

REVIEW OF THE LAW OF HOMICIDE - ABOLITION OF DISTINCTION BETWEEN MURDER AND
WILFUL MURDER

1205. Mr P.D. Omodei to the Attorney General

- (1) Is the Attorney General awaiting the final report of the Law Reform Commission on the Review of the Law of Homicide before finalising his position on whether to abolish the distinction between Murder and Wilful Murder in this State, as well as the statutory defence of provocation, or does he already hold a concluded position?
- (2) Can the Attorney General confirm that on 12 October 2005 he indicated to Members of this House that he would introduce legislation to abolish the distinction between Wilful Murder and Murder?
- (3) Can the Attorney General confirm that if this distinction is legally abolished it would result in the factual finding of whether a murder was, or was not intentional being removed from the domain of the jury and be made the exclusive domain of the trial judge?
- (4) Can the Attorney General confirm that if the defence of provocation is abolished it would remove from the jury the right to decide whether an accused person was acting under provocation at the time, and place the right to decide solely in the hands of the judge?
- (5) How will the Attorney General answer concerns that these proposed reforms would limit the role of the jury in the judicial process, and instead hand that role over to the Judge?
- (6) Can the Attorney General confirm that in a radio interview with Liam Bartlett, on Radio 6PR on 16 May 2006, he stated that the Defence of Provocation applied only to male persons, and will the Attorney General accept that as a matter of law this is totally incorrect?

Mr J.A. McGINTY replied:

1. I am awaiting the report.
2. No.
3. Yes, the issue of whether an offender intended to kill or alternatively intend only to do some grievous bodily injury would be for the sentencing Judge, as it is now for Judges in every other State and Territory. In Western Australia a sentencing Judge and not a jury determines whether such an offence was pre-meditated, or formulated at the spur of the moment, whether a weapon was used, and if so how, whether the offence is properly classified as cold-blooded or not, the extent, if any of any relationship between the deceased and the offender and all other factors that mitigate and those which aggravate the offending behaviour.
4. Yes, if the defence of provocation in homicide cases is abolished, as it has been in Tasmania and Victoria, it would be a matter for the sentencing Judge to consider when sentencing an offender, together with all other aggravating and mitigating factors.
5. The Law Reform Commission of Western Australia is currently inviting public submissions on an issues paper on the law of homicide. The Law Reform Commission's final report will no doubt highlight any major concerns. I will consider these concerns when the final report is released.
6. Although the defence of provocation in homicide is technically available to men and women alike, in practice many women who may be responding to years of violence and mistreatment are unable to avail themselves of this defence.