the medical, nursing and allied professions without indemnity and preclude the continuation of all abortion services in Western Australia. He states -

However, regardless of this division of views or the legal position that prevails, the fact remains that thousands of women in this State will obtain an abortion each year by one means or another.

The association is of the view that unless abortion is decriminalised in the next six to eight weeks existing abortion services will be withdrawn, with serious public health and social consequences. A similar warning was sounded by Dr Brian Roberman, the Senior Specialist Obstetrician and Gynaecologist at King Edward Memorial Hospital for Women -

Along with so many others from whom you have no doubt heard I have been trying to have clarified from both the Hospital Board when we had one and from my Medical Indemnity Insurance Fund, whether they would cover me if a criminal charge was brought against me, ie. performing an abortion. This is currently on the statute books as a criminal offence. They both said they would cover me as long as I wasn't doing anything criminal so we kept going around in circles.

Despite the change of circumstances that is likely to overtake us, there will be a continuation of significant demand. The demand may not involve 9 000 women a year, but still it will be many thousands. We should consider the real cost of the demand continuing in the current legal circumstances. As Hazel Hawke has quite clearly stated, there will be class discrimination. The well-to-do will fly interstate or overseas. The Labor constituents in particular will not have the same access to facilities. There will be unsafe abortions. We have heard a range of stories related in this debate. Invariably there will be abortions that are illegal, if not unsafe, and that will lead to a considerable exchange of money, the involvement no doubt of a criminal element, the imprisonment of doctors and women, and the cost to the State in terms of the court and prison systems. The cost alone of keeping someone incarcerated in Western Australia is \$1 000 or more a week. This State has a sorely pressed prison system and a great demand from the public to address a whole range of crimes that are inadequately addressed at the moment by an overworked Police Service and prison system that cannot cope. Yet we are to impose this new set of instructions on the Police Service and new demands on the prison system.

In addition, there is the cost to many parents. I refer to the comments made by a number of doctors from the Centre for Women's Health at the King Edward Memorial Hospital, and quote from a letter received from them dated 11 March -

About a hundred pregnancies each year in WA are terminated because of serious fetal abnormality. The decision to do this is not undertaken lightly by the parents or their medical attendants and is done with the potential health and well-being of the child in mind. In our view, this should not be considered a criminal

offence. We urge you to repeal the current law, so that parents can make a choice based, not on their own physical or mental well-being, but on the potential health and well-being of their unborn child, without fear of prosecution.

The doctors identify the cost of not making the change contemplated by the Davenport Bill, the cost to a range of parents, and the cost to our health resources without an equivalent quality of life for some of these children who survive for any length of time. We face the farce in the current situation of the Western Australian Government proposing to decriminalise prostitution because of the involvement of criminal elements and the diversion of scarce police and prison resources while, at the same time, it is considering an effective criminalisation of abortion. What a complete conflict of policy.

I address the Chamber this evening in my capacity as a representative of my constituents. I note from the opinion polls the sentiments of the public in this regard. I have looked through the Morgan polls, indicating in February 1998 the attitude to change in the abortion laws Australia-wide. In that survey 47 per cent supported a proposed easing of the law, 38 per cent thought it should remain as it is, and only 10 per cent supported the option of making the laws harder. In Western Australia the figures are even more stark; 53 per cent favour liberalisation, 26 per cent favour the status quo and 9 per cent favour a toughening up of the legislation. My course is clear as a representative of my constituents. My course is also clear as a representative of the Labor movement. For the past 20 to 30 years the clearly stated policy platform of the Australian Labor Party Western Australian branch has been to repeal sections 199, 200 and 201 of the Criminal Code. This policy was reaffirmed only a few weeks ago by the State Executive of the ALP indicating overwhelmingly the support of the party and the Labor movement for the Davenport Bill. In my capacity as a representative of my constituents and a representative of the Labor movement in the South West Region, I discharge my obligations by supporting the Davenport legislation.

I conclude by saying very simply, as I started out saying, that I do not propose that the Parliament or the Government of Western Australia should embark on such a dangerous course as criminalising 9 000 women a year in our community and putting them at jeopardy of imprisonment. I believe we should not make the mistake that the United States made with the eighteenth amendment legislation, the Volstead Act. It sounded good at the time but the consequences were appalling. For that reason, I wholeheartedly support the Davenport Bill.

HON M.D. NIXON (Agricultural) [11.19 pm]: I oppose the Bill. It is interesting that in the time I have been a member of this House this is the first Bill on which members have had a free vote. Therefore, it is possibly surprising that, once again, the vote will be divided. The reason for the differing opinions is that people's beliefs determine the action they take. It is true to say that there are two groups in the House. One comprises those who are pro-life, and is a group that believes human life is important and is entitled to protection by society. That is a very valid view. On the other hand, I am prepared to accept the fact that a pro-choice group believes it is a woman's right to make a choice on these matters. Normally I believe in a free and responsible society, so the pro-choice argument has appeal to me. However, the issue is not as simple as that. While I would like to play Pontius Pilate and say that it is a decision I am not required to make, and that I will leave it to the woman to make the choice, I cannot go that far.

As a member of Parliament I believe two things are important. First, all of us should endeavour to act in a moral way. At the end of the day, we must all sleep at night. I do not doubt that most members, to a greater or lesser extent, endeavour at all times to achieve that. However, the problem is that we also have a responsibility as elected members to reflect the views of the community. Sometimes there could be a difference between what a member believes to be correct and what the majority of electors believe to be correct. In this case, as in most cases, it is very difficult to know what the electors believe.

I would like to associate myself closely with the remarks made by Hon Barbara Scott, Hon Ed Dermer and Hon Muriel Patterson because they have spelt out many of the issues.

If I look at the correspondence I have received there is absolutely no doubt that the pro-life group has run the best campaign. I do not know the percentage, but by far the great majority of approaches has been from that group - at least 10:1. If I were to measure that, I would say that the pro-life group has the numbers in the community. However, I spend a lot of time speaking to people and I have taken an interest in this issue for many years. It is not something I have recently confronted; I have spent a lot of time trying to work out where I stand on this very difficult issue.

I have many friends who are ladies and I can discuss this issue with them. Generally speaking, women tend to be more pro-choice than men. Interestingly, those young people to whom I have spoken tend to be less pro-choice than some of the more mature women. This probably reflects our current society - young people are perhaps now more conservative than they were 10 or 20 years ago. Society generally learns from its mistakes. Whether it is drug abuse, alcoholism or whatever when society goes down one road, and it becomes obvious that that leads to problems, there is then a swing of the pendulum and community attitudes swing back.

Given the views expressed by the small sample of people to whom I have spoken, the young people - those who still must confront a pregnancy, whether it be joyful or a problem - are pro-life. Perhaps it will be only when they are faced with the choice that they will really know what they believe. The more mature women might be speaking from experience. However, I have gained the view that many young women believe that abortion should be permitted in certain circumstances, but it is not purely a matter for women to choose.

It is important that the law be understood by those who must confront it in their normal daily life and live within it - in a law abiding society that is essential. It is also important for those who have a professional interest - whether they be doctors, lawyers and so on. The law should be clearly understood and in accord with moral values and the general view of the community. One hopes that in a democracy the great majority are moral - if they are not, society will destroy itself - so there should not be a conflict.

Hon Ed Dermer explained the issue clearly: It depends on what one believes. If one believes that life begins at conception - all the evidence I have viewed leads me to believe that that is the case - and that human life is of value, one would be very reluctant to accept abortion as a solution to social problems. Very few of the people who have contacted me seem to be of the view that abortion should be available at the whim of individuals. In other words, most people believe it should be available under special circumstances, and there is a range of views about those circumstances.

The passing of this amendment to the Criminal Code would put abortion on the same basis as removing a toenail or a wart. I am sure that the vast majority of citizens of this State believe it is far more important than that.

I believe it is essential that the law also be a guide to society. While people should live within it, it is also an expression of what the community believes is correct. I am concerned that this amendment will lead to abortion being considered a routine procedure available on all occasions. I am not prepared to accept that.

Another pro-choice argument is that if the unborn child is part of a woman's body, she should be able to control it. It is then logical to say that abortion is no more difficult to deal with than a haircut. Again, I believe that the evidence proves that the life within the woman is separate. One can use any means of measuring including a separate blood supply and a totally different genetic makeup. While the female provides half the genes, the life inside her is a separate human life and it should be protected.

The point has been raised on many occasions by members in this House that all human life is valuable and it is the responsibility of society to protect it. There is certainly no form of human life that requires more protection than the unborn child, because it is unable to protect itself. The problem is that, while an abortion may or may not be dangerous for the woman, in most women it produces psychological consequences and it should not be recommended as a form of birth control.

I take exception to some of the remarks made by Hon John Halden, in that there is a very clear difference between contraception and abortion.

I am nominally an Anglican, but I disagree with some of the writings of the leaders of the church. On this occasion the church sent me a document - presumably, it was sent to all members - which was one of the best pieces of information I received. It spelt out very clearly the situation as that church sees it, in that it supports responsible birth control. The church believes that is a responsible way for people to act so that children are raised in a loving and responsible environment. However, at the same time, it believes that there is a period between fertilisation and conception, which presumably is the stage when the embryo attaches itself to the womb, at which it would not object to abortion in the case of rape.

One can argue at all stages about where one draws the line, and there are many lines. It has been stated that a foetus does not become an individual until birth. The reason could be that the person does not have a name - although many mothers give their unborn child a pet name.

In most cases until actually meeting the new baby we are not quite sure of the appropriate name. On meeting this new born child we think of John, Bill, or whatever. To that extent I can understand why the law behaves in the way it does. There is certainly plenty of other evidence that the law considers the life of an unborn child to be human life. The Criminal Code is clearly worded in the way it is on the assumption that human life is valuable and should be disposed of only in very special circumstances. If we take the tightest interpretation of the law without going into the Davidson interpretations, it would appear that when this Bill was written the only case in which it was permissible to terminate a life was when it was a choice between the mother and the embryo or foetus, which was really no choice at all. If the mother died the embryo or foetus would also die, particularly at the early stages of pregnancy. I suppose it could be argued that at a later stage it could be possible to save the foetus, but not the mother, through a caesarian section. Generally speaking, the health of the mother is of vital importance to the health of the foetus. Mothers are not only vital; they are also people with a responsibility. I am amazed that it should be considered murder to kill a

baby a day after it is born but that abortion is moral under the right circumstances and it is perfectly permissible to abort the foetus until the time it is born. That logic sounds ridiculous. The only way we can change that logic is if we find some stage at which the foetus is in a different situation than that before birth. I have come to the conclusion that there is really no point where we can draw a line after conception, so I am prepared to run with that.

It is very unlikely that any debate this evening will change the minds of people. If ever there has been a subject where the members of this House have examined an issue thoroughly, it is this. They have not had to rely on party discipline, loyalty or whatever to support a particular angle. Each member of this House is acting in a manner which he or she finds comfortable with their conscience. If members' views of reality are faulty, no doubt their actions will be faulty also. I put myself in the same bracket. I have spelt out why I believe in the way I do. I believe that supporting this Bill will do nothing to help the sanctity of human life. It would not be in the best interests of the mother or the child. That does not mean that at a later date I would not be prepared to support a Bill which dealt with some of the problems in the community. There is a view in the community that maybe a law which has been in existence for a number of years no longer accurately reflects the view of society. With a different Bill I would certainly be prepared to consider those issues.

I take the view that most people believe that an abortion causes the loss of a human life and is therefore unacceptable except in very special circumstances. I am fully aware that many members on both sides of the argument have pointed out the need for counselling and better support services so that people are not tempted to have an abortion for economic reasons. If a person would like a child but because of economic circumstances is tempted to terminate a pregnancy, that is a great disaster for society. It is obviously not a simple matter, but in many areas the community has a responsibility to make life easier for those who are raising families. Apart from anything else, Australia is an ageing society. In the end we will have to correct that imbalance or there is no way in which we will have enough young Australians to support those of us - and I speak for myself - who are getting progressively older. Today we have a young group in the community dependent on their parents, a middle group who are the producers, and then an ageing group who, like the young group, depend on society for their support. At both ends of the spectrum society can do much to take the pressure off families. I oppose the Bill.

HON N.D. GRIFFITHS (East Metropolitan) [11.36 pm]: I also oppose the Bill. The Criminal Code Amendment (Abortion) Bill are the most repulsive words I have had to read during my almost five years in this Chamber. This debate is taking place because for 30 years our society has been subjected to myth and falsehood. It has been a one sided debate because some people in our community have failed to get up and speak the truth about this awful practice of abortion. This debate is the result of a society which has progressively gone backwards for the best part of three decades. That progression is evidenced by the fact that we have increased marriage breakdown, increased poverty and, worse than either of those, an increased incidence of unnecessary abortion.

I cannot put a starting point to this process of the dissolution of society. Anybody who is caring and who wants society to function well knows precisely what I am getting at. Some people, it seems now so long ago, labelled it a permissive society. It is certainly an anti-family society and not a society which values women, children or any human being at all; particularly it is not a society which values those who have been conceived but are yet to be born.

I can count numbers. I know what many on this side of the House and several on the other side of the House are contemplating. It seems to me that those who are supporting this Bill are beginning to feel a little triumphant. I have news for them. They might win the battle in this House today, tomorrow or whenever the vote takes place but it is only one battle. Those in Australia who value life have failed to properly educate the people of Australia about the facts of abortion and why it is so wrong. They have failed to insist that the practice of abortion be dealt with so as to minimise its occurrence. One of the reasons they have failed to do that, and probably the major one, is the one sided, biased nature of the debate. Those of us who read the paper late at night noted the use of the word "progressive" in the evening edition. In the morning edition the word "progressive" was changed to "liberal", which was a most curious change. The word "progressive" with respect to abortion almost equates to that very nasty other word.

This Bill is the product, not of Hon Cheryl Davenport, but of Hon Peter Foss -

Several members interjected.

The PRESIDENT: Order!

Hon N.D. GRIFFITHS: No doubt Hon Cheryl Davenport has played a most interesting and significant role in its introduction. Hon Cheryl Davenport read the second reading speech. However, the words are the words of Hon Peter Foss. What Hon Peter Foss and his colleague Hon Cheryl Davenport are all about is abortion on demand; and to achieve abortion on demand, they use soft language.

One of the members who supports this Bill for abortion on demand, Hon Jim Scott, last night referred to it as not

being a Bill about abortion at all, notwithstanding its title. The soft language of the so-called pro-choice lobby is that it is not abortion but is pro-choice. They do not talk about the killing of an innocent human being in the womb. They talk about a woman's right with regard to her body. Of course a woman has a right with regard to her body, but the child in the womb deserves to be protected in a civilised society.

The language of choice should be very interesting to my colleagues in the Australian Labor Party. One thing that binds the members of the Australian Labor Party together is the fact that we acknowledge that employers and employees do not have equality in bargaining. We therefore say society has an interest in that relationship because many consequences flow from it. That is something that we in the Australian Labor Party hold dear. In fact, last year Hon Tom Stephens defended that principle very eloquently for a considerable time, as did others of us to the degree that we were able.

Our opponents in that debate used words of choice. When it comes to the deregulation of the labour market, the soft sell is choice. Similarly, when it comes to the deregulation of killing human beings who are yet to be born, the soft sell is choice. It is not pro-choice; it is pro-abortion. They should have the honesty and decency to tell the people of this community that that is what they are about.

The primary obligation of society, in my view, is to protect the weak and vulnerable. That is why I am a member of the Australian Labor Party. I am well aware that many members opposite share that view, but I have a particular view about the party of which I am a member in respect of that primary obligation of society. This Bill will remove society's protection of human life from conception to birth. Whether those who believe in abortion like it or not, the fact is that life begins at conception. Life begins at the beginning; it is a nonsense to say otherwise. People who say otherwise are living in the past and ignoring scientific knowledge. They are living in the dear old permissible 1960s that is where their mentality comes from. The unborn human life is entitled to the protection of the law. That protection is in the Criminal Code, and this Bill will remove that protection.

Society does have a proper role. This is not just a matter between a mother to be - or in the case of those who advocate abortion, a mother not to be. This is not just a question to be dealt with by a woman and her doctor. For all of those reasons expounded by Hon Tom Stephens and several of my colleagues so eloquently during this debate, society is properly concerned with matters of life and death. The degree to which our society is concerned with that is the measure of the extent to which we are a civilised society.

The mother is protected in the Criminal Code. I note that in the course of the debate, three sections of the code were referred to. The Bill refers to another section, section 259, which states -

A person is not criminally responsible for performing, in good faith and with reasonable care and skill, a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

That is the protection for the mother and for the life of the unborn child. The protection of human life from conception to birth is contained in sections 259, 199, 200 and 201. The policy of this Bill is open slather abortion. It is abortion on demand - or, if we want to be soft, and I am very soft, abortion on request - and abortion at any time. When we consider whether we should allow that, we should consider the question of time. This is a Bill about taking human life. What human life? Who is to be killed, and when? Clearly the human life can be taken from the moment it is conceived.

This issue of abortion has been live in many parts of the United States of America. I put to the proponents of abortion that what they have done with this Bill is start a debate in this country that will lead us to the state of affairs that exists in many parts of the United States. Some of the matters being undertaken in some parts of the United States are very worthwhile indeed.

I understand that in the State of Maryland, a person who wants to have an abortion receives a document which describes the development of the human being from conception to birth. It describes the fact that on the twenty-fifth day after conception, the heart begins to beat - here in Western Australia killing can take place then; it describes the fact that at eight weeks, the embryo begins to form arms, legs, hands, toes and a face - here in Western Australia that human being can be killed; it describes the fact that at 10 weeks, at the latest, the foetal heartbeat can be detected electronically - here it can be killed; and it describes the fact that at 12 weeks, the doctor can often tell whether the foetus is a boy or a girl by means of special tests. I note in that context that reference made by some parliamentarians to the preference in some cultures for males over females and to what that knowledge can lead.

I do not think anyone who advocates abortion is a true feminist for that reason and for many reasons. At 16 weeks the foetus can kick, swallow and sleep. They can be killed under this Bill at 20 weeks. They can be killed under this Bill at any time before they are born; they can be killed at the moment of birth. That is what this Bill permits and

in fact there are some abortionists who engage in such practices. That is a risk we run in Western Australia.

Abortion is a dreadful thing and unfortunately there are many reasons why people engage in this practice. I am not talking about the abortionists - I do not have much time for them. Many reasons have been given; many of those reasons are very tragic. They must be tragic for people involved in such an awesome activity. They can be and have been categorised in a number of ways and when we debate matters like this it is appropriate from time to time to refer to the studies of people who have a day-to-day concern with what is going on and understanding it. In that context, by making reference to the "Twenty-sixth Annual Report of the Committee Appointed to Examine and Report on Abortions Notified in South Australia" for the year 1995, I note that of the 5 459 - as they put it, again in soft language - reasons for termination - it is not an abortion, it is a termination; a soft disguising of the truth - in that year in South Australia, 5 333 were said to be due to specified psychiatric disorders. I am not a psychiatrist. In fact, we have heard it said from time to time that there is a shortage of psychiatrists in Western Australia. However, this issue of psychiatric condition and abortion has been addressed elsewhere.

With these matters I prefer to draw on the advice of experts and I make reference to an article by Dr Ney and Adele Rose Wickett called *Mental Health and Abortion: Review and Analysis*, which, under the heading "Mental Health Indications for Abortion", states -

The vast majority of abortions done in North America and Europe are on the basis of either social or psychological factors. Where the grounds are unequivocally stated, over 85 per cent of abortions are for allegedly psychiatric reasons, and in many statistical reports this is closer to 95 per cent.

It is greater in South Australia but it is in the ballpark. It further states -

Standard texts state there are no psychiatric indications. . . . Psychiatric indications for therapeutic abortion did not stand the test of scrutiny. Women suffering from psychiatric illness before abortion showed no significant improvement after abortion and had more difficulty coping with the stress of abortion than psychologically more healthy women. Patients who were sicker before abortion had more serious post-abortion problems.

If people are really concerned about women's health, they will be very concerned indeed to minimise the practice of abortion. The prevalence of this practice says a lot about our society. It is a society which more and more tends to treat people like things; a society that I hope to turn around; a society that I want to improve so that once again we find ourselves treating people as people and valuing human life to the degree that we should.

I recently read an article by Angela Shanahan in *The Australian* newspaper on 2 March 1998 which sums up my view on the relationship of this debate and our society better than anything I have read in recent times. It states -

In a morally pragmatic and economically rationalist world, an unplanned pregnancy is considered the worse moral transgression . . . Women who have abortions, many feeling regret or guilt and some suffering permanent psychologically damage, say whatever the underlying reason given - financial, psychological - they had no choice.

The days when women could claim the debating high ground on abortion are long gone. Acceptance of mass abortion is the first step to legalising euthanasia and infanticide. Noting in the notice paper that those words have particular relevance to Western Australia, she further states -

Never mind about a woman's right - in the brave new world of moral relativism we are entering into the next millennium: only those individuals deemed worthy will be supported by society.

It is my view that those who are supporting abortion are contributing to the undermining of our society. They are contributing to a devaluing of the way we see ourselves and each other.

They are contributing to the destruction of family life. I said earlier that one of the reasons this debate is being held tonight is that people have not been told the facts about abortion. We do not have unlimited time any more in the Legislative Council, which I regret, though some other members may not! I need to point out some matters to members.

I am not a member who finds detail of inhumanity pleasant. I do not like blood, guts and gore or the notion of people being hurt. I heard mention earlier this evening of the pain that a foetus experiences in the process of abortion. The practices involved in abortion have been considered in other parts of Australia recently and in the United States of America. I make some short reference to these considerations as part of the commencement of a campaign in Western Australia to educate people about the awful effects of abortion so they will cease to be encouraged to take that course of action. People have vehemently advocated this practice now for in excess of 30 years, and we are told that they have won the public mind.

A document from Dr Peter McCullagh titled "Response to the NHMRC Draft Consultation Document (September 1995): Services for Termination of Pregnancy in Australia: A Review" states that -

In the United States of America, dilation and evacuation has been the recommended method from 13 to 16 week from 1978 but Dilation and breach eXtraction is emerging as the favoured method, especially after 16 weeks.

That method is referred to as D and X. I hope anyone contemplating an abortion at least finds a medical practitioner who will tell them what is involved in this process. D and X, he says, is the standard for second trimester abortion, and he provides a statement on what is involved in the procedure in these terms -

The procedure requires a physician to extract a fetus, feet first from the womb and through the birth canal until all but its head is exposed.

This is obscene, Mr President, but I must read it because abortion is obscene. It continues -

Then the tips of surgical scissors are thrust into the base of the foetus' skull and a suction catheter is inserted through the opening and the brain is removed.

That technique is referred to as a "partial-birth abortion". That takes place in Australia; it could go on in Western Australia. Somebody who practices that method has already indicated that he may be welcome over here to set up a clinic. Members of this House who will support this Bill should be aware of the consequences of their actions. They should be aware of what they are doing, although they have had every opportunity to find out.

A conference was conducted on 30 August 1994 dealing with ethical issues in prenatal diagnosis and the termination of pregnancy. The proceedings of the conference were published and contained in these papers as a document headed "Abortion After Twenty Weeks in Clinical Practice: Practical, Ethical and Legal Issues". The author of this document is David Grundmann. In the course of the article he makes reference to a number of practices that occur in Australia and the United States. He outlined in paragraph 4 on the first page -

In the 20 years since Roe vs Wade medical science has made such tremendous advances that the boundaries of reproductive technology have been pushed beyond all known limits at both ends of the spectrum.

Babies born after 26 weeks are now routinely being salvaged and the technology to perform very late abortions safely is readily available and routinely used.

He continues by posing the question: Can abortions after 20 weeks be performed safely? The policy of the Bill is open slather as people argue that it is a matter between the woman and her doctor. This man is a doctor. There are two methods for post-20 week abortion; namely, medical induction and delivery, and surgical evacuation. Why is it that the practitioners always use soft language? On medical inductions and delivery, he makes a number of observations and then refers to the disadvantages as follows -

Always requires hospitalisation and takes a long time. Women can labour for two to three days.

The last disadvantage reads -

The method may result in the delivery of a live baby.

It then deals with surgical methods and mentions hysterectomy and dilation and extraction. This is a doctor who has expressed an interest in starting up in Western Australia - a man who will get his licence to kill under this Bill. He says -

This is my method of choice . . . The principle of this method is to extract an intact foetus whose soft tissues protect the cervical canal from laceration.

To do this it is necessary to achieve an internal cervical os diameter of 75% BPD (Biparietal Diameter), which is roughly equal to the bi-trochanteric distance of the fetus. This measurement is important as the pelvis is the most incompressible part of the fetus. Cranial decompression then allows the delivery of the fetus with ease either by breech or vertex extraction.

The advantages of medical induction are given. There is no chance of delivering a live foetus, but there are disadvantages and this is one of them -

Although rare, complications can be serious and may include haemorrhage, disseminated intravascular coagulopathy, uterine perforation or cervical trauma. All require hospitalisation and surgery.

Abortion is bad for women's health. He poses the question: Should abortion beyond 20 weeks be performed? This is his answer -

It is my belief that abortion is an integral part of family planning. Theoretically this means abortion at any stage of gestation. Therefore I favor the availability of abortion beyond 20 weeks.

I am sure that if he were in this House, he would vote for this Bill. He asks whether abortions beyond 20 weeks have been performed and, if so, where. He points out that they are taking place at his clinic in Brisbane. Towards the conclusion of the article he poses this question: What can be done to improve or expand this service? His solutions are very interesting. They remind me of a number of speeches given in this House in support of this Bill. I will mention these reasons in passing. They include -

1. Demystify abortion, particularly late abortion by appropriate education of the population . . .

We know he does that. The next point, surprise surprise, states -

2. Decriminalize abortion.

That is what we will do - kill babies. The next points state -

3. Remove the moral and social stigma associated with abortion.
4. The medical profession must stop being judgmental about abortion.

In cold, soft language the final recommendation states -

5. We must accept that women can make important decisions.

I have no argument with that. Of course we accept that. They do make important decisions. Many women in this House do that and hopefully after the next state election many more will do so. All parties are concerned to correct the perceived gender imbalance in this place, and that will occur as a natural event. However, the way in which those reasons are presented are on all fours with the arguments put forward by the proponents of this Bill.

People will not engage in this awful practice if they are aware of it, and they will tell those who advocate it where to go in the appropriate Aussie manner. I think I should point out yet another description of an act that I consider to be evil. This description was provided to me by Dr van Gend, who makes this observation -

The Davenport Bill would allow, with no legal restraint, the sort of violence described to the US Senate inquiry by a former abortion clinic nurse . . .

Those who support abortion might have the stomach for this, but I do not. However, they should listen. It states -

The doctor delivered the baby's body and arms - he kept the baby's head just inside the uterus. The little baby's fingers were clasping and unclasping, and his feet were kicking. Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch . . . The doctor opened up the scissors, stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby was completely limp . . .

If we allow that sort of barbarism to occur in Western Australia, this society is bound to be completely limp!

There are many things wrong with this Bill that I could go on to describe, but I do not want to engage in more descriptions of these acts of evil. I regret that I may have to because of what may shortly occur.

I will mention a couple of aspects that are deficient in the abortion regime which Hon Cheryl Davenport and Hon Peter Foss got together to inflict on Western Australia. They talk about choice. Where is the choice without informed counselling? That has been fairly well dealt with by my colleagues. I will tell members one thing about the attitude of the Attorney General towards counselling. I understand that under the standing orders I can refer to the uncorrected version of *Hansard*. I am referring to a photocopy of page 123 of the *Hansard* of 10 March 1998. I regret that at this stage we do not have a copy of the corrected version. In a question to do with counselling the Attorney General made an observation. Those who think about counselling should bear in mind that this is how one of the primary proponents of abortion views counselling. He states -

I have not encouraged him to counsel me. Unfortunately, the nature of the member's question is a little vague. Counselling could happen by bumping into somebody in the corridor and their saying, "You have done a good job" or otherwise. The Leader of the Opposition may be counselling me at the moment. I have bumped into Mr Fletcher and talked to him from time to time.

That is his view of counselling. This is an unjust Bill. It is about destroying human life. We should be about making a just society, not an unjust one. This Bill should be resisted. If it is passed, it will continue to be resisted.

HON E.J. CHARLTON (Agricultural - Minister for Transport) [12.19 am]: This debate has come about basically

because sections of the medical profession have failed themselves and their fellow human beings in this State. We would not be going through this exercise if those who have been charged with looking after, and who have taken an oath to look after, the health and interests of our society, had shown some respect for human life. This debate has taken many years to reach this stage. We all now know it occurred by chance because of certain members of the medical profession's, first, thumbing their nose at the law and, second, performing procedures that have been ably and specifically explained to members of this House during this debate. The descriptions used in this debate do not need to be repeated.

People who conveniently, or through genuine ignorance - I respect individual's beliefs - believe that life does not begin at conception are kidding themselves. We have heard recently that we now live in an enlightened society and that we will not be sitting idly by and experiencing events such as the stolen generation, which generated so much debate recently even though we have not heard the facts surrounding many cases. In some cases babies and children were rejected and as a result they ended up with caring families.

We have heard about ethnic cleansing and how groups throughout the world do not accept that people of different race or colour should survive in their society. Because of religious beliefs or other reasons they take it upon themselves to eliminate those communities. The so-called enlightened society in which we claim to live applauds those who try to put a stop to that and bring about justice.

At the beginning of the debate sections of the media that wanted to promote abortion on demand indicated their belief in the fallacy that abortion should be a woman's choice. They believe that abortion is all about deformities in the unborn child. Although we will not know the exact number that come into that category, I am told that only about 200 abortions take place each year in King Edward Memorial Hospital as a result of deformities. That leaves about 8 200 abortions carried out in clinics in Rockingham and Midland where people have determined that abortion is their business in life. It is a money making activity for the people determined to take that path. They have broken the current law. However, they have not come before the courts because action was not taken. Anyone can break the law and go on unscathed if nobody takes action against them. That has finally come to an end because action has been taken and now people must make decisions.

We have also recently experienced the downfall in some areas of our society, particularly in the western world, of people becoming addicted to drugs. We say that we must help them then we give them needles so that they do not get AIDS. Has that helped them? I do not think so. I do not support that action and never have. We should be trying to find ways to help those people get over their problem, not allowing them to continue using drugs. If we decriminalise abortion, members should make no mistake that the same people will support euthanasia. They will ensure it is also the right of other people in our society to end the lives of people at the other end of the spectrum. However, that situation is a little different because some people are a bit worried about becoming the victims of a euthanasia law. They will not get the overwhelming support for euthanasia that they do for abortion.

Hon Norm Kelly: Have you read the Bill?

Hon E.J. CHARLTON: Regardless of whose Bill it is, I am talking about facts. I am not camouflaging things with words; I am talking about a plan that is widely promoted -

Hon Norm Kelly interjected.

Hon E.J. CHARLTON: I am not talking about Hon Norm Kelly's Bill.

The PRESIDENT: Order! I do not want any interjections.

Hon E.J. CHARLTON: I am talking about a system to make termination of life legal; the same as this issue is about making it legal for life to be terminated.

Some people have spoken about whether there is a God. They have their right to do so and maybe there is a God; we can all speculate on that. However, I suggest that they had better believe it because I do not know how anyone can walk out of this place and look around and believe that man created the sky, the heavens, the trees, the birds and, most important, human beings. Did they arrive through evolution according to the big bang theory? People can speculate on that and have their choice. However, it would probably do us all good if we spent more time researching some of our background and history to determine more about human nature and humanity and judge whether this is right or wrong. As I often say, no individual has a mortgage on what is right because we are human. We all have our failings and we all get it wrong. However, I do not know how anyone can believe that there is not life at conception.

If, after tonight's descriptions, anyone can still believe that it is acceptable to end a life for convenience I feel very sad and sorry for them. Most of us know that most families have a tragedy in their life. My family had one; everyone knows we lost a son.

In her second reading contribution, Hon Cheryl Davenport spoke about the love she has for her son. That is tremendous. We all congratulate her, applaud her and fully appreciate what a great thing that must be. I am sure most of us enjoy the privilege of parenthood. That she can do that on one hand - say with great emotion how she respects and loves her child - and on the other propose a piece of legislation to terminate the same sort of life amazes me.

Members should look at the person sitting next to them. None of us had anything to do with the decision that led to our coming into this world. We are here because women have the capacity to carry a child. If one believes in God, that is regarded as a God given ability. With all our intelligence and the science and research we have indulged in, no-one has been able to change that. We have played at the fringes and made some marvellous advances in science and medicine, but the basic fact is that it all starts with man and ends with woman - the two creating new life. That occurs because of the ability of the woman to carry the child from conception to birth to produce a person who is visible to the rest of us.

For the first few months the baby is not visible. Because it is not visible to human eyes, some people have decided that life can be terminated. We are living in a world of make believe. China has areas called dying rooms where, as a result of population control measures, babies are taken to die. No-one would say that that is right. What is the difference between that and abortion?

We have heard tonight and yesterday about its being a woman's choice. It is not a woman's choice. I have not, nor has anyone else, blamed the woman for getting pregnant. For whatever reason, it happened. That is the way she is made. She did not decide to have reproductive organs that enabled a pregnancy to take place. Some women do not have that gift. That has brought much sadness to many women who would give anything to have a child of their own. Yet, we are being asked to decriminalise abortion because doctors are responding to women who want abortions and they have decided that that will be their business - whether it is simply to make money, I do not know.

Some people have suggested that men should not be involved in this decision making process. There are two reasons that we must be involved: First, election to this place means we must make decisions. If members do not want to make decisions, they should take their superannuation and go. Secondly, as I said, it is not the woman's fault she has become pregnant. She may not want to be pregnant, but she is. Therefore, a decision must be made, whether she is part of a loving family or out in the lonely world - and many women and children are out there. What we should be doing tonight is working out how we can make this a better society and look after those women - giving them the care, love, understanding and financial assistance they need.

Hon Ljiljanna Ravlich: You have had 25 years to do it.

Hon E.J. CHARLTON: We should find another way of bringing the mother and the baby together, not find some legal and surgical way to take them apart.

Given some of the contributions tonight, one would be forgiven for thinking that men should not be involved in this debate. However, in the real world, many women do not want this Bill to pass this House. We all have a responsibility to respond, whatever we think is correct, acknowledging that we have the opportunity to vote one way or the other.

Hon John Halden has a great capacity to build a story and an argument within a debate. If we had asked him to put the case against this Bill, he would have built an enormous and influential argument. One of the points he raised in support of the Bill was that we have not seen anything yet if we do not pass it - many legal actions will take place. The courts and gaols will be full. I suggest - not in the articulate manner of Hon John Halden - that the day will come when someone else might take legal action against doctors. A father, a grandmother or a grandfather of an unborn child might take action against a doctor who has undertaken an abortion. Perhaps we need a test case like that to introduce some balance into this argument.

Perhaps we could bend our minds to another point. We might say that the pregnancy was a mistake and the solution is to have an abortion. After someone has run over a child with a car they cannot back up and pretend it did not happen. That is the premise we are presenting. Life is not like that. In many cases we get a second chance but in others we do not and we must face the consequences. We must face the consequences of our decisions on this issue and other issues. This issue is very much more serious than many minor issues about which we make decisions.

It is unpalatable for me as a male that the man creates the problem for the woman and she must bear the consequences. I wish it was not that way and that the two could share the burden. However, that is the way God made us. The woman must bear that additional burden. However, as we all know, no-one can give love to a baby or to anyone else like a woman can. Men might think that they are very caring but they will never meet the heights of love and the capacity for love that a woman can give.

It has been said many times. If we take a step back from where we have all set ourselves in this debate and stop

trying to justify our positions, we might be able to see if we can work out some solution in between. I do not think that anyone in this place does not acknowledge that circumstances may arise in which a pregnancy can be terminated. We would want to ensure that the mother had every opportunity to have fully explained to her the facts about that baby that is yet to be born and its size and make up, and about her economic and health situation and how society can help her. All those factors must be taken into account before that final decision is made. That is not the way it has been. We must pause, rather than members simply blazing on down this trail and saying, "We have the numbers. We can win this and get this Bill through this Parliament. Then we can go out and celebrate." Celebrate what? Will all those who have won feel good? I suggest they think long and hard about that rather than someone winning and someone losing, because we are talking about life and not industrial relations or building a road. We are talking about the 9 000 children who could have been walking around next year celebrating their first birthdays.

I said that I lost a son. I nearly lost a granddaughter who contracted meningitis last year. We prayed to God that she would live and she did. The happiness that come to my son and daughter-in-law will stand by them forever. I wish they had not had the experience but it has been great for them to find out how close she is to them as a result of not only the threat of death but also the threat of incurring a lifelong disability which can occur in most cases. By the grace of God - members do not have to agree with that - she survived. She was eight months old. You cannot tell me, Mr President, that that little child a few months before that occurred was not a child in her mother's womb. A lot of little individuals are not around because they did not belong or were not part of a family and did not make it.

Let us all take a step back and a deep breath and try to put this on hold for a little while, just as we are suggesting that pregnancies should be put on hold for a little while to allow for a counselling. Let us work something out as mature, informed people. We will get something that Hon Cheryl Davenport can see satisfies the fundamental aspects of what she is trying to achieve and those of us with more extreme opposite views can back away from them in order to achieve something positive. I am not talking about compromising. I do not believe that compromise is the way to go with everything in life. However, at times we must try to deal with issues.

We can keep maintaining a position on this issue, but we are a speck in life and in history. We think that we are very important and that the decisions we make will have enormous effects for a long time, but really we are here today and gone tomorrow. We should really be thinking about the consequences in the long run and trying to make a decision that will contribute something positive rather than trying to get the numbers.

HON BARRY HOUSE (South West) [12.47 am]: After the last contribution mine will seem a little mundane. This has been a difficult decision for me. I intend to support the second reading of this Bill. Like all 91 members of the Parliament I have been lobbied extensively over the past month by people with all points of view. I have received mountains of mail and many personal messages from a wide variety of people. I acknowledge that they all come from very committed, passionate people. A couple of days ago I spoke to a group of Catholic people from Bunbury who were obviously anti-abortion. I have spoken to many others from the medical profession, friends, constituents and nurses who have the opposite point of view.

I suspect, like many men, I have given this topic a lot more thought in the past few weeks than for very long time. I have certainly devoted a lot of time and emotion to the issue. Some points have come out of this for me. I have been staggered by the statistics. I had not been aware of the statistics prior to the debate emerging in the past couple of weeks. The statistics indicate that there are 9 000 terminations per annum in Western Australia compared with over 30 000 live births, which represents nearly one in four conceptions being terminated during the past 20 to 25 years. I was even more horrified by the statistics to which I was alerted on the situation that pertained prior to that. Those statistics were that prior to the days of safe contraception something like one in two conceptions were aborted. I may be corrected but I understand that one in five women during those times died ultimately as a result of complications arising from abortions carried out during their lifetimes.

I do not like abortion. For me there would have to be extreme circumstances before I would agree to an abortion or any termination involving my wife or daughter; but I also accept the fact that ultimately it would not be my decision but theirs.

The debate has also made me question what sort of parliamentarian I am. I have always believed very strongly in parliamentary democracy. I always try to consult closely with my constituents and with the electorate and to reflect their views and basic set of principles. However, in this case it does not work that way. It is far more difficult because there is such a wide divergence of views. All the people with whom I have had contact - and they have been many - over the past few weeks, have been vocal, committed and totally passionate about their point of view. The fact is that not any of those people are wrong and we cannot discredit the views they hold. I have also had to question who am I to decide who is right and who is wrong when people declare their views based on their beliefs and convictions. Therefore, I respect all of those people, and I respect all of those people who have in this debate in the Chamber made their point of view clear in a perfectly valid way.

That created something of a dilemma for me and I had to decide how I would address this legislation to decriminalise abortion. I concluded that I have an obligation, indeed a responsibility, as a legislator to ensure that the legislation that is ultimately passed by this Parliament and this House is workable.

I have also an obligation to ensure that there is not a wide divergence between the legal framework that we ultimately provide and reality. To do otherwise would be irresponsible. That is the basic reason that I will support the second reading of the Bill. If we do not pass this legislation, it would be analogous to our sitting in the middle of a road and being undecided about whether to go left or right to get out of the way. The end result would be that we were hit by traffic coming both ways. That is not an option, and I believe that to return the legislation to the status quo is not an option either.

I guess I have been led to conclude in this way by asking myself a series of questions: Will rejecting this legislation lead to a reduced number of abortions? I have to conclude no; history tells us that. Will it solve the legal dilemma currently facing our medical professional - our nurses and doctors? I have to conclude no in that case as well; in fact, they will be in breach of the law and face prosecution. Will it ensure that terminations are conducted in a safe and hygienic medical facility? I also have to conclude no. It will more than likely encourage demand for alternatives, it could well see a return to the use of unhygienic backyard abortionists, and it could well see that the problem is merely handballed to another jurisdiction. Many women would fly to Adelaide or Melbourne to obtain an abortion in that jurisdiction. Will it provide additional protection for women? I have to say no to that also, because the uncertainty that would be provided if we did return to the status quo would continue.

That is the way that I have addressed the Bill, and as a responsible legislator I cannot stand in the middle of the road and be run over. Therefore, I cannot sanction the continuation of the current situation, which I believe to be untenable.

Hon E.J. Charlton: That is why we have to try another way.

Hon BARRY HOUSE: That may be correct. We may well find another way, but at this stage I do not want to block off this option. My conclusion is that we have a better chance of providing a realistic legislative framework at this stage if we support this Bill. The current debate is raging wide in this Parliament and in this community, and I guess most of us are optimistic that some sort of sensible, realistic ground will be achieved in the next few weeks. To block off this option now would not be a responsible option so far as I am concerned as a legislator, and I will support the second reading.

HON B.K. DONALDSON (Agricultural) [12.54 am]: I too would like to contribute to this debate. I have listened with great interest to many of my colleagues who have spoken about their divergent views and have put on record their feelings, and who have also tried to assess what legislative path their constituents or the electorate at large wish them to follow to reach a sensible and responsible resolution.

I, like every member of Parliament, have received an unprecedented number of correspondence, telephone calls and representations over the past few weeks. I, like Hon Barry House, had not given a great deal of thought to abortion because the current laws were running, and whether they were right or wrong, and whether they covered all those problems, nobody had to think about and I guess nobody wanted to think about. Although abortion has probably been discussed in the wider community for a number of years, traditionally most legislators would be very happy to push it to one side and not come to terms with the fact that legislation that should have been looked at a number of years ago has now reached the point where something must be done.

One of the things I have learnt in life is that I must respect another's viewpoint. When my second son was born at Wyalkatchem-Koorda District Hospital, I wanted to have him circumcised. The doctor who delivered my second son was opposed to circumcision, so he and I almost had a stand up fight in the corridor outside my wife's room, which distressed her, and he just said no. I was very angry at the time, because I felt it was our choice; it was our son, and the doctor should do it.

However, the doctor would not do it, so we took our son to Perth to the family doctor who had delivered our first son, because my wife had some trouble with her blood and at one stage it seemed likely that she would need to have an abortion, but she struggled through and had that child. About two weeks after that doctor had performed that circumcision, my son suffered a gastric upset and I had to rush him from my farm, which was about 60 kilometres away, to Wyalkatchem hospital. Of course, naturally the circumcision had cleared up, but the nurses there knew what we had done as a family.

I had to get the doctor out of the drive-in at Wyalkatchem. He was very nice, and he and I were quite good friends. He rushed up, and the nurses did everything possible to keep the nappy covering the circumcision - an infection had set in - but he was a bit smarter than us and did notice it. It was quite some time later that he told me that he had realised what I had done and that he knew the nurses had been doing their utmost to try to cover up that situation,

and he said, "I hope you will understand my position. That was my choice, and I will stick to it. You and your wife made your choice to have your child circumcised, and I hope that one day you will respect my view."

That was a very valuable lesson, because he respected our view as a family to take that child elsewhere, as much as he expected me to respect his view as a medical practitioner who did not want to engage in that surgical procedure. There is a very good message in that. That doctor went on to become one of the leading forensic pathologists in Australia. I managed to see him a few times when he was in Perth, and we have often had a bit of a giggle about this event. I thought it was a very good lesson.

I have appreciated the contribution from so many people in not only my electorate but the wider community who have alerted me to their point of view. I respect their point of view.

From the correspondence and some of the phone calls, I would say that the overwhelming majority would be against liberalising laws on abortion. Those people are certainly not pro-choice but pro-life. I respect their feelings, because I have had to set aside my personal feelings, as a member of Parliament, to try to reflect the opinions of some people to whom I have spoken. Sometimes that is the silent majority, because it is well known in parliamentary circles, or in any sphere of government, that if a person is opposed to something that person is usually very vocal about the subject and strongly puts his or her point of view. Many colleagues and friends in the community sometimes are the silent majority; they think that life will go on and commonsense will prevail. However, the old saying is that the squeakiest wheel will get the most oil. From that point of view, one must try to understand the broader community thinking on what we are trying to do with the two abortion Bills - one here and one in the other place. During his contribution to this debate, Hon Barry House reflected on the difficulty of trying to draw out that community thinking. When trying to get people to offer an opinion at dinners or functions, one does not like to sit down and ask people what they think about abortion -

Hon Ljiljanna Ravlich: I do!

Hon B.K. DONALDSON: It is easier for a woman to do that.

It has been an interesting debate. I have discovered that there is a great groundswell for change in the community so that people can have a choice on this issue. However, it is difficult to draw from people just how far they want that choice to go. When engaged in conversation people begin to draw lines. Their first reaction is that it is a woman's choice. Then they draw back and say that they believe that abortion should not be available on demand. My question is where does it all fit.

One of the aspects of the debate that worries me was an unintended consequence. I do not wish to reflect on any member as a result of what I am about to say. If one were to draw an analysis of comments so far, they have been rather demeaning to women. I say that because, in some instances - although unintended - it appears that women are deficient in making responsible decisions. They are deficient in moral values; they are deficient in religious beliefs, and incapable of making an informed decision. I preface my remarks by saying that that was unintended, because no member of Parliament would mean to allude to women in that way. However, the other side of the equation has been forgotten somewhat. I refer here to the male of the species. It takes two to tango.

Although I was dismayed when I heard the number of procured abortions that have occurred in Western Australia in the past 12 months, I would like to think that the overwhelming majority of women who sought that procedure from a medical practitioner, made an informed decision, and that it was a shared decision with a partner or husband - by those who are fortunate enough to have a partner or husband who is part of the family unit. It is important to remember that there is far more to this issue than saying that a woman should not have an abortion or seek an abortion; that she should carry the child - leaving aside the questions of abnormality, rape, incest or the mental or physical health of the woman. I would like to think that in many cases it was a shared decision. It is not only the woman who must face up to the situation at the end of the day - although she is the carrier of the child and she is the person whose body has been invaded by the abortion procedure. However, we have probably emphasised too greatly the role of the woman in the equation. Perhaps I have come to that conclusion from some of the debate so far.

It must be a very traumatic decision for any woman or any family or partner or husband, if it is a shared decision. I do not think that any one of us could understand, because we do not know the circumstances; we could not know the reasons that a woman would proceed to seek an abortion. It is not for me to pass moral judgment on a person who makes that decision at the end of the day. We are not privy to those circumstances. We are not privy to the reasons that have led to that decision.

I understand that some of the greatest need for counselling is probably up to two years after the termination. A woman goes through the procedure, and not being a woman a man cannot understand the inner feelings and emotions of a woman. After all, it is her body, she carries the child and the pregnancy. Some women do not show their feelings or emotions. However, the procedure must have a dramatic effect on the average woman. In the

overwhelming number of cases no woman would make that decision lightly, because she also has a fear of the procedure which may prohibit her from ever having another pregnancy. The woman will always have a deep fear whether she has made the right decision. I hope that such a decision would never be made for social or economic reasons.

Some very spurious statements have been made about a woman deciding to have an abortion because she wanted to wear a bikini during the summer -

Hon Ljiljana Ravlich: That was an unintelligent remark.

Hon B.K. DONALDSON: It is an outrageous remark, which would demean any woman. That remark led me to make this statement.

Recently I was fortunate enough to be in the country - as I am most of the time. I spoke to a young woman of about 35 who is a daughter of some very good friends of mine. I called in to see them on Saturday, as I was going to Northam. This young woman encapsulated what many other women - young, middle aged and senior - have said to me. She felt that at the end of the day it would be her decision, because it is her body. She said that she has managed and regulated everything she does in her life. We have laws. We are one of the most over-regulated societies. Years ago we talked about the many regulations in the USSR, but someone pointed out that we are probably more regulated than that country.

This young woman said that she is responsible for her own health; when necessary she seeks medical advice and support. She said that she is responsible for her personal hygiene. She is responsible for the decisions she makes about whether to have a relationship whether short term or long term. She is responsible for her actions. She said that she should at least have the right and privilege to be the master of her own destiny when making such a decision. She said that she would like to be able to share the decision with her partner. She said that she does not believe in abortions, but that does not deny the fact that in many cases, and in many circumstances, she may find it difficult to justify taking such an action, but at the end of the day we live in a society where family values have broken down. That is the sad part. I felt that she was trying to give me a message, while her mother and father listened to what she had to say.

Her parents told me that they strongly supported the message she was trying to convey to me. Like many others, she started to draw in that line on the reasons for an abortion, so the number of abortions could be decreased. She had regrets about what might happen, but she was also being very realistic and referred to her religious principles.

I am staggered by the statistics and I am sad that somewhere along the line we have failed as a society. We are all better informed. We have access to better contraception and more open discussion on sex education and sexual relations. One finds women's magazines full of articles on how to enjoy sex. We can tear out the sealed middle pages in Cleo and Cosmopolitan. We talk openly about sex.

Hon Cheryl Davenport: As it should be.

Hon B.K. DONALDSON: It is a normal part of life. There is nothing wrong with sex and it has been brought out into the open. However, we have failed when each year 9 000 women procure an abortion. That worries me. Those abortions cannot all be attributed to women not using contraception because of religious beliefs. I know many women who have strong religious beliefs where contraception is not part of their church's teachings, yet they go against their feelings, principles and the religion that they have embraced to ensure that they do not have an unwanted pregnancy. I do not believe that each year 9 000 women would be at risk either physically or mentally or their foetuses have abnormalities that require abortions to be performed.

Maybe we are tackling this in the wrong way. I do not know. Has medical and social research failed? Are women fearful of the side effects of the pill, which can cause increased risk of thrombosis and other long term effects? The hormone dose in the pill varies and doctors keep changing the dose. The medical advice is that women should come off the pill for periods because of the possibility of medical problems created by the long term use of a particular contraceptive.

We saw the demise of the intra-uterine device, which was supposed to be the ants pants of contraception. Look at the horrific problems that device caused. Maybe society has failed women in the sense that we have not continued along the path of researching more effective contraceptive measures. I do not know, and perhaps only women could answer that. At the end of the day, whatever decision is made - I have great respect for the women who make those decisions; whether I like or dislike their decisions is irrelevant - if those women are religious they believe they will face their maker about the decision.

I could continue but I would be going over issues that have already been well and truly debated in this House. I am reminded of a story of which many members would be aware. It is titled "Footsteps in the sand". I first heard it

delivered at a funeral. Two men had been close friends for over 50 years. They had been in business together, and their families were intertwined. It was one of those very close relationships that people do not always have the privilege of being part of. This guy got up and told the story of someone who had died and when he met his maker he and God were walking along the beach. There were two sets of footprints in the sand and when he looked behind there were two sets of prints. They arrived at a point where there was only one set of footprints. They continued on until there were again two sets. This person turned to God and asked why at the point in his life that he needed him the most had God forsaken him. God's response to this person was, "My son, I did not forsake you. That was the time I had to carry you."

I would like to think that when a woman seeks an abortion she is well informed when she makes the decision. I would like to think it is a shared decision. One would hope she and her partner would reflect on the alternatives. Hon Muriel Patterson talked about the low number of adoptions. Many families who cannot have a child seek to adopt, but the number of babies available for adoption is limited. One of the greatest gifts that we can receive is to be brought into this world both wanted and loved. It is a precious gift and I was fortunate enough to enjoy that.

I am in a real dilemma over Hon Cheryl Davenport's Bill. I do not think procuring an abortion should be a criminal offence. I would like to think there were other options and choices, so I will support the Bill in the other House. I do not know what has happened there. I will support the second reading of this Bill. I do not want to be in a situation where both Bills are defeated, so I will support this Bill to the second reading stage only. I will wait like many others to see the changes that may occur. I know we should not talk about Bills in the other place, but it has a bearing on the next step. I hope that somehow along the line we will finish up with a responsible and sensible solution to this whole issue.

HON CHRISTINE SHARP (South West) [1.19 am]: This Bill has been enormously challenging for all of us. I would particularly like to say to other members of the Council that I respect the members' sharing their personal experiences tonight, because they reflect on our real views and values. This existential element is significant. A few members have spoken from what one could call a politically correct standpoint. I respect that most members in this debate have been speaking about their own values and life experiences. I have tremendous respect for that authenticity.

Like other members, I have been bombarded with huge amounts of information and letters over the past few weeks, which has caused me to examine my own values even more deeply. This has caused a strengthening of my conviction in support of the Bill. With a strong stomach, I was able to look at some appalling evidence. Having the courage to face the reality of my values has caused me to strengthen them. A few members have been courageous tonight, and the moral outcome of my own values shocks me a little, though the process was valuable. Ultimately, I share with members that my position is the outcome of values I have felt only instinctively all my life before the beginning of this debate a few weeks ago. Having received this correspondence, I feel concern for those people called the right to lifers, who are very much against the repeal of the provisions of the Criminal Code. I respect their deep concerns.

I am pleased to hear in debate that some people I would consider to be hardened economic rationalists have deep moral concerns about this issue. In an age when people do not speak much about morality or spirituality very easily, I am pleased to hear some old, hoary types approach these issues with real heart and religious and spiritual beliefs.

I feel concern for the people who have been drowning me with mail telling me what I support is wicked. I feel compassion because they come from a position of great fear about what is becoming of women. They ask: What are these women up to, for they seem to be abandoning the quality for which we have respected them; namely, motherhood, compassion and nurturing? There is a huge fear that suddenly women are becoming uncompassionate. Women standing up for their rights is not the same as turning into uncompassionate beings. Women always have been, and always will be, compassionate. Being pro-choice is not symbolic of women being anti-life. On the contrary, it is seeking women's rights to organise how to support life. That is how it always has been. I suspect that abortion is about as old as birthing, and it certainly predates any Christian notion of God. Women have always been birthing and on occasions have faced the appalling choice to seek an abortion when unable to contemplate motherhood.

This is where I start to surprise myself when looking honestly at where my values have led me. I see abortion as life organising life. I see it as a process of affirming life. Therefore, I am prepared to sit through the remonstrations which assure us that a foetus is a life. I know that a foetus is life. Any woman who has been pregnant and felt life inside her has no doubt about that notion. Sometimes, with integrity, women would choose to terminate that life. I see this courage, which women must adopt from time to time, as life affirming. I see women taking the awesome responsibility of motherhood very seriously.

It has been suggested that as Greens we should be especially respectful towards life, nurturing and biodiversity. I am pleased to hear such respect for our high moral ground. I affirm and agree with that view. We have great

concerns. However, our philosophies are usually concerned with the long term survival of ours and all species. We are approaching six billion people on this planet, and our long term survival perhaps rests with our ability to give birth to fewer babies. This is one of the great challenges facing our species. Of course, this is not to advocate that abortion is the best way to secure the survival of our species, but it is part of the traditional way that our species has survived. It will need to continue to survive. In a way, Greens (WA) are not very sentimental.

When I was thinking about what I would say in this debate, I was reminded of a discussion I had some years ago which had struck me as extraordinary. As an environmental activist and strong forest campaigner who had fought with great dedication to protect the forest, I found myself at a cocktail party with a gentleman who was the manager director of a large mining company which was involved at that time, and still is, with the destruction of many hectares per annum of forest. We introduced ourselves at the cocktail party saying such things as "I have heard about you". We talked about our approach to forests and trees. I said I was busy running a tree nursery. The managing director of the mining company assured me that he was keen to hear that, and said that he cared deeply about trees. In fact, he mourned greatly whenever a single tree was chopped down in his garden. I said cheerfully, "Isn't that funny: I guess it is the fact that I grow a lot of trees that I accept that we need to chop down trees as long as we do it with respect for the long term value of the trees." Then I stopped myself and thought that this was a ridiculous conversation. I had spent my life trying to save and grow more trees, and this guy who destroys trees tells me that he is concerned about every precious tree which falls.

What is this fear about giving women choice? I will not go into what other members have said at great length about abortion as a type of contraception. From my experience and from the life experiences of many of my women friends, I am certain that virtually no woman would choose abortion glibly. It is traumatic and appalling for women, in the same way that it is appalling for a woman who miscarries at half term to look into the lavatory pan and confront what has come out of her body. It is appalling, it is bloody, and it is reality. It is the process of life and death.

Hon Bruce Donaldson mentioned that it has become very commonplace in our society to talk about sex. He is absolutely right, it is everywhere, it is in your face. Funnily enough, the one thing people do not confront very easily in our society is death, and yet it is just as much a part of life as birth and sex. It is all part of the same cycle. It is shocking but abortion is part of the tradition of our species.

Of the myriad correspondence I have received, I noted with great interest a letter received from Associate Professor of Public Health Judith Straton about research carried out a few years ago comparing the statistics in Western Australia with those in New South Wales. She found that in Western Australia where abortion is illegal the annual abortion rate was 19 per thousand women. In New South Wales where abortion is legal the rate was 18 per thousand women. That research suggests that the question of whether abortion is legal or illegal has little impact on the practice.

However, it is not a question of pragmatism. Most speakers in the debate have said it is a question of morality; however, it is actually a question of moral choice for those on both sides of the argument. It is not a question of those who take the moral ground versus those who take the pragmatic ground. No-one likes abortion, least of all women in the appalling situation of facing that choice. Rather it is a moral choice for women between the quality of motherhood and the acceptance of the life within them.

Ultimately, this debate comes down to a matter of attitude towards women, as other speakers have pointed out. It is a question of whether we trust women and have respect for their ability to be informed and to make responsible moral judgments. It is a question of whether people fear women's sexuality. My vote tonight will be a vote of trust in women. I have great faith in women and I believe they have always been, and will continue to be, life affirming.

HON PETER FOSS (East Metropolitan - Attorney General) [1.33 am]: Unlike Hon Christine Sharp, I did not come into this House or debate with the view of supporting this Bill or confirming attitudes I have always had. I can remember sitting in this House when Hon Cheryl Davenport gave her maiden speech, and I listened to her talking about abortion. I was quite unsympathetic to what she said and felt that we were not even on the same wave length. I felt she had missed an important point and that there was a moral decision to be made.

One of the difficulties in this whole debate - it is hard to make a useful contribution after so many people have spoken - is that we are all on different wavelengths. It is not a debate in which people are either for or against a proposition, and the guidelines are drawn clearly with some people having one view and others having another. There are so many different bases upon which people hold their views, and often we are not talking to one another in the same language in this whole debate. My attitude has changed very much. Over a period I have come to the view that it is necessary to take a different attitude towards abortion. I started coming to that view when I became Minister for Health, and there was a possibility at one stage that an action I had taken with regard to anaesthesia would close the abortion clinics in Perth. I suddenly realised that, as Minister for Health, I had an important responsibility to that part of the health system and I had to examine what my responsibility was and what society's view was.

People always question the motives of members of Parliament, but they do not realise that members often do things they do not like them to do because they must take a serious view and make decisions. Members of Parliament must make decisions, and they labour over them, think about them and try to find all the facts. For the first time, instead of sitting in an armchair and shooting off an opinion, members have the right to make a decision and it is amazing what a difference it makes. That happens even more often to a Minister. Ministers decide every day on matters that will affect somebody else's life. Nobody else can be blamed or can take that responsibility, only the Minister can. It is amazing how the knowledge that one must make the decisions concentrates the mind. It might be thought that I am talking about Parliament and about being a Minister, but anybody who has been following the debate can see that there is another parallel; that is, when a person must make the decision, it is amazing how it concentrates the mind.

Nobody else is in a position to know what the person has gone through in making up his or her mind. Hon Nick Griffiths stated that this Bill is mine. I am not trying to deny the Bill, but it is very definitely the Bill of Hon Cheryl Davenport. I do not want to take away from her the credit she should have for what has been a very difficult matter. I took the responsibility of arranging for the drafting of her Bill, but I tell members that it is hers. She has taken responsibility in this matter, and that is what makes it her Bill. In the course of doing that she has changed my view. As members will probably know, I have promoted a Bill which currently is in the other place and which sets forward a different method of proceeding. I think that is a very useful Bill; however, that was as far as I intended to go when I promoted the Bill. It is only in the course of talking to Hon Cheryl Davenport and listening to her and her reasons for it that I came to the view that I should support her Bill, and I intend to do that.

We cannot support laws that we believe are immoral. I do not believe that what has been moved here is immoral. We do not have a law that seeks to cause people to do immoral things. It takes a decision away from a criminal law. We make many moral decisions on a day to day basis, but that does not mean they are visited with criminal penalties. This Bill seeks to take away the criminal penalty that flows from the decision made by women, in which they are assisted by a doctor. We are not saying that abortion is compulsory, that people must make a decision to abort.

I will put another point of view at the other end of the same problem which came to me when I was Minister for Health. It became quite clear that a number of people were assisting women to have children by giving them multiple insertions of fertilised ova and using hormone type medicines to increase their own production of ova. The result of this was that those women were having multiple births, where they might have four or five babies. As a consequence those babies generally were born weighing under 1 000 grams.

Medical research has shown that babies weighing under 1 000 grams have, I think, 14 times the incidence of cerebral palsy. The likelihood of any other problem of deformity, disability, attention deficit or antisocial behaviour increases remarkably when a child is born weighing less than 1 000 grams. Admittedly, as times goes on some of those impediments are reduced. Where is the morality when we assist those women to have children in a way that makes it almost likely that they will have deformed children? Where is the morality in preventing the natural death of an under 1 000 gram baby? I am sure everybody can give me examples of a deformed child who has had a wonderful life. However, for every one of those many more will not have a wonderful life. Due to the intervention of the people who first created multiple births and the doctors who then save the babies' lives we end up with an immense problem. The cost of producing that is enormous. Where is our society going? Why are we producing this? Where is the morality in that compared with the morality of a woman making a decision not to have a foetus go to term? I eventually came to that conclusion because the decision to terminate a pregnancy is a moral one. Very few people do not have that view.

However, who do we get to decide the circumstances under which it may occur? Already section 259 of the Criminal Code says that it is lawful to terminate under certain conditions. Interestingly, the Act does not provide for a doctor doing it or make any reference to the first trimester or counselling or anything about consent. It says that it is for the preservation of the mother's life. Members should think about that. That provision is included for a very good reason. The circumstances for which it caters would be most likely found in the third trimester. It deals with a situation where a mother who is coming to term has a serious complication which threatens her life. She may be unconscious in the middle of the Central Desert where there is no doctor. Under those circumstances this law says that if it is necessary to preserve the mother's life the life of the unborn child can be terminated.

One of the effects of not terminating the life of the unborn child might be that both the child and the mother are likely to die. However, if a doctor is available it would not necessarily be reasonable to carry that out. If she were conscious it would not be reasonable to do it without her consent. It is a fairly broad and flexible part of the law. The Davidson test is not dependent on section 259 of the Criminal Code. Sections 199, 200 and 201 about which we are talking read -

Any person who with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her . . .

It does not say what is unlawful, nor does it exhaustively say what is lawful. In fact, the Davidson case comes from a State that does not have a section 259 in its legislation. That was decided on the basis of the word "unlawful". The courts have interpreted what is unlawful in the light of what they believe is reasonable. That is how the Davidson test came about.

Members should not look to section 259 as being in some way definitive of sections 199, 200 and 201. They define the offence. The offence is not defined in section 259; in fact, it is a general defence for what would otherwise be an unlawful assault, grievous bodily harm or manslaughter. It enables doctors to carry out serious medical surgery. A person going into heart surgery might be told he has only a one per cent chance of surviving. The doctor is about to open the body, remove an important part and try to replace it with another part from someone else's body and there is a one per cent chance of survival. If the patient dies, the doctor has caused that death. Why is he not guilty of at least manslaughter, if not murder? He is not because of the provisions of section 259, which override the general rule that one cannot consent to serious assaults or assaults causing bodily harm.

Members should look at the law as it currently stands. It envisages that there will be circumstances under which it will be necessary to terminate the life of an unborn child. It provides that it is only in those cases where it is unlawful that there will be a specific offence.

Who will decide this question? Do we have a doctor, a judge or a tribunal? We already have such a tribunal; that is, the woman. One of the important issues is who will be most concerned in this decision. Who will make the most serious decision? I cannot think of anyone more intimately able to weigh up the matters of relevance and who will live with it forever if they get it wrong. Doctors have a very important role to play, but members should ask a doctor to remember the operations he performed last year or a lawyer to remember the cases he handled last year. They are professionals and they will do their job, but do not expect them to remember whether or not they did a good job.

The woman will live with her decision for the rest of her life. If one believes in a life hereafter, she will live with it even longer. Who can better weigh up the truth of what is being said? Do we ask a tribunal to make decisions about whether the appropriate factors are being properly stated by the person or whether they are making the facts fit within the terms of the law or what is seen to be the law? There is no escaping the truth in that woman's mind or body; there is no escaping her motives. She does not escape that when she makes the decision or after; she never escapes it in her whole life. If members want to find an appropriate body to make a decision, that body is the woman's body.

I suppose I have put it differently from other members, but ultimately we come to the question of whether it is appropriate that we visit this moral decision with criminal consequences.

Nobody would suggest that section 200 should remain. That section imposes a criminal penalty on the woman. How can we suggest that for that particular moral decision? There may be some argument so far as the doctor and the person who supplies the mechanisms are concerned, but for the woman there cannot be any such suggestion. I have not heard any argument put to the Parliament over the days of this debate which I would see as supporting section 200 of the Criminal Code. It is not as if the criminal law is totally escaped. People are saying that we must take abortion out of the Criminal Code. We will never take abortion out of the Criminal Code because the law relating to manslaughter and grievous bodily harm remains there. It is not as if we have said that the normal principles of law do not apply to abortion - they certainly do. We are saying that we do not apply a particular sanction to abortion.

Much has been said about life beginning at conception. I do not believe that life begins at conception. I believe that the possibility of a living human being begins at conception. At some stage - the word people used to use is quickens - it becomes some perception of that child in the womb but at that stage it still does not have the reality of surviving outside the womb. I do not think that in the end that is the relevant point. We have to see what society should be doing for women who find themselves in that traumatic situation of having to make decisions about that child within them. It is not as if we are getting large numbers of third trimester abortions. If we put some of the qualifications on it that I have heard mooted in the Press regarding the number of doctors women would have to see and the amount of time they would have to spend before they made a decision, they could very well end up in the third trimester before they could do it. It is not as if we can demonstrate massive abuse of the process in the way it is being carried out. If we assumed that the law did not provide a special penalty, what abuses could we currently point to that need to be addressed? Despite the fact that some would argue that people are operating outside the law, I cannot see large numbers of abuses. I do not believe they have been operating outside the law.

I was taken to task for mentioning that certain lawyers were Roman Catholic. I should just mention the context in which I did that. I had stated my view of the law. I believe it is a view of the law I am entitled to hold; that is, I believe that the Davidson test applies in Western Australia because it has been applied in Victoria to a lesser provision, which is almost identical to section 199. Victoria does not have section 259, so it was perfectly legitimate for me to hold the view that in Western Australia the Davidson test appropriately applies. I believe that the test suggested by Judge Levine could also be argued to apply in Western Australia until such time as a decision is made

in Western Australia. That is a view one can hold and until there is a binding decision it is not possible to say otherwise. Lawyers can always hold different views. I was criticised by a group of lawyers, who put themselves up as senior lawyers. I was asked, "What do you say to the criticism of these senior lawyers that you acted improperly in your statements?" Having been told who the senior lawyers were, all I said was that they did appear to me to be Roman Catholic. I went on to say that I respect their views and their right to hold them. However, I believe that they should have told the public that their views came from a situation where, quite rightly, they hold a different view from the one I hold.

As a lawyer, I believe I quite rightly formed a legal opinion. My opinion was based not on whether I thought it was murder, but on what the law said, not coloured by any religious belief that I had about the moral status of abortion, but speaking plainly and simply as a lawyer. I did not believe I deserved the moral criticism that I came under. I felt that it was important, if the public were to judge between the legal view that I held and the view of people who clearly held themselves up as being senior lawyers - people whom one might think because they were senior lawyers got it more right than me - that I should point out that it was not exactly coincidental that these people came from a point of view as to the morality of the matter which was different from mine.

Hon Tom Stephens: You have never been able to contain your sectarian bigotry.

Hon PETER FOSS: It seemed to me the politest way to deal with the problem, because what I said to them was, "I respect your views, and I hope you will respect mine. You have not shown any respect for mine, because you have come out and criticised my honesty and my integrity, and my views as a lawyer." I formed those views not merely of my own accord but by taking the legal opinion of crown counsel. Before acting, I took the opinion of crown counsel and the Crown Solicitor. I took a cautious view.

Therefore, I took some exception to having my integrity, my views and my honesty, and the legality of my behaviour, challenged by people who were not prepared to tell the public of Western Australia that they came from a preconceived point of view. I respected their views, and I said that at the time. They are perfectly entitled to hold their views, and I am perfectly entitled to hold my views. The difference between what they said and what I said was that I respected their view but they did not respect mine. If they had merely wanted to say I was wrong, they could have said that they thought I was wrong. They went further and attacked my integrity. I do not believe I deserved that. I formed that view after taking advice, and I believe it was a view fairly and properly held.

I raised that matter in this debate because Hon Tom Stephens chose to do so and attacked me on it. I should mention also that he attacked me for laughing the other day, and I did not do so.

Hon Tom Stephens: You did exactly that. You cannot contain your contempt for some of the -

The DEPUTY PRESIDENT (Hon J.A. Cowdell) Order!

Hon PETER FOSS: The Leader of the Opposition is totally wrong, and I am sure those members who were around me at the time will confirm the fact that I did not. Hon Tom Stephens has put something wrong on the Hansard record, and he owes it to the House and to me to correct it; and if he will not do it, I will. That is unfortunate in a debate which has, I believe, proceeded with such good faith on the part of all members. I do not believe that generally speaking this debate has in any way shown other than the honesty and intent of members to seek a solution to a very difficult matter. It reflects greatly on this House that the people who have expressed their views have expressed them in the way that they have.

I wanted to make those two points clear, not because there is any rancour on my part, but because I believe it is unfortunate that I was attacked in a debate which otherwise was without any form of malice or personal argument. Having put that on the record, I hope that we can proceed in this debate in the manner in which 99.9 per cent of this debate has proceeded; that is, with members of Parliament demonstrating that they take their role seriously; that they take their personal responsibilities and the responsibilities for their own consciences and morals seriously; and that they recognise that they must seek the views of the public. I think most of us have sought the views of the public and see this as one of the more difficult, but in many ways one of the more rewarding, matters that has come before us, because we are working together to try to find a solution which we believe will be in the best interests of the people of Western Australia and will be good law. We may differ on how we see the result, but the important aspect that has made this a worthwhile debate is that we have worked together towards a common cause, and the common ideal is that we seek the best solution. I believe the best solution is to support Hon Cheryl Davenport's Bill. I will be doing so.

HON MURRAY MONTGOMERY (South West) [2.00 am]: This Bill was introduced by Hon Cheryl Davenport as a result of community concern about abortion. The Bill has created a great deal of interest in the community. I have received a large amount of correspondence, a couple of videos, many telephone calls, and messages on Voicemail. When one talks to people in the community, both individually and in groups, one notices the wide

divergence of opinion about the possible final result of this legislation. The interesting part of the debate is that there have been many sides to it, which is not often the case. In this place, we have heard various arguments for and against the legislation. We have heard many points of view, and we must decide whether to support or reject this legislation. It comes down to one's morals and beliefs; whether one believes in a maker; whether, at some stage, that maker will judge us individually, and whether there is a life hereafter.

The Bill has been discussed widely, both inside and outside this place. Members have debated the rights of the unborn, and whether that is an issue at law. One could go on at great length on many points, and many members have spoken at length on this issue. Much of the debate has been of great interest not only to me and other members in this Chamber but also to people listening in the gallery. As Hon Barry House said, members must make a decision one way or the other, and not take the middle road and get run over. We are elected to this place to make decisions, and some people will agree with those decisions and others will not. It is up to individual members whether they listen to community opinion. There has been no animosity during the debate. Members have put their points of views. The abortion debate has raised the issue of contraception. Should it be part of this debate or left to another area, and where does education fit in; should abortion be considered as a health issue; should the curriculum cover contraception so that females and males learn what life is about? If society acts responsibly, following generations will know what our aims were and where we were coming from. We can talk about what has happened over the past 30 or 40 years, and it does not matter whether I agree; the issue is where I stand on this Bill.

I understand that people have been hurt and will grieve over their decision to have an abortion. I have talked not only with the wider community but also with my family. I have two daughters who live on different sides of the country and who hold different views. It is interesting that they disagree on what should be the general outcome of this Bill.

Hon Cheryl Davenport telephoned me at some stage, and I indicated to her that I would wait for her Bill to be presented to the House before making a decision. I have listened carefully to the debate but I will not support this Bill. The changes that the community is seeking will be brought about in other ways.

HON RAY HALLIGAN (North Metropolitan) [2.08 am]: I will take part in the debate but I believe the majority of the community would not like it to take place. We are told that there are 9 000 abortions each year in Western Australia alone, so there are at least 9 000 women who would be interested in the outcome of this debate. I am also a little concerned that we seem to be indignant about what has been happening for the past 25 years or more. I am not suggesting for one moment that now we have found it is happening we should not do something about it. I was impressed by the arguments of a biological, spiritual and moral kind. I do not intend to add to that part of the debate. However, I place on the record some of the matters I considered to reach a decision on whether I should vote for or against the Bill.

The subject matter is one of such importance, now it is out in the open, that it is dividing the community and causing consternation to many. The amount of material I have received on this matter, as have other members, shows how the subject of abortion is causing a great deal of agitation in the community. We now have people pitted one against the other on the issue. I understand that across the road at what is known as the workers' embassy one group cut down the banners of another group. Photographs in the newspaper suggest that some considerable ill-will was evident between the two groups, and that is most unfortunate. This agitation in itself is not surprising, but I have been surprised by the strength of feeling expressed and the diversity of views.

I now record excerpts from some of the correspondence we have received. The first quote is a pastoral letter from the Archbishop of Perth, the Most Reverend Barry J. Hickey, called "A Case for Life". The front page reads "Have no doubt that the matter of abortion is a dividing line for civilisation". The next reference is a letter from a doctor containing the following points -

1. A substantial number of members of the Australian Medical Association and medical profession do not condone indiscriminate abortion on demand as has been the practice in our community for some time.
2. Unlike members of the lay public, all doctors and other paramedical staff who have carried out or observed an abortion are in no doubt that the foetus is alive.
3. It follows from this that abortion kills the foetus.
It could therefore be argued that abortion is never justifiable.
4. A case can be made for aborting the foetus if there is a strong belief that continuing a pregnancy would pose a grave risk to the mother's physical health to the extent that it could lead to her death.
The mental health of the mother and the possibility of genetic and other diseases of the foetus are other possible justifications for abortion but are more difficult to prove in individual cases.

5. Freedom of choice by the individual is a legitimate concept, but in this special instance this is a choice between preserving or terminating life.

These points encompass a range of views expressed by a number of people and organisations. The next reference comes from the Chairman of the State Committee of the Royal Australian College of Obstetricians and Gynaecologists in a statement issued following the college meeting of 12 February 1998. It reads in part -

In the past twentyfive years in Western Australia the procedure of abortion to terminate pregnancy has been widely practised both by specialists and general practitioners. These operations have been performed in good faith for a variety of reasons relating to the life health and welfare of the patient concerned. The costs of the procedure and hospital expenses have been funded by the State and Federal governments. The decision for doctors and nursing staff whether or not to be involved in an abortion operation has been a personal one, and free from duress.

The next letter is from a person who states she is a mother and a proud grandmother of five grandchildren, one of whom has Down syndrome. She writes -

I cannot understand the mentality of any person thinking that legalised abortion which would be abortion on demand regardless of circumstances is the way to go. To me it is no different from legalising the killing of another human being.

I feel very strongly about this and have been moved to write this letter. I am also aware that under certain circumstances an abortion could be necessary.

The next is from an organisation called Women Hurt by Abortion and it reads in part -

We have received several accounts of girls being forcibly taken into abortion clinics by relatives and of other women being held down by clinic staff and aborted despite expressing a change of mind immediately before the procedure.

One crisis call WHBA received was from a desperate woman who had been told by a psychologist from a major public hospital that if she did not abort, the psychologist would start proceedings to remove her other children from her care. On subsequent intervention, initiated by WHBA, the woman's GP did a home visit and found there was no justification for such a threat. Appropriate medical care and support was then arranged for the woman.

While we acknowledge that coerced abortions are not the norm, the above accounts are by no means isolated events.

The next letter states -

I am fully aware of the complexities surrounding this issue and just how vexing it must be to hear the polarised views of both sides, particularly as it is expressed with vehement zealotry. Too many "pro-lifers" in my view quote Scripture or Church teachings and lose sight of the one inescapable and utterly fundamental truth in this whole debate: NO-ONE has the "right" to take another human being's life . . .

It continues -

Many years ago I heard an obviously well-educated and affluent woman assert on the ABC program *Monday Conference* that it was reasonable for her to decide to abort the foetus within her womb if the birth of that child would interfere with her travel plans - a "homicide of convenience" if ever there was one.

The next letter is from three doctors associated with the Young People's Health Australia (WA Branch) Inc and they write -

We recognise that prevention is better than cure however the fact of unwanted pregnancy has to be addressed.

As David Bennett stated (*Growing Pains: what to do when your children turn into teenagers* 1987), an unwanted pregnancy is a tragedy for all concerned whatever the outcome. Some of the relevant issues and problems are:

1. Pregnant teenagers often present themselves late for antenatal care which puts them at risk. Also the younger and less mature they are, the greater the risks.
2. Teenagers continuing with the pregnancy have their lives permanently affected, usually adversely.

3. Just over one in ten pregnant girls marry, but teenage marriages are notoriously unstable, with many ending in divorce.
4. About four in ten pregnant teenagers have their babies and as single mothers, raise them in a situation fraught with difficulty; the children of adolescent mothers are more likely to be exposed to illness, injury and deprivation and go on to become teenage mothers themselves.

The letter goes on -

As an organisation representing health professionals working with young people we believe that if the present situation remains unchanged there will be serious implications for the physical, mental, emotional and social health of young people.

The last document I will read from was mentioned by Hon Murray Nixon. It is a press release from Anglican bishops responding to the abortion debate. In part, they state -

Finally, as Bishops, we wish to re-affirm the need in a civil society to care for and protect all human life at all stages of its development. We are very sensitive to the fact that we are males and cannot fully appreciate the difference in perspective brought to the issue by women. We do not underestimate the depths of the on-going trauma suffered by women who are caught in the dilemma of an unwanted pregnancy. It is also clear that, for many women who have had abortions, it is or can become a very significant grief issue.

Finally they say -

The abortion debate raises for the Church a need to connect far more deeply with women, so as to understand the reasons why abortion becomes a preferred option. We wish to commit ourselves to providing on-going support for women through our parishes and agencies of care. We also hope to work with Government for the development of policies which support family values for the provision of more adequate child care facilities, through advocating for equal rights in the workplace for parents of both genders, and for providing tax breaks for families. In other words, we acknowledge that we are addressing an issue which is not just medical, but social, political, moral and spiritual. Accordingly, it requires a multiplicity of responses and great care in putting them into effect. Adjustments to the law alone will not be enough.

This indicates that we could well have a situation where relationships may change, and may never be the same again. Certain people or groups of people may never show the kindness, concern and understanding that previously existed between them. Members in this place and in the other place have an onerous task to perform. I do not believe anything I have to say in this debate is likely to change the way members view this issue or the way they will vote. I do not have to tell members that this is a very sensitive issue, which many say should be the province of women alone. It is an issue where there is speculation about whether men should have an opinion, let alone be asked for it.

However, as members of this House we are confronted with this issue and, as with so many others that reach this place, it requires all members to consider whether members of the community at large should be given the freedom to do as they please, believing that all around us are law abiding citizens, whose daily creed and actions epitomise the Ten Commandments.

Hon Tom Stephens spoke yesterday of presumptions by doctors and others. If we accept that those presumptions exist, legislation will be required, probably in the Criminal Code, to deter those who believe that they can do things to women without their consent. It should not be suggested that through our inaction we allow women to become vulnerable to the unscrupulous in our society.

We must now make a very important decision. It appears that, like me, many members are finding it a very difficult decision. My own thoughts and feelings pale into insignificance in the light of the agony felt by the women who must make a decision about abortion. It has been said that the vote on this Bill is a conscience vote. However, I cannot agree with that description. The correct term should be a "free vote" because on the one hand a conscience vote could be construed as a member's providing his or her own concept on morality; on the other hand, a free vote would allow a wider ranging debate and input from the community.

Like so many others, having received so much mail and spoken to so many people face to face and on the telephone, I believe that wide debate has taken place and, therefore, my vote will reflect my understanding of the feelings of the majority of people within my electorate. I consider my personal views to be subordinate to the view of the majority.

HON GREG SMITH (Mining and Pastoral) [2.24 am]: This is an issue about which I have had to think long and hard. I am prepared to say it is not in the domain of a man to comment on abortion because I have never had to experience carrying a child to full term nor the trauma of an unwanted pregnancy. In coming to a decision, I wanted

to make sure I could live with my decision. I had to put aside all the arguments of morality, at what stage the foetus is a life, etc.

In the end I decided that I would far prefer to live with the knowledge that a pregnancy had been terminated than with the thought that I had been responsible for making a woman or a girl endure an unwanted pregnancy and been forced against her will to be responsible for the upbringing of that child for the next 15 to 18 years.

As much as I do not believe this is a perfect Bill - it is inadequate in many respects and it will leave a vacuum where we have thrown something away without knowing what other options could be open to us to provide for women seeking termination of an unwanted pregnancy - I have no alternative but to support it.

I emphasise that I will support it at the second reading stage because I believe there could be other options open to us in the future. I do not believe that anything we do or say in the next few weeks in this Parliament will affect the number of abortions carried out in this State. We are led to believe that about 9 000 abortions are currently carried out each year. I do not believe that making it totally illegal or allowing abortion on demand will result in any fewer abortions being carried out. Other avenues will be opened for abortion.

At the end of the day, if a woman has taken all steps to avoid falling pregnant but finds herself pregnant and wants to terminate that pregnancy, it should be able to be done as quickly as possible. I would like to see legislation providing that termination not be possible after 12 weeks and so on. However, we have no other option on the table at the moment. What we have is what we must deal with.

One of the most fundamental tenets of the Liberal Party is a belief in the rights of the individual. That means I do not have the right to force a woman to go on with an unwanted pregnancy. Although I do not approve of abortion per se or as an alternative to contraception, until something else is presented, I will support this Bill at the second reading stage.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [2.31 am]: This debate has demonstrated the maturity of this House and its capacity to debate and consider issues of great complexity and passion in an exemplary manner. All members have debated this issue in very good spirit. We have witnessed people who have very strong and passionate views being able to put those views forward in a very strong and measured way. This debate has demonstrated a significant maturity in this House in the way it handles this sort of issue. I regret that that is not the case with party political issues, but we are good at debating issues of this nature and they bring out the best in members.

I will reflect on the immediate history of this Bill. As members are aware, this issue began with the charging of two doctors under the existing laws. As a result, we had the first Davenport draft Bill, which sought to amend the Criminal Code to make abortion legal in Western Australia. The Government then considered what might happen if that Bill were introduced. It would have given a members a choice of supporting or not supporting abortion. The Government felt that members should be given the chance to consider more options. Hon Peter Foss was given the job of drafting a Bill that would provide a number of options, ranging from totally opposing abortion to abortion on demand, with a number of options in between. I thought that was a good method of dealing with the matter because it would give all members of Parliament the chance to vote according to their personal view. I am aware that members have a range of views from one end of the spectrum to the other.

I was sorry that Hon Cheryl Davenport produced a second Bill which, if passed, would effectively decriminalise abortion. That has added a further element to Parliament's position or its capacity to resolve this issue. We must resolve it because there is currently a problem. I quickly emphasise that the Government's role has been to try to facilitate a parliamentary debate. I took some exception to the comments made by Ted Cunningham which were reported in this morning's *The West Australian* that somehow or other the Court Government was responsible for bringing in legislation to legalise abortion. It is not a government Bill, never has been and never will be. It is a proposal.

Hon N.D. Griffiths: You must be joking.

The PRESIDENT: Order!

Hon N.F. MOORE: If the member takes that point of view, he puts a person like me who is attempting to be moderate in this debate into a political position. He must understand very clearly that the Government has not taken a position on this. Government members are entitled to vote in any way they wish, as he is entitled to vote in any way he wishes. I emphasise that that is the position, and I resent any suggestion to the contrary. It is simply not true. It is a pity that that comment by Mr Cunningham was reported in the newspaper because it again seeks to create the impression that somehow or other the Government has a particular position. It is also a pity that the media do not understand the intent of the Foss Bill, which was to give options to members. The Bill should not be seen in its

entirety. It was almost a straw poll type Bill. However, that is for another time.

This morning I listened to ABC Radio, on which the member for Willagee, Alan Carpenter, was quoted as saying that the debate had been had already, and had been had for a long time. I agree in a sense with that comment. Society changes its views of social issues over time through what is usually a very evolutionary process. On most issues of this nature it is not necessary for there to be revolutionary change because evolution tends to reflect the views of the community. People have begun to accept that there is a need for change and that change has been occurring even though it has been contrary to the law.

My time here is now over 20 years. Some 20 years ago there was very strong community support, and I suspect strong support in the Parliament, for there to be no change to the existing law. Now some 20 years later there is a general acceptance that what people think is the law is what they want. What they think is the law is not what it is. They think the law is essentially the Davidson principle; that is, that if the physical or mental health of the mother or child is at risk or the foetus suffers from a severe abnormality, abortion is justified. That is the view most people have of the situation in Western Australia at present. Most people, including myself, when this whole issue arose were not aware of what Western Australian law currently provided for. It was of interest to me to find out exactly where we stood in respect of the law. As I have said, I adopted the view that the Davidson principle was essentially the law of Western Australia.

Most people in the community believe that there is an argument for termination under certain conditions. I do not believe that the community supports a total repeal of the abortion laws in the Criminal Code. They do not know that that is what this Bill is about. Their general view is that we need to make some changes to the law because the law says that the only circumstance in which an abortion can take place is when the life of the mother is at stake. That needs to be changed but I do not think people agree with the Bill Hon Cheryl Davenport is putting forward, which eliminates the whole of the abortion law from the Criminal Code. Most people would not consider a person who commits an offence in relation to abortion to be a criminal. They probably would support Hon Cheryl Davenport's Bill that abortion should not be in the Criminal Code. They would want, however, some alternative to what is currently in place. They would want some indication that there will be some rules and constraints in respect of abortion. I believe the majority of people in the community would want us to put something in place of what is now in the Criminal Code if we did accept Hon Cheryl Davenport's legislation.

I have heard enough in this debate and I have read enough and talked to enough people to have reached the conclusion that we need some regulation of the process of abortion. There is a need for a set of "rules", governing how abortions can be carried out in Western Australia. I support the Davidson test for when abortion should be legitimised, and I hope that some time down the track I will have a chance to vote on that matter.

I do not think this Bill will solve the problem that we have at present, and I will be opposing it because it throws away all of the references in the Criminal Code to abortion. I do acknowledge that other sections of the Criminal Code can apply to circumstances when abortion can take place, such as grievous bodily harm, but it is important from the point of view of the community to know that a body of law relates to this issue and that it can understand it easily without having to go from one part of the Criminal Code to another to know where it should stand on this issue.

I indicated a moment ago that I support the Davidson principle and will be supporting any proposition in the future which allows for paragraphs (a) and (b) of the Foss Bill when that comes to the Parliament. However, I am not prepared to agree with the removal of the current law in the Criminal Code until such time as we have a chance to do that and I can see what the alternatives are. Unfortunately, at the moment I do not know what the alternatives are because I do not know what we will decide as a Parliament in respect of that matter.

I acknowledge that the numbers in this Chamber are such that this Bill may be passed. If that is the case and we do remove from the Criminal Code sections 199, 200 and 201, I believe it will be necessary for us to put back into law some rules, controls and regulations governing abortion; and I will put forward a proposition in a moment that members may like to consider.

My basic view on these moral issues is, I guess, a reflection of my relative conservatism; that is, we should seek to follow the views of the community rather than try to impose our views upon the community. I acknowledge, therefore, that over the past 20 or 30 years that I have been thinking about these sorts of issues, there has been a change in the community's view and there are circumstances where abortion should be an acceptable practice.

However, I do not accept, as Hon Ljiljana Ravlich indicated last night, that we can simply look at an opinion poll and say that is a reflection of community opinion. She indicated to us that because 82 per cent of a particular poll suggested that we should legalise abortion, that is the view of the community and we have an obligation as politicians to implement that view.

I was tempted to interject and say that if we had a poll on capital punishment, we would get the same result, but Hon

Ljiljana Ravlich would not feel obliged to go along with that opinion poll because I know she does not support capital punishment. It is not a fair judgment that if an opinion poll showed a particular result, that should require a Parliament to legislate on that basis, because opinion polls usually ask a one sentence question and never have the capacity to look at the complications, differences of opinion and nuances that might be attached to that particular matter.

I am concerned that the Parliament may find that it cannot resolve this issue. We have two Bills - one in this House which is dealing with the removal from the Criminal Code matters relating to abortion. I have a feeling that Bill will pass this House but it may not pass the other House. At the same time, a Bill in the other place relates to the Criminal Code. I suspect it will pass the other House in a modified form, and come here. I am making an assumption about the result, but it will be a nonsense for this House, having decided it should not be part of the Criminal Code, to debate an amendment to the Criminal Code in respect of this matter. It does not make much sense to me. It is not inconceivable for both Houses to reject the other House's Bill. That would put us back where we started, and that would be an intolerable situation.

Over the next week or so I propose to look at a mechanism by which we might seek to put the "rules" relating to abortion into the Health Act, which would be a suitable piece of legislation in which to place those rules. That would give this House a chance to consider a number of options regarding what might go into the Health Act on this issue. We can do that, I understand, if the House is prepared to accept a direction to add another part to the Bill. That part could relate to an amendment to the Health Act. In the event this Bill were passed, and subject to some drafting in the next week or so, I would be considering the possibility of adding to Hon Cheryl Davenport's Bill in Committee a second part which could amend the Health Act. In that amendment I would seek to put elsewhere the options relating to abortion contained in the Foss Bill. The four options contained in that Bill can be contained in the Health Act, and when members in this House debate that in Committee they can decide whether to accept paragraphs (a), (b), (c) and (d), or one or several options. It is important that we resolve this matter because it will be intolerable for us to face a situation where both Houses cannot agree, and we end up back where we started. That cannot be allowed to happen, because where we started is with the existing law which I do not support, and most others, I suspect, do not support it either. We must have some certainty in all of this. We should work out a mechanism to ensure that certainty applies.

I do not support the Bill because I do not know what the alternatives will be. I do not want to remove from the Statutes some law that exists now, until I know the alternatives. I acknowledge the numbers in this place, and in the event that the Bill is passed, I will seek to do something about putting into law some rules and regulations on abortion so that people in the community will know where they stand and that there are some constraints on what people might do about this issue. Therefore, under those conditions, I oppose the Bill.

HON CHERYL DAVENPORT (South Metropolitan) [2.48 am]: I place on record my thanks to the members who have supported me in this debate. I thank them also for their excellent contributions on behalf of the Western Australian community. For those who do not support the Bill, I continue to respect their right not to support me, but those arguments have not convinced me and have not changed my mind. My Bill seeks to provide certainty for women and the medical profession, ensuring that a safe and legal choice can be made without fear, should an abortion be required. This does not force any woman to terminate a pregnancy. The current laws on abortion are antiquated laws, designed almost a century ago to protect women particularly from backyard abortions.

Some arguments have been mounted in this Chamber by the anti-choice proponents who seem unable to grasp the fact that the current laws are from the past but have not had any enforcement in Western Australia over the past 30 years. Repealing these laws will not result in an escalation in the terminations of pregnancy. It will mean that women and their doctors can be assured of certainty of a service that is provided medically, safely and legally.

I will touch briefly on the percentage of terminations performed in Western Australia. Eighty-three per cent of pregnancies are terminated within eight weeks of gestation or less; 96 per cent after 12 weeks or less, and only 1.4 per cent after 16 weeks or more. Only a handful of abortions in Western Australia are performed in the third trimester - that is, greater than 20 weeks. They are extremely rare and they are performed for the preservation of the mother's life or because the baby is severely deformed or has a congenital illness. I have never suggested that third trimester terminations should be the norm. They are not. The situation in Western Australia has been regulated for the past 30 years.

During my second reading speech I mentioned the situation in South Africa. The reason for the changes to the law in South Africa was to create choice for, in the main, poor women - mainly black and coloured women. Although abortion was legal in South Africa the only women who had access to abortions were women with money. In South Africa women can now access safe, legal terminations, primarily in the first trimester of their pregnancy.

I reiterate again that this State has regulated itself over the past 30 years. My reason for seeking to remove these

sections from the Criminal Code is not to create an explosion in the number of terminations of pregnancies in this State, and this will not happen. Doctors are responsible people and the women who present seeking terminations are responsible women.

There was some discussion during the debate on rights of the child. I acknowledge Pat Giles, who is in the gallery tonight and who is currently the chair of the Global Commission on Women's Health. Pat sent me a message to say that despite 10 years of effort by the Vatican no mention is made in the Convention of the Rights of the Child to an unborn child. I contrast that with the Convention for the Elimination of all Forms of Discrimination Against Women. Australia has been a signatory to that convention for many years and is still yet to honour its commitment in terms of reproductive rights. Australia is placed in the western Pacific region. Of the 46 member states in that zone only two countries still have abortion in a Criminal Code so it is illegal. Those two countries, I regret to say, are the Philippines and Australia. Think about that, members; think about the nations of the western Pacific.

During my second reading speech I posed a number of questions, which I pose again now. Firstly, do we as legislators have the right to deny a woman the right to choose when she will become a mother? Secondly, can we live with our conscience if we as politicians fail to change the law and then witness women dying or sterilising themselves unnecessarily because access to a safe, legal medical service is denied? Thirdly, are members, as politicians, listening to their communities? If members cannot accept that change is needed, how will they justify that failure to their constituency?

I note the contribution from Hon Greg Smith and Hon Bruce Donaldson, and I thank them for their support. Propositions have been put to me regarding the situation if the legislation passes the second reading stage this evening. I also acknowledge the discussions I have had with Hon Norman Moore tonight to try to sort through what might well be a stalemate should this Bill fail in the Legislative Assembly, and should the Assembly Bill fail here. I acknowledge that not everybody agrees that we should have no laws relating to abortion. We can negotiate on the proposal the Leader of the House put to me to reach some agreement; I am happy to entertain that proposal. Obviously, over the next week or so, after we rise tomorrow and before we return, a lot of discussion will take place. I also record that I have attempted at every stage in the passage of this Bill to maintain a bipartisan relationship as much as possible with the Government, and I think I have succeeded in that regard.

I appreciate the problems which the Leader of the House has envisaged may occur. I do not want to create a problem. As I said earlier, I seek to put in place that which has been a reality for the 30 years prior to the two doctors being charged. In fact, we had a status quo situation to which we cannot return because of recent events. I am open to discussions and negotiations in the event that the second reading of the Bill is passed. I know members have been here for a long time. I appreciate the attention and concentration, and the dignity and respect that we have extended to one another.

In conclusion, I attended a breakfast this morning organised by the Association for the Legal Right to Abortion at which Hazel Hawke was the lead speaker. Many members know that Hazel Hawke has been in Perth assisting us in this campaign over the past few days. Hazel Hawke has been named by the Heritage Foundation of Australia as a national treasure. Are members, as lawmakers, prepared to make a criminal of this woman, now in her late 60s, who has admitted to having a termination of pregnancy when aged 18? Quite frankly, under the existing laws she would be a criminal and she freely admits to that. At the breakfast this morning Hazel Hawke said that it takes two people to fertilise an egg, but only the woman is criminalised. Where is the equity in that?

Question put and a division taken with the following result -

Ayes (21)

Hon Kim Chance	Hon Peter Foss	Hon Norm Kelly	Hon Greg Smith
Hon J.A. Cowdell	Hon John Halden	Hon Mark Nevill	Hon Derrick Tomlinson
Hon M.J. Criddle	Hon Tom Helm	Hon Ljiljana Ravlich	Hon Ken Travers
Hon Cheryl Davenport	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon B.K. Donaldson	Hon Barry House	Hon Christine Sharp	Hon Bob Thomas (<i>Teller</i>)
Hon Max Evans			

Noes (11)

Hon E.J. Charlton	Hon Ray Halligan	Hon M.D. Nixon	Hon Tom Stephens
Hon E.R.J. Dermer	Hon Murray Montgomery	Hon Simon O'Brien	Hon Muriel Patterson
Hon N.D. Griffiths	Hon N.F. Moore	Hon B.M. Scott	(<i>Teller</i>)

Question thus passed.

Bill read a second time.

As to Committee

HON CHERYL DAVENPORT (South Metropolitan) [3.04 am]: I move -

That the Committee stage of the Bill be made an Order of the Day for the next sitting of the House.

Point of Order

Hon TOM STEPHENS: I understood the Leader of the House intended to make sure that before this Bill went to Committee, there would be a motion to enable the Committee to deal with more than just the current policy of the Bill. In those circumstances, I did not expect this motion to be moved at this time. Mr President, I would like you to clarify for me that if this motion is put now, it will not prevent the Leader of the House subsequently moving the motion that he has indicated that he wants to put. Will he still be able to move that motion during the week following the recess?

The PRESIDENT: Order! The Leader of the Opposition referred to a motion to be moved by the Leader of the House. I have had no notice of that motion. From what the Leader of the House said while I was in the Chair, he is not precluded from moving that motion when the House eventually meets to consider this Bill again. When the order of the day is called, there will be an opportunity for any member to take whatever action that member sees as proper in accordance with the standing orders.

Question put and passed.

ADJOURNMENT OF THE HOUSE

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [3.07 am]: I move -

That the House at its rising adjourn until 2.00 pm today (Thursday).

In moving that motion, I indicate that is on the understanding given to me by members of the House that the first hour will not be consumed by motions, but that we will go into orders of the day at 2.00 pm.

The PRESIDENT: Order! Before I put that motion, I advise that the Standing Orders Committee had intended to meet at 9.30 this morning. Given that the House will not sit until 2.00 pm, that meeting will now occur at 1.00 pm in the committee room upstairs.

Question put and passed.

House adjourned at 3.07 am (Thursday)
