ACTS AMENDMENT AND REPEAL (COURTS AND LEGAL PRACTICE) BILL 2002

Second Reading

Resumed from 23 October 2002.

MS S.E. WALKER (Nedlands) [9.02 pm]: I have already discussed in some detail the position the Opposition will take on this Bill. I will respond in part to the Attorney General before I refer to the Legal Practitioners Act, which is being repealed. I will refer to the Western Australian Constitution and the 1999 referendum.

The Attorney General has dredged up section 65 of the Criminal Code in order to justify changing the reference to the Crown Solicitor and other references to the Crown. The Crown Solicitor has been in that position for a considerable number of years and is highly respected. The language is outdated and could be modernised. A similar example is the Lord's Prayer. I have heard it since childhood. The version I heard when I was a child is different from the version I have heard recently because the language has been modernised. However, reference to our Lord or God is not deleted. I am not referring to the Queen in that context. However, under the current Australian and Western Australian Constitutions, we have a relationship with the Queen. The Attorney General and this Government cannot get away from that fact whether or not they like it. It is fallacious to dredge up section 65 of the Criminal Code. Some words could be changed. The Supreme Court rules and other different instruments in this State are changed all the time.

Section 2(1) in part I, "Parliamentary", of the Western Australian Constitution, which is relevant to this debate, reads -

> There shall be, in the place of the Legislative Council now subsisting, a Legislative Council and a Legislative Assembly: and it shall be lawful for Her Majesty, by and with the advice and consent of the said Council and Assembly, to make laws for the peace, order, and good Government of the Colony of Western Australia and its Dependencies: and such Council and Assembly shall, subject to the provisions of this Act, have all the powers and functions of the now subsisting Legislative Council.

Importantly, section 2(2) states -

> The Parliament of Western Australian consists of the Queen and the Legislative Council and the Legislative Assembly.

In 1999, we had a referendum in Australia which drew heated debate and divided the community about whether to pursue a republic or retain a constitutional monarchy system. If I recall correctly, even if a federal referendum were carried, a referendum would still be required in our State to make a republic.

This Attorney General has the outrageous arrogance to suggest this change. Obviously, he did not like the outcome of the referendum that was based on his one vote, one value. Everybody had one vote, one value and they made a decision. Whether we like it or not, that was the decision and we have a constitutional monarchy in this State. These Bills are an attempt to tear down the traditions and the respect for "monarchical expressions", which have great tradition and lend a sense of stability in the community, especially in such times. When I looked at the Attorney General's position in relation to legal practice, his actions in bringing this trivial legislation to Parliament can be attributed only to envy. In presenting the Opposition's view, I have had discussions with lawyers in the community on these matters. Many lawyers tell me they see this as a Bill to modernise the legal profession. It will do so. However, it is very important that due process is followed in the Assembly and in the community. I am a stickler for due process, which often is lost. People may want to maintain a constitutional monarchy and others a republic. The people decided in 1999 they would retain a constitutional monarchy. It is still with us.

I refer again to the article headed "Queens, wigs set to go". If the Attorney General had the power, he would get rid of the wigs and gowns in the criminal courts because he has no idea what that action would do to the system. If he had his way, legislation would be here today and the wigs and gowns would go. Thank goodness that it is not his decision; the decision resides with the judge of the court.

Another interesting matter in the article about which the Attorney General was wrong was his comment that politicians and local government councillors would no longer have to swear the royal oath. That legislation would be here today, too, if the Attorney had his way. I did constitutional law. I did not come first; I might have come second or third - I cannot remember. That is okay. I am not familiar with the Constitution Act of Western Australia, although I have referred to that Act. I remember when I came to Parliament I took an oath. Section 22 of the Constitution contains the oath or affirmation of allegiance. Section 73 indicates how to change the Constitution Act. It states -

> Provided always, that it shall not be lawful to present to the Governor for Her Majesty's assent any Bill by which any change in the Constitution of the Legislative Council or of the Legislative Assembly shall

> be effected, unless the second and third readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and the Legislative Assembly respectively.

In some situations that is what must be achieved to change the Constitution. However, in other situations, not only must we get it past that hurdle, but also, as required under section 73(2) of the Constitution Act, present the Bill to electors for approval in accordance with that section. That is why politicians will go on taking the oath or the affirmation. It is very contemptuous for the Attorney General to drag up section 65 of the Criminal Code as some sort of justification for this crackpot, trivial legislation that he has introduced. However, it says a lot about his ignorance of the due processes in this State.

I return to some of the remarks I made earlier about this joint legislation. In the second reading speech on the Legal Practice Bill, the Attorney General said that it provides a package of reforms that respond to the community's interest. He has not told us how this is in the community interest. He has not told us how it is in the community interest to change the name of the Crown Solicitor to the state solicitor and to make all these other changes. The only reason I am opposing the changes is that we have already voted on a system in Australia.

The partnership in the Constitution is in the carpet on the floor of this House. There we see the crown, representing the Queen, and the swan, representing, I presume, the State. I tried to find out something about the history of the carpet today. I am sure it is bound up in the Constitution somehow and represents that. It is very important not to tinker or nibble away at the edges. What is the rationale behind this? What motivates the Attorney General to come into this House with this trivial legislation? I accept that this Bill is intertwined with the Legal Practice Bill, and I accept that the Legal Practice Bill strengthens the disciplinary powers that apply to legal practitioners and introduces a more modern regime of business structures available to legal practitioners. However, I do not accept, and nor does the Opposition, the necessity of making what really are dangerous, cynical, dishonest and simply ideological changes to monarchical references in legislation applying to the courts.

When I visited the schools in my electorate prior to Christmas, most of the headmasters and headmistresses spoke about the need to stabilise children at the moment, particularly with a war in Iraq, and the sense of uncertainty that many people in the community feel. I do not see the need to come in here and tinker with traditions and court processes. Maybe the Attorney General wants to make his mark. He obviously will not make it in the legal profession. Maybe he wants to go down as the Attorney General who made major reforms. He will not gain the respect of large numbers of the legal profession in this way, and I know that for a fact. He appears to be obsessed with tearing down anything in the legal system that refers to tradition and respect. He knows why he is doing it. It is just his participation in the legal profession via the backdoor through the union movement by doing a legal degree while he was a politician. He is yet to tell me how he did his 12 months articles. Maybe there is a rational explanation for it.

I turn now to the Legal Practitioners Act 1893, because I note that the Act will be repealed by clause 4 of the repeal Bill. I note that when a person is an articled clerk - and a person has to be an articled clerk to gain admission usually, although there may be some instances in which a person does not - restrictions are placed through the Legal Practitioners Act. Section 13 states -

> (1) No articled clerk shall, without the written consent of the practitioner with whom the articles are served, which consent shall be filed with the Board by the articled clerk within 14 days of its being granted, hold any office or engage in any employment other than as a *bona fide* articled clerk to the practitioner with whom the articles are served for the time being or a partner of that practitioner.
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> (2) Subject to the provisions of subsection (3) the written consent of a practitioner shall not be given to an articled clerk unless the hours of such other office or employment are outside the hours of between 9 a.m. and 5 p.m. on those week days (excluding Saturdays, Sundays and public holidays) when the offices of legal practitioners are normally open to the public.
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> (3) Where, in the opinion of the Board, there are special circumstances and the written consent of the practitioner is obtained, the Board may determine that the provisions of subsection (2) shall not apply in relation to an articled clerk . . .

I would be interested to have the Attorney General whisper in my ear sometime about how he managed to get away for 12 months with being Leader of the Opposition, a minister and completing his articles. I know that the Attorney General likes to whisper in people's ears. How do I know that? Someone told me that the Attorney General was going to whisper in the ear of the Chief Judge of the District Court and the Chief Justice of the Supreme Court about Kate O'Brien. My hair stood on end because, frankly, if he whispered in their ears their hair might stand on end.

Mrs C.L. Edwardes: Or their wigs!

Ms S.E. WALKER: Or their wigs, particularly in light of the Attorney General's conduct over the Lewandowski affidavit, which I am sure has not gone down very well in the legal profession. In any event, for the Attorney General to make his mark by tearing down traditions and suggesting that judges and lawyers look absurd by wearing clobber from centuries ago says more about the Attorney General's ignorance of the profession than any desire on his part to try to improve the criminal justice system.

It is fair to say that not one decent original thought has emanated from the Attorney General. Usually the ideas are someone else's and are plagiarised from things the Opposition has done or has considered in the past. For instance, the public has not heard one word about Bandyup Women's Prison - a new state-of-the-art prison. In the news article the Attorney General states that deleting references to the Queen from Western Australian courts and the legal system is a necessary prerequisite for Australia's becoming a republic. In view of the way the public has voted on one vote, one value it is extreme arrogance on the part of the Attorney General to think that he can tamper at the edges of our legal system. This is relevant to the debate on the Bill, particularly part 5, which contains references to the term "State Solicitor". During consideration in detail I would like the Attorney General to explain to me how this change will help the criminal justice system in this State. It is intended to remove from the Crown Solicitor the reference to the Crown by replacing it with the term "State Solicitor". I would like the Attorney General to advise me whether the Crown Counsel, Mr George Tannin, will be called the State Counsel. We used to have a Crown Counsel, a Solicitor General and a Chief Crown Prosecutor and now we have a DPP. If the Attorney General is to remove the word "Crown" from Crown Solicitor and make it the State Solicitor, will he make Mr Tannin the State Counsel?

The public of Western Australia should be quite concerned about the legislation that is being forced through this Parliament. I preface my remarks, as I did in debate on the previous Bill, by saying that this issue has nothing to do with whether we believe in a republic or a constitutional monarchy. It comes from a belief in the upholding of the democratic process. The referendum in 1999 resulted in a complete defeat; every State in the Commonwealth resoundingly voted no. There was an opportunity then for the proponents of the republican system to present a valid alternative, and they did not. They frankly stuffed it up and lost their chance on that occasion. The Attorney General cannot make up for that defeat by attempting to come in the back door by stealth to alter our traditions.

If the Attorney General and the Government were truly committed to making this State a republic, they could hold a referendum to change the State's Constitution to achieve that objective. However, they know that the outcome cannot be achieved lawfully without the will and support of the people expressed at a state referendum. Yet, the Attorney General does not have the courage and decency to recognise the reality of the law. He just trots into this place and tries to subvert the constitutional position of the State without giving the people a say in the matter. This is the Attorney General who is fighting vigorously to give people one vote, one value! He has used other people's funds since he started on the track with one vote, one value, he has used his colleagues' funds and now he is using taxpayers' funds to try to pursue an ideological issue.

The State is separate from the head of the state. The Legislature -

Mr A.J. Carpenter: Is this going to get any better? I mean this is one of the most boring speeches I have ever heard.

Ms S.E. WALKER: The Minister for Education and Training may not like it and I do not frankly care but I am going to say what I have to say.

Mr A.J. Carpenter: It is appalling.

Ms S.E. WALKER: It is not as appalling as what the minister had to say on the ABC. I listened to what he had to say and the comments I have heard from teachers about what he said are - actually he does not want to hear them.

The State is separate from the head of the State, the Legislature is separate from the judiciary, the prosecution authority is not open to political interference, the police owe their loyalty to the Crown and not to the Government of the day, and so on. The Queen is the head of the State of Western Australia and, as the Crown, is the head of the judicial and court system. Many officers of the State, including the Attorney General who is the first law officer of the Crown, are uniquely and deliberately separated from politics and the direction and influence of government, and owe their responsibility to the whole community through the Crown. In practice by removing the Crown there may not be much difference on the surface but the substantive and long-term effect may be very different and could well open up all sorts of possibilities for government interference and prosecutorial, judicial and other processes. I say that because of comments the Attorney General made recently about the judiciary, particularly comments made yesterday about the President of the Children's Court. He said that he would be monitoring her, remarks that I found quite threatening and intimidatory. That is not the

Attorney General's role. His role is to monitor her sentences. Our role is to examine them to see whether we should make legislative change. The Attorney General's remarks in that regard were entirely inappropriate.

This is a case of fiddling with the Constitution without the authority of the people with unknown consequences and with dangerous possibilities. I reiterate that I am sorry that the Law Society of WA has not considered the legal issues in this Bill and come forward with some objective comment on the legal aspects. This issue is not a political issue; it is a legal one. It may suit some members of the Government to pursue this Bill, but it does not suit the Opposition for the reasons I have outlined. For those reasons, the Opposition does not support the Bill. We will oppose all of part 5 and all of the amendments to part 8 about the Crown.

MRS C.L. EDWARDES (Kingsley) [9.24 pm]: In July 2001 I received an e-mail on the subject "Should state constitutions only be changed by referendum?" I am sure the Attorney General himself could have raised that question, as he is about to change many of those aspects of our structures and about to chip away at our institutions by the changes that he proposes to make with this legislation. He may think that he is correcting words that are antiquated, outdated and outmoded. However, he is doing an awful lot more than that. As he has said on a previous occasion, he is attempting to put in place the necessary prerequisites for becoming a republic. He is making a huge leap on the assumption that this State, let alone Australia, would vote to become a republic. As the member for Nedlands pointed out, that would require an amendment not only to our federal Constitution but also, quite clearly, to our state legislation.

A poll was taken by the organisation Australian Survey Forum. A small number of people were polled. The poll results for the state Constitution issue - that is, "Should State Constitutions only be changed by a State referendum?" - as at Friday, 13 July 2001, were yes votes, 138; no votes, 24; total of all votes, 162. Eighty-five per cent of the votes were yes votes. I acknowledge that it was a low participation rate. However, I believe that if there were greater participation in a survey, the result would be somewhat similar. People will not accept our state Constitution and the structures of our organisations being chipped away by changing other legislation and essentially bringing in what the Attorney General would like to see - namely, a republic.

Many members on this side of the House, as well as on the Attorney General's side of the House, would like to see a republic at some time in the future. However, the community must go along with the Attorney General. That is the reason that the Constitution cannot be changed without a referendum. Australia is a nation state. It is a constitutional monarchy. Despite what the Attorney General said about the way in which he believed the federal Constitution came into existence, Australia is a constitutional monarchy. The monarchy is vested in the Queen of England - the Crown of the United Kingdom. Although the Attorney General might not like that, the current sovereign is Queen Elizabeth II. That is the basis for part of our constitutional background.

I will deal with our state Constitution. To all intents and purposes, Western Australia possesses its own separate state monarchy. For the material and information that I have received, I acknowledge the work that has been done by Professor Greg Craven at the University of Notre Dame Australia in his paper entitled "Implications of a Republic for Western Australia". This was produced at the time of the republican debate to show what it would mean for Western Australia if the people voted yes at the referendum. The paper gives a very strong background to the basis of our Constitution in Western Australia. It states that -

> . . . Western Australia possesses its own separate State monarchy, operating within the confines of the West Australian Constitution Act and constitutional system. Although Queen Elizabeth II is Queen both of the Commonwealth of Australia and the State of Western Australia, her functions and those of the monarchy specifically in respect of this State effectively are distinct from the operations and existence of the monarchy at the Commonwealth level.

Whatever happens at the commonwealth level, Western Australia can determine for itself what it wishes to have in its Constitution and its connection with the monarchy. The paper continues -

> Thus, while it often is said that the Crown is one and indivisible, in practice, Western Australia's State monarchy is independent of the national monarchy . . .

That was the focus of the republican debate at that time. The paper goes on to refer to an important guiding principle and states -

> . . . just as every element of Western Australia's internal constitutional system (including the monarchical elements) derives from the endorsement of the Western Australian people or their elected representatives . . .

That is the question: Should this State's Constitution be changed only by referendum? Overwhelmingly, the people of Western Australia would say yes. They would not take very kindly to the changes that the Attorney General is seeking to make. The Attorney General can refer to a statement that he thinks may be antiquated, such as the police referring to "Her sovereign lady, the Queen" at the beginning of a riot. I agree that that is

antiquated legislation. However, to change the term Crown Solicitor to State Solicitor in the same Bill begs the whole new question of the importance of the changes being made.

Mr J.A. McGinty: No it does not. It is the same thing.

Mrs C.L. EDWARDES: Not at all. The Attorney General is chipping away at one of this State's strong institutions; that is, the office of the Crown Solicitor. I am referring to not just the present incumbent, who is a strong incumbent in any event, but the particular office.

The Attorney General referred to the Australia Acts as providing support for removing the reference to the Crown in this State's legislation. However, section 7 of the Australia Act provides that the Queen's representative in each State will be the Governor. It further entrenches the monarchy by providing in each state Constitution that it is the Governor who shall exercise the Queen's powers in that State. On face value, therefore, section 7 assumes the existence of the monarchy within the States. Therefore, if we start to remove the monarchy, we must amend not only the State's Constitution but also the Australia Acts. That provides some level of complexity to what the Attorney General is attempting to do. We can go through all of WA's legislation and remove altogether "Crown" whenever it is referred to, or replace it with "State". The Attorney General can do whatever he believes will modernise the words and the import of the particular clauses in each of those pieces of legislation. However, at the end of the day, the Attorney General is doing what he intimated; that is, moving towards a republic. We cannot move towards a republic when in the 1999 referendum the people in this State overwhelmingly voted no to a republic. Further, in the Western Australian Constitution Act a large number of other sections would need to be addressed such as those dealing with identity, nomenclature, appointment, removal and powers. Other sections deal with the Governor or make reference to Her Majesty's capacity to make laws, Her Majesty's pleasure, her sign manual and her power to remove judges, let alone the form of an oath of allegiance. It is not as simple as having the Attorney General make changes to pieces of legislation by removing "Crown". The Crown is an integral part of the constitutional background of this State and a referendum is required to make those changes. The Attorney General is attempting, through the backdoor, to chip away at this State's institutions and to bring in what he would like to see; that is, the beginnings of a republic. Western Australia overwhelmingly voted no in the 1999 referendum. It was a large majority. Indeed, it was a no vote in all the States. Therefore, to try to achieve republicanism by stealth is the sign of a sore loser. The Government might have wanted a republic.

Mr J.A. McGinty: I thought you were in favour of a republic as well.

Mrs C.L. EDWARDES: I am, but it should be done in the right way. It requires a referendum. One cannot just remove the Crown. Members have referred to the carpet in this Chamber, which includes an image of a crown. More significantly, we have seen a change in the colour scheme throughout this Parliament from blue to green, particularly in the Legislative Assembly area. There is a historical connection between the colour blue and this House. One should not, by stealth, change the carpet, not only to remove the Queen, but also to change its colour. I give clear notice that if I come back into this Parliament one day to find that this carpet or the colour of my seat has been changed to green - even though I dislike this seating and would like it to be changed, because I am sure it was made for 20-stone men, as it was certainly not made for females who are under five foot - there will be words; there will be a war.

I referred to the Government's trying to achieve republicanism by stealth. The position is worse in Western Australia than in other States because both a state and national referendum would be required in Western Australia for the monarchy to be abolished. This State has entrenched the Crown even further than have other States. That is our historical and constitutional background. The member for Nedlands mentioned that the Attorney General is supportive of one vote, one value. That is what the referendum was. People voted overwhelmingly against a republic, particularly in this State. If the Government cannot get a republic one way, it will try to bring it into this Parliament and achieve what it would like in another way. Members have mentioned public and private organisations. How far will the Government go to remove references to royalty or the Crown?

I mentioned section 7 of the Australia Act, which entrenches the monarchy even further in Western Australia's constitutional system. In the middle of the republican debate, the Premier, Dr Gallop, said that if he were elected, he would consider republicanising the office of Governor by providing for a more popular form of appointment. It was pleasing to see that he did not do that when he reappointed our current Governor. I suppose that if he had done, it would have been up-front republicanism. However, I think the Premier recognised that it would not have been very popular and dropped the idea like a hot potato. There are other measures that the Attorney General might regard as small, petty and antiquated. What else will he change? Is he preparing to change the Western Australian flag? Is that something that annoys the Attorney General? Does he believe that he should make changes to the Western Australian flag? The Leader of the Opposition mentioned Royal Perth Hospital and Princess Margaret Hospital for Children.

Mr J.A. McGinty: He also mentioned Crown Lager.

Mrs C.L. EDWARDES: What he did not mention was whether the Governor was to be turfed out of Government House, as has occurred in New South Wales. How far will the Government go to achieve what it would like to see happen, which is the beginning of a republic? I referred earlier to the Attorney General, by way of interjection, as the first law officer of the Crown. I know that the Attorney General has previously referred to his position as the first law officer of the State. However, historically, the Attorney General is the first law officer of the Crown. That is intrinsically monarchist. If we keep referring to that term, will that deeply embarrass the Attorney General to the point at which he would desire a change to the title of Attorney General? One could be unkind and come up with all sorts of names to try to keep some connection to the old terminology. He does not want to get rid of "general" as such.

Mr J.A. McGinty: It is a bit militaristic.

Mrs C.L. EDWARDES: Yes, it is. We could make the Attorney General the attitude general. He has a roving attitude on a wide range of social and moral issues. That might be a more appropriate term for him. He might regard me as being flippant in this debate, and to some extent I intend it to be so. Although the removal of the crown, particularly the Crown Solicitor becoming the State Solicitor, is a serious issue - some of the changes the Attorney General wishes to make can make a lot of sense - there are ways of going about this. Although other issues affect people's lives - health, law and order, education and the like - they may not see the crux of the real issue of the change from the Crown Solicitor to the State Solicitor.

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

Mrs C.L. EDWARDES: It is crucial to the whole removal of reference to the monarchy, and it is at the pinnacle of those changes. People probably will not regard this as being of great import, and I can understand that. However, for people who have an interest in our Constitution - and I believe the Attorney General had an interest in our Constitution -

Mr J.A. McGinty: I still do.

Mrs C.L. EDWARDES: He still has that interest, so he would know that the Crown Solicitor has stood for decades for fearless advice in Western Australia. I have no doubt that while the current incumbent holds the position, the Attorney General will still receive fearless advice, whatever he wishes to call the position. When people hear the term "Crown Solicitor", they do not think of the Queen or the monarchy, but they do think of independent legal advice. If "State" is inserted, it will seem more to be legal advice for the State, being the Government, as against the State as part of the nation state, and therefore our constitutional background, which is entrenched with the monarchy. Therefore, the whole question of legal independence and integrity is absolutely crucial, and State Solicitor has none of those connotations whatsoever.

Ms S.E. Walker: What benefit is it to the community?

Mrs C.L. EDWARDES: The member for Nedlands has raised a very important question. "State Solicitor" suggests nothing more than a mere appendage to the Government, and that the State Solicitor will be there to do the bidding of its masters. Government lawyers are different from other lawyers. I have a great deal of time and admiration for government lawyers. Sometimes they are called upon to query those who instruct them - ministers and departments of the day - and to remind them that there are legal and constitutional values that endure beyond any Government. That is clearly the critical element, and the reason a Crown Solicitor is more likely to give that level of confidence in independence and integrity than the term "State Solicitor", which implies that the office is there to do the bidding of its masters.

The changes that the Government is introducing make it clear that it will not tolerate questions of some of the legal and constitutional aspects that might be brought to its attention. We raised questions about the advice the Government had received on one vote, one value. Quite frankly, I do not believe that we ever received a satisfactory answer on the question of the Solicitor General's advice. I put it again to the Attorney General that by removing the Crown and making the office that of State Solicitor, he is making the State Solicitor a mere state Solicitor and chipping away at the solid constitutional foundation of an institution and office that has stood the test of time.

We will not support the legislation. The Opposition believes that the Attorney General is using the backdoor to bring in what he would like to see. Although he will not get his way of having a complete republic, he will feel a little more comfortable, as will those around him, by offices or titles set out in legislation not having reference to the Crown. I believe that if the Attorney General really thought about the State's constitutional background, and if he were on this side of the House, he would deplore amendments coming in by the backdoor to achieve this objective.

MR J.A. McGINTY (Fremantle - Attorney General) [9.47 pm]: I thank members opposite for their indication of support, albeit qualified, for this very important piece of legislation, which effects a number of very

significant changes to the regulation of the legal profession and also the operation of courts in Western Australia. However, the debate has focused on one relatively small part of the overall legislation when one takes into account everything that will be achieved by the legislation.

The member for Kingsley is quite right: before we can achieve what she and I, and I suspect the majority of the public, would like to achieve, we need a referendum of all citizens in Western Australia. I have no argument with that proposition, because quite clearly she is right. What the Government is seeking to achieve by this legislation is not a republic by direct or indirect means, but rather, as I had said already, to seek to achieve the removal of archaic provisions from the statute books in Western Australia, particularly as they relate to the State's legal apparatus and the operation of the courts.

If I may bring the debate down one peg to look at what is sought to be achieved by part 8 of this Bill, its effect will be to remove monarchical words from the legislation affecting the courts, except - this qualification is important - where there is an underlying and historical complexity involved in the issue. I believe that is what the member for Kingsley has been suggesting about the office of the Crown Solicitor. I disagree with that proposition of the member for Kingsley. As far as the references to the Queen and the Crown are concerned, the Government has left in place any issue which has any underlying complexity or which affects existing rights or entitlements in any way at all.

I will give three examples of what the legislation does. Currently, when someone is charged with a serious offence, what is presented to the court is the indictment, which currently issues in the name of the Crown. Frankly, it does not issue in the name of the Crown; it is the State of Western Australia, particularly through the office of the Director of Public Prosecutions, who is not the Crown in any way, shape or form but who enters the indictment and prosecutes on behalf of the State of Western Australia. We are saying that an indictment of a serious criminal charge is entered by the Director of Public Prosecutions of behalf of the State of Western Australia. People can object and say that it used to be the Crown. Maybe it did once, but it is not anymore. The more relevant terminology to make the law say what it means - to have it as a contemporary expression - would have indictments issued in the name of the State. Similarly, if anyone here were summoned to appear in a court, they would be summoned by good old Queen Elizabeth. According to the document, she is the one who summons people to appear; but, of course, she does not. She does not summon anyone to appear.

Ms S.E. Walker interjected.

Mr J.A. McGINTY: It is outmoded terminology. People are summoned to appear by the court itself. We want to change the terminology used in the summons to say that it is not our good friend Lizzie in London who is summoning a punter to give evidence. That punter may not be up to date on the historical approaches to constitutional law and may not understand why Betty Windsor is summoning him to attend.

Mrs C.L. Edwardes: The courts are independent of the Executive Government, and that is what is reflected by that terminology.

Mr J.A. McGINTY: What is reflected here is that the court will summon a person to attend to give evidence. That reflects the independence of the courts, and I think that is quite appropriate. It is appropriate that an indictment be entered by the State, but it will be the court that compels someone to attend. I cannot see the objection to that use of modern terminology to reflect the reality.

Ms S.E. Walker interjected.

Mr J.A. McGINTY: I appreciate that many good conservatives have a view that we should not change things even when they are a nonsense. I think this is one of those examples. I give another example of what this legislation will do. Interestingly, the seal of the Supreme Court is currently required by statute to contain the arms of the British monarchy. The house that currently occupies the British monarchy is on the seal of the Supreme Court of Western Australia. Does that have any contemporary relevance? I do not think anyone would suggest that it does, nor do I think that anyone would seriously suggest that by removing it, we are striking at the existence of a monarchical system of government, which, for better or worse, is what we have here. I do not think that anyone would argue that saying that the state arms should appear on the seal of the Supreme Court of Western Australia presents any attack on the fundamental aspect of our system of government as it exists today. When what is said by members opposite is distilled, we come to the realisation that it is a nonsense.

Ms S.E. Walker: You are a nonsense.

Ms A.J. MacTiernan: I find it really odd that the member for Nedlands is taking such a strong pro-monarchist position on this when during the referendum her electorate displayed the strongest republican sentiment in this State.

Mr J.A. McGINTY: I have tried to be gracious during this debate, but in the light of that last comment from the member for Nedlands, I feel compelled to offer her some advice. In my experience, people with limited ability

often seek to denigrate others as a way of promoting themselves; to build themselves up to be something they are not. Frankly, this applies in the case of the member for Nedlands, and it does not work. All she achieves by carrying on in the way in which she does is to debase herself. Even her colleagues are embarrassed. People in the broader community no longer give her credence because of the way in which she conducts herself. I give her a little advice: deal with the issues and leave the petty denigration to one side, because we can see through it. She is a person of limited ability and experience and she is trying to boost herself to be more than she is. Frankly, it does not wash.

Ms S.E. Walker interjected.

Ms A.J. MacTiernan: She certainly has not mastered the art of repartee.

Mr J.A. McGINTY: The Western Australian State Constitution is an important issue that was raised by the member for Nedlands. She suggested that although this legislation does not deal with that question, a referendum or at least a passage by an absolute majority in both Houses of Parliament would be required to amend the oath of allegiance and the affirmation -

Ms S.E. Walker: I did not say that at all.

Mr J.A. McGINTY: What is required?

Ms S.E. Walker: I did not actually pinpoint it. The Attorney General was not listening.

Mr J.A. McGINTY: If I did not hear her correctly, what did the member for Nedlands say?

Ms S.E. Walker: I referred to the provisions of section 73 of the Constitution. If you had listened, you would have heard that I said that in some circumstances a majority of both Houses is needed but that in others not only that requirement is needed, but also the requirement of a referendum.

Mr J.A. McGINTY: What is required to change the oath of allegiance?

Ms S.E. Walker: I did not say anything about that. You tell me.

Mr J.A. McGINTY: I am happy to give the member a lecture on the meaning of section 73 of the Constitution because she has told only half the story. Section 73 sets out four circumstances by which the Constitution of Western Australia can be amended.

Ms S.E. Walker: I don't want to know.

Mr J.A. McGINTY: I think the member will benefit from this. The first circumstance is by means of a simple amendment with a simple majority of each House of the Parliament of Western Australia. The amendment to the oath of allegiance requires nothing more than a simple majority of both Houses of Parliament. The member for Nedlands suggested that either an absolute majority in both Houses of Parliament or a referendum is required, which is not the case. A simple majority is needed to amend the provisions of section 22 of the Constitution Act 1889 and schedule E, which contains the text of the oath of allegiance and the affirmation of allegiance. Most provisions can be amended using a simple majority and a limited range of provisions can be amended by an absolute majority. A very small number of provisions are required to be reserved by the Governor for the signification of Her Majesty's pleasure. A referendum is the fourth way by which the Constitution can be amended in certain circumstances. Any suggestion by the member for Nedlands that an amendment to the oath of allegiance requires more than a simple majority is constitutionally incorrect.

I will refer to another matter for no other reason than the member for Nedlands raised it. She assured the House that she believes in dealing with matters with due process and propriety. She said that she was concerned about the tenor of my comments with regard to the President of the Children's Court. A press release issued by the member for Nedlands on 23 January states -

> Shadow Justice Minister Sue Walker has called for Children's Court President Kate O'Brien to be replaced following the latest in a series of inadequate sentences that she has handed down for serious offences.

That is improper. That defies the convention of the separation of powers between the Executive and the judiciary; it is a direct assault on the independence of the judiciary in this State. The member should be ashamed of herself for crossing that line and impugning the independence of the judiciary. Nobody else has made that proposition. The member for Nedlands stands condemned by her own words as being someone who has directly sought to threaten a member of the judiciary with dismissal because she does not like a decision the president gave. That happens in banana republics and military dictatorships; it does not happen in Western Australia - although it might happen if the member has her way. She should not give her cant and humbug about due process. She has broken an important convention by launching a direct and personal attack on the President of the Children's Court and calling for her dismissal.

Ms S.E. Walker: You're a joke, Attorney General.

Mr J.A. McGINTY: The member for Nedlands should debate the issues but she is not up to it. Why did the member call for the president's dismissal? Does the member agree that her call for the dismissal of the President of the Children's Court breaches that convention?

Ms S.E. Walker: Why are you using your thug tactics on the judiciary?

Mr J.A. McGINTY: The member for Nedlands is the only member who has called for a member of the judiciary to be sacked, and she stands condemned for it. The member does not appreciate the very important conventions that are applicable in these circumstances.

Ms S.E. Walker: I do, more than you, Attorney General.

Mr J.A. McGINTY: Why has the member called for a judge to be sacked?

Ms S.E. Walker: Why are you telling that female judge that you will monitor her every move?

Mr J.A. McGINTY: The member got it wrong. When members of Parliament get an issue so profoundly and fundamentally wrong, they should at least have the decency to come forward and say they got it wrong. The member is not prepared to do that.

Ms S.E. Walker: You stuff up and then you try to cover up.

Mr J.A. McGINTY: Is that the best the member can do?

Mr J.N. Hyde: You will be bitter by the second term in opposition.

Mr J.A. McGINTY: I do not think that is possible. I had a good laugh when I read in the newspapers about the reshuffle on the opposition front bench when the member for Nedlands was described as a caring and compassionate person. I assure the House that the milk of human kindness does not flow through her veins. She is far from being a kind and compassionate person. The member has debased the debate by the way she is carrying on now, and by her dishonesty and the way she has approached these issues. She is not prepared to debate the substance of the legislation.

Ms S.E. Walker: Tell us about Lewandowski and why you made your first major stuff up as the Attorney General. Tell us why.

Mr J.A. McGINTY: The member is not prepared to debate the legislation before the House.

Mr J.C. Kobelke: I think the mercy rule applies here, Attorney General.

Mr J.A. McGINTY: I normally prefer a moving target but this one is more like a sitting duck on a lake at the moment; it is a little too easy! I am sorry for the way the member for Nedlands has dragged down the whole debate.

Ms S.E. Walker: I refer to your deception over the Lewandowski affidavit.

Mr J.A. McGINTY: The member should listen to herself and occasionally have a look in the mirror; it is not a pretty sight, I assure her. I am sorry that the member has dragged the debate down to this level with the nonsense she is carrying on with now. She is not ingratiating herself with her colleagues. Her colleagues are deserting her as they do not like the way she is conducting herself. She does nothing to promote the level of debate in this House. The member should take a look at herself.

Ms S.E. Walker: I think I look fine.

Mr J.A. McGINTY: It is pathetic. As the Leader of the House suggested, we should invoke the mercy rule and let the member go.

Question put and passed.

Bill read a second time.