The CHAIRMAN (The Hon. W. R. Hall): I think the title as it stands would cover the situation.

The Hon. A. F. GRIFFITH: If we say that the title as it is covers the situation, we reach the point where any Bill that is presented, and which has the words "for incidental or other purposes," will be wide open to the insertion of any amendment we please. The committee has gone right outside the intention of the Bill.

The Hon. H. K. Watson: The Chairman has ruled otherwise.

The Hon. A. F. GRIFFITH: The point I raised was: Did Mr. Strickland propose, if the interpretation of primary schools were accepted by the Council, to amend the title of the Bill? And I asked you, Mr. Chairman, to rule whether or not it should be amended. You ruled it should. You said you thought the addition of the interpretation of primary school was within the scope of the Bill, and it would be necessary to amend the title.

The CHAIRMAN (The Hon. W. R. Hall): I said I considered it would be necessary.

The Hon. A. F. GRIFFITH: Let us be consistent. The Government does not bring before Parliament Bills for anybody to deal with as he wishes; it brings down Bills for a specific purpose as is the case with this one. But now we propose to change the whole purpose of the Bill.

The Hon. H. C. STRICKLAND: The Minister has missed Mr. Watson's point, namely, that the Bill is to provide for the establishment of a country high schools authority.

The Hon. A. F. Griffith: That is what we wanted to do.

The Hon. H. C. STRICKLAND: To leave the matter in no doubt I will proceed with my amendment.

The Hon. A. F. GRIFFITH: I do not wish to differ on this point or to see us get to a ridiculous stage. I would like members to appreciate that by accepting this amendment we can, after this, add anything we like to the title of a Bill. We can say, "An Act to Provide for the Establishment of Country High School Hostels Authority"; put in what Mr. Strickland has suggested; and then add, "Get Accommodation in the Chevron-Hilton Hotel." The Bill seeks to establish an authority to raise money for the provision of hostel accommodation for country high schools, including any junior high school. That is where it starts and finishes.

The Hon. H. K. Watson: That interpretation is not sacrosanct.

The Hon. A. F. GRIFFITH: We might find, however, that another place may have something to say about it.

The Hon. F. J. S. WISE: From the Minister's argument one would imagine this is the law of the Medes and Persians; that it is unalterable. That is not the case. All that has been done is to make an amendment clearly within the scope of the Bill to deal with primary education. Within the scope of the Bill lies authority vested in the Minister to provide for schools other than high schools for the purpose of this authority's jurisdiction. It is idle to say, therefore, that if such an amendment to the title is accepted it leaves any title open to amendment with irrelevancies. This is relevant to the subject matter in the Bill; it is associated with the proposal and dealing with it in substance.

Amendment put and passed.

Title, as amended, put and passed.

Bill reported with amendments, and an amendment to the title.

ADJOURNMENT OF THE HOUSE: SPECIAL

THE HON. A. F. GRIFFITH (Suburban—Minister for Mines): I move—

That the House at its rising adjourn till 2.30 p.m. tomorrow.

Question put and passed.

House adjourned at 11.21 p.m.

Legislative Assembly

Wednesday, the 21st September, 1960

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CONTENTS—*continued*

The SPEAKER took the Chair at 4.30 p.m., and read prayers.

QUESTIONS ON NOTICE

FISHING

Use of Traps

1. Mr. JAMIESON asked the Minister for Fisheries:

(1) Are fish traps permitted to be used in waters closed to net fishing?

(2) What prohibition exists in respect of trap fishing in any part of the State?

Mr. ROSS HUTCHINSON replied:

(1) Yes, except in all those waters in which the taking of fish by any means of capture whatsoever is prohibited.

(2) (a) It is unlawful to place, set, or use, in inland waters, any trap or device enclosed with wire or wire netting with wings so attached as to impede the free passage of fish on either side of the trap or device.

(b) The taking of any fish whatsoever by means of more than two fish traps, other than crayfish pots, is prohibited in Western Australian waters surrounding the Abrolhos Islands.

ESCORT OF PRISONERS

Provision of Special Railway Van

2. Mr. EVANS asked the Minister for Police:

Has his department considered the equipping of a special railway van, to serve with obvious advantages to all parties concerned, as an escort car for police officers bringing charges from large country towns—such as Kalgoorlie—to the metropolitan area?

Mr. PERKINS replied:

Yes; but it is considered impracticable.

3. and 4. *These questions were postponed.*

BOGIE CASTINGS

Manufacture by Bradford Kendall

5. Mr. JAMIESON asked the Minister for Railways:

(1) Is it a fact that Bradford Kendall have been allocated a contract for 210 bogie castings of a type previously manufactured by Hadfields W.A. Ltd.?

(2) What was the reason for changing from a firm which had already tooled up, in this State, for production of this railway requirement?

(3) Has he an assurance that Bradford Kendall will carry out this contract in full, at its South Fremantle works, in view of this firm's principal works being in South Australia?

Mr. COURT replied:

(1) The acceptance of Bradford Kendall's tender was authorised by Executive Council this morning. At the time this question was presented, the contract had not been authorised; and it is surprising that the information which presumably caused this question to be asked was available to the honourable member.

(2) The final determination prior to Executive Council approval was made by the Tender Board on the recommendation of the Railways Commission following its examination of quotations received in response to public tenders. All features of tenders are considered by the commission and the Tender Board, including the locally-manufactured component, in relation to the local-preference policy.

(3) This is not a matter normally handled by the Minister; but, consistent with Government policy, the Railways Commission and the Tender Board have regard for preference to locally-manufactured goods. I am assured that full local-preference percentage was taken into account before a determination was made. The Bradford Kendall bogies will be approximately 40 per cent. locally-produced and the proportion of local manufacture will be closely watched during production.

ELECTRIC CURRENT

Increased Charges in Metropolitan Area.

6. Mr. FLETCHER asked the Minister for Electricity:

(1) Is he aware—

(a) that he informed the House—(Item 11—*Votes and Proceedings*, Tuesday, the 13th September) "That Bunbury produced power is cheaper than power produced in the metropolitan area";

(b) that my query as to whether any increase in price of electricity was imminent or likely in the metropolitan area, was overlooked?

(2) Will he oblige by answering this question in either the affirmative or negative?

Mr. WATTS replied:

(1) (a) Yes.

(b) No. The question was based on the honourable member's assumption that Bunbury-produced power was more expensive.

(2) Not at present; and having regard to the possibility of changing circumstances, every effort will continue to be made to avoid any increases in the price of electricity.

UNDERGROUND WATER

Survey of Swan and Chittering Valleys

7. Mr. CRAIG asked the Minister representing the Minister for Mines:

In view of the announcement by the Minister for Mines last week that three geologists had begun surveying the surface and underground water potential in the Perth coastal basin from an area nine miles north of Armadale through to Byford and Serpentine—

(1) Would he consider extending this survey to the Swan Valley and Chittering Valley areas because of the importance of these districts in vineyard and citrus production?

(2) If this is not possible, could he formulate a plan to assist growers in these areas in their search for underground supplies for irrigation purposes?

(3) Would he consider the acquisition of test boring units to assist in such investigations in these areas and in other parts of the State?

Mr. ROSS HUTCHINSON replied:

(1) The present survey is confined to the coastal plain, which would include those areas west of the Darling Range. These are the only areas possessing underground water potential suitable for citrus and vineyard production.

In the opinion of the Government Geologist, the Chittering Valley area has no potential underground supplies suitable for irrigation purposes of this nature.

The present exploration will be extended north and westwards on the coastal plain, which will include the vineyard areas adjacent to the Swan River on the coastal plain.

(2) Answered by No. (1).

(3) The department has already established a small drilling section which, in conjunction with its geological section, has undertaken drilling operations in different areas. It is hoped to expand this in the near future.

EMPIRE GAMES VILLAGE

Land Involved

8. Mr. GRAHAM asked the Premier:

(1) What area of land is to be handed over to the State by the Perth City Council for the Empire Games village?

(2) How many house-building lots will be involved?

(3) How many lots, if any, for other purposes, and what are those purposes?

(4) What payment or obligations will devolve upon the Government in consideration of the land grant?

(5) What is the anticipated total cost per residential site for surveying, levelling, clearing, road construction, footpath construction, kerbing and any other works required by the Perth City Council to be done by the Government, excluding usual electricity and water supply?

(6) What is the anticipated value per residential building block on the open market, after completion of the works required to be carried out?

Tabling of Relevant Documents

(7) Is there in existence any letter, agreement, or other document setting out the arrangements between the State and the Perth City Council respecting the games village?

(8) If, so, will he table a copy?

Source of Developmental Funds

(9) From what source will the funds be provided in order to carry out the development and house construction?

(10) When will these funds be made available, and against what financial year's allocation will they be debited?

(11) When will interest and capital repayments to the Commonwealth commence?

(12) What are the arrangements regarding renovations of dwellings after use by games officials, competitors, etc.?

Cost and Subsequent Disposal of Residences

(13) What is the anticipated approximate cost of constructing the residential units (average)?

(14) What number of residences are likely to be built?

(15) What is to be the method of ultimate disposal of the residential properties?

Mr. BRAND replied:

(1) and (2) The approximate area of the Empire Games village, including open space, is 76 acres. The Perth City Council will hand over to the Government 156 building lots within this area.

(3) None.

(4) The arrangement between the Perth City Council and the Government provides that the Perth City Council shall provide the building lots and the Government will undertake the following—

(a) Necessary surveys.

(b) Share the cost of road construction on the following basis: Where building lots to be handed over face both sides of a road, the Government to be responsible for the total cost of construction; and, where building lots are on one side only, the cost to be equally shared between the Government and the Perth City Council.

(c) The construction of 150 houses.

(d) Cost of grassing and reticulation of the area around the house sites to be shared.

(5) Until tenders are called and accepted for this work, the figure cannot be accurately given.

(6) Average between £800 and £900.

(7) Principles of arrangement have been agreed to. When further details of costs are known, the arrangements can be confirmed. Arrangements of this nature must of necessity be subject to variation, pending completion.

(8) When finality is reached details will be made available.

(9) Commonwealth - State Housing Agreement funds.

(10) As required in the years 1960-61, 1961-62, subject to another Commonwealth-State housing agreement.

(11) Repayment of principal will not commence until the 1st July, 1963, and interest will be deferred until the 28th February, 1963.

(12) The Government is responsible for any necessary renovations to the houses after the completion of the games.

(13) £4,500.

(14) 150.

(15) By sale.

9. *This question was postponed.*

COLLIE COAL

Marshall Report on Open-cut Supplies

10. Mr. MAY asked the Minister representing the Minister for Mines:

(1) Has he received the report from Mr. Marshall regarding the inquiry as to the areas and estimated quantities of open-cut coal available on the Collie coalfields?

(2) If so, will he arrange for a copy of the report to be laid on the Table of the House?

Mr. ROSS HUTCHINSON replied:

(1) Not yet.

(2) Answered by No. (1).

WATER SUPPLY AND DRAINAGE

Departmental Offices for Midland Junction

11A. Mr. BRADY asked the Minister for Works:

(1) Has any consideration been given by his department to establishing buildings and offices in the Midland Junction township with a view to carrying out all phases of water supply and drainage activities—e.g., issue of licenses, receipt of applications for services, payments of accounts, etc.?

(2) Will he state the result of such consideration?

Mr. WILD replied:

(1) Full consideration was given to the question of establishing a branch office for the northern suburbs in response to the request of the honourable member in 1956.

(2) Establishment of a branch office is considered to be unjustified for a number of reasons, which were

given at the time. A copy of the relevant letter will be forwarded to the honourable member.

PUBLIC WORKS DEPARTMENT

Establishment of Midland Junction Branch

11B. Mr. BRADY asked the Minister for Works:

Will he give consideration to establishing a branch office of the Public Works Department to attend to all matters in and about the districts of Midland Junction relating to public works, main roads, etc.?

Mr. WILD replied:

The number of business dealings with the public that these departments have in the area would not warrant the establishment of a branch office in the township.

ALLAWAH GROVE SETTLEMENT

Unemployed Natives and Establishment of Training Centre

12. Mr. BRADY asked the Minister for Native Welfare:

(1) Is any record kept of the number of natives out of employment in the Allawah Grove settlement?

(2) Has any consideration been given to getting the Commonwealth Social Services Department to create a special training centre in this area?

Mr. PERKINS replied:

(1) No.

(2) No.

QUESTIONS WITHOUT NOTICE

SLOT MACHINES

Legality and Banning

1. Mr. HEAL asked the Minister for Police:

In recent months certain machines have been placed in the milk bars, clubs, and other establishments. A coin is required to operate these machines; and, if the person is successful, a sum of money is paid as a prize. Would the Minister ask the Commissioner of Police to have the position examined to see whether, in his opinion, the machines are legal and satisfactory to the life of the community? If they are not legal, would the Minister give consideration to introducing a Bill to have these machines banned?

Mr. PERKINS replied:

I will take steps to have the Commissioner of Police prepare me a report on this question.

POLICE

Establishment of Station at Kalamunda

2. Mr. OWEN asked the Minister for Police:

(1) Has provision been made on the Estimates this year to provide a police station for Kalamunda?

(2) If so, when is the work likely to start on this project?

Mr. PERKINS replied:

(1) Yes.

(2) Steps are being taken to finalise the necessary plans and to call tenders. If tenders have not already been called, we are very close to taking such action.

ESPERANCE LANDS AGREEMENT BILL

First Reading

On motions by Mr. Bovell (Minister for Lands), Bill introduced and read a first time.

CRIMINAL CODE AMENDMENT BILL

Recommittal

On motion by Mr. Nulsen, Bill recommitted for the further consideration of clause 2.

In Committee

The Chairman of Committees (Mr. Roberts) in the Chair; Mr. Watts (Attorney-General) in charge of the Bill.

Clause 2—Section 133 amended:

Mr. NULSEN: I move an amendment—

Page 2, line 12—Delete the word "seven" and substitute the word "ten".

Amendment put and passed.

Clause, as amended, put and passed.

Bill again reported, with an amendment.

WATER RATE ASSESSMENTS

Reversion to Progressive Valuations

MR. TONKIN (Melville) [4.48]: I move—

In the opinion of this House the arbitrary general increase of 25 per cent. on the annual rental value of residences in the metropolitan area imposed by the Government this financial year, and resulting in severe increases in rates payable for water supply and sewerage, is unfair and unnecessary and should be removed and a reversion made to the ordinary progressive valuations on the conservative basis, which has proved quite adequate to meet revenue requirements in the past.

This motion implies two things: Firstly, that the charges for water, sewerage, and drainage are much too high, and unnecessarily high; and, secondly, that the method of valuation adopted, of applying an arbitrary 25 per cent. increase to all valuations, is unfair and unjust, and ought to be removed. I propose to direct my argument to those two implications.

In order to follow what I intend to say, it is necessary to have an appreciation of what is laid down under the Metropolitan Water Supply, Sewerage, and Drainage Act. Therefore, I propose to quote from section 73 of that Act. That section deals with the method of valuation for the purpose of rates. Section 73 provides as follows:—

> The Minister shall cause rate books to be kept for each District in the form or to the effect of the Third Schedule, and shall enter therein all ratable land in the District with the several particulars indicated in the said schedule, and in the appropriate column shall state the estimated net annual value or unimproved capital value of such land.

This gives the Minister a choice when he is selecting the valuation upon which he proposes to levy his rates. He can choose either the net annual value or the unimproved capital value. Section 74 of the Act provides as follows:—

> Such annual value may, at the option of the Minister, be either—

So, it is open for the Minister to adopt one method or another. To continue—

> (1) The current value of the local authority in whose district the land is situated; or
>
> (2) A sum equal to the estimated full, fair, average amount of rent at which such land may reasonably be expected to let from year to year, on the assumption (if necessary to be made) that such letting is allowed by law, less the amount of all rates and taxes, and a deduction of twenty pounds per centum for repairs, insurance, and other outgoings; or
>
> (3) An amount not exceeding six pounds per centum on the capital value of the land in fee simple.

The Metropolitan Water Supply Department has adopted the net annual rental value. So it had either to adopt the valuations of the local authority or provide for its own valuations. When the Hawke Government came into office the department was dependent mainly upon the valuations of local authorities; and that created a good deal of anomaly and unfairness, inasmuch as some local authorities, like the Perth City Council, revalued every year and so kept their valuations right up to date. Other municipalities, like Claremont, had not revalued for 20 years; so their valuations were very much out of date.

Therefore the department had no option, not having its own valuations in those years, but to adopt those unfair valuations of the respective local authorities. The result was that people in districts like Mt. Hawthorn were paying a disproportionate amount of the rates as compared with people in municipalities like Claremont.

It was the then member for Leederville who interested himself in this matter and brought it well under the notice of the Government at the time. He drew attention to the unfairness of the situation and suggested a certain remedy. Of course, the only remedy available was that the Government should take steps to have its own valuations in all municipal and road board districts so that the same basis of valuation would apply in every instance, and then there would be no disparity as between valuations, and the rates levied would be fair and equitable.

It was on the 1st July, 1957, that the Government was in a position to levy rates upon its own valuations in all districts; and that is when the commencement was made with the new policy. In arriving at the value for rating purposes this method was adopted: The property was taken and considered as a letting proposition. If it would let, say, for £2 per week, the gross annual rental value of that property was £100. According to the Act, due allowance had to be made for rates and taxes. So the department allowed 20 per cent., which reduced the annual rental value which I have just mentioned to £80. The Act further provides for a deduction of 20 per cent. for repairs, insurance, and outgoings. So that would reduce the annual rental figure which I have just taken to £60.

The department did not adopt that full £60 as the annual rental value; it took only 60 per cent. of it. This Government has taken 75 per cent. of that net annual rental value; and that is what has resulted in this arbitrary increase of 25 per cent. in the basic rate. I emphasise here that that is the first difference in the policy. This Government has deliberately taken 75 per cent. of the annual rental value after the two allowances of 20 per cent. have been made, as against 60 per cent., which the previous Government adopted as a basis. Later on I am going to endeavour to point out how that is most unfair to a number of ratepayers.

With regard to the rates which can be levied, Parliament thought at the time that it was taking control of this matter, but the present Government has shown how to get around Parliament and how to get around the Act. Section 94 of the Act provides as follows:—

> (1) No water rate shall in any one year exceed—
>
> (i) two shillings in the pound on the annual ratable value of the land rated, or

(ii) fourpence in the pound on the capital unimproved value of the land rated, where the valuation is on the basis of the capital unimproved value of the land.

(2) The sewerage rate shall not in any one year exceed—

(i) two shillings in the pound on the annual ratable value of the land rated, or

(ii) fourpence in the pound on the capital unimproved value of the land rated, where the valuation is on the basis of the capital unimproved value of the land.

(3) The storm-water rate shall not in any one year exceed—

(i) Sixpence in the pound on the annual ratable value of the land rated, or

(ii) one penny in the pound on the capital unimproved value of the land rated, where the valuation is on the basis of the capital unimproved value of the land.

The respective rates at the present time are 1s. 6d. in the pound for water; 1s. 9d. in the pound for sewerage; and 4d. in the pound for drainage. So there is still a margin of 6d. in the pound with regard to water; 3d. in the pound with regard to sewerage; and 2d. in the pound with regard to drainage before the maxima are reached. The Government did not choose to increase the rate in the pound up to that maximum, because obviously that would not have brought in as much money as it hoped to obtain from what it has done.

In that respect it flouted the will of Parliament. It would be possible for a Government to adopt any method with regard to its valuations and leave the rate in the pound unchanged, and so take away from the control of Parliament the control of the actual amounts of rates being levied.

The intention of this Act, when it was passed, was to leave with Parliament the power to say what rates should be levied from time to time; and if the maximum provided in the Act was insufficient, the course that the Government should have followed was to ask Parliament to increase the maximum and give reasons why it was necessary to do so.

But in doing it this way, it was not necessary for the Government to bring the matter to Parliament at all; and the result has been increases in rates, in some cases exceeding 90 per cent. on what was actually paid last year. A number of those cases are in my own district, and in the district of Subiaco—two areas which are particularly hard hit by the action of the Government.

One of the complaints I make with regard to the Government's action is that the method adopted shifts the burden off the users of excess water on to the shoulders of people who never use their quantity. If the policy expressed on the hustings was to be believed, the Government was going to do the opposite: it was going to assist the people who did not use large quantities of water, and make those who used large quantities of water pay for the service.

But the Government has turned it around, and I propose to show later on that for the man who previously used a large quantity of excess water, the burden imposed on him is not so very great; whereas old-age pensioners, and people who live in houses on small pieces of land, are now carrying the portion of the burden which previously was carried by residents on large areas of land—and I will be able to prove that conclusively by an example which I will quote a little later on.

That is my big objection to this increase: that the burden of the finance required by the department has not been placed where it should be fairly placed, but has been partially taken off one section and put on to a section which should not have been called upon to bear it—and I refer again to old-age pensioners and people who have houses on blocks with small frontages in the older settled areas: places like King Street, East Fremantle, with 45-ft. and 50-ft. frontages, with very small gardens; and where, therefore, the consumption of water does not run into excess. Those people are obliged to pay more for their water supply when they were already paying for more water than they needed; whereas people who have large areas of land and big gardens will now pay less excess than they paid before, because they will get a greater quantity of water for the rates they pay, and the actual impost upon them will be much less than it will be upon others who never use the quantity of water available to them.

Mr. Court: Are you advocating, as a matter of policy, that rates should be levied on 60 per cent., or 75 per cent., according to districts?

Mr. TONKIN: I am not advocating that at all. I am simply illustrating that in imposing this arbitrary increase and making the people pay in advance for excess water—some of whom will not require any excess water—the Government is shifting the burden of payment from the section that is getting the service on to the section that is not getting the service. I hope to remedy that.

Mr. Court: If we have them all on the same percentage, that defeats the proposition you put forward.

Mr. TONKIN: It will not defeat my proposition. In passing this increase of 25 per cent. on valuations in the way it has, not only has the Government increased the water rates substantially, but it has also very substantially increased the rates for sewerage and drainage; and in my view there is not the slightest justification for one penny increase with regard to either.

I have examined just what the departmental experience has been with regard to sewerage. Before I quote any figures, I want to emphasise that the increase in the sewerage rates this financial year is greater than the increase in the water rates. That is a point which must be kept in mind. Yet the departmental return for sewerage each year since 1954 has shown a surplus. Therefore, on a rate which was showing a surplus every year, the Government imposes an additional increase.

For the year ended the 30th June, 1954, the sewerage rate was 1s. 11d. in the pound —one penny below the maximum; and the surplus revenue on account of sewerage for that year was £22,870. For the year ended June 1955, the sewerage rate had been reduced one penny in the pound. The rate previously in operation having shown a surplus, it was reduced a penny in the pound to 1s. 10d. Despite that reduction, the department finished with a surplus in the sewerage account of £41,891. For the year ended the 30th June, 1956, the sewerage rate had been further reduced to 1s. 9d. in the pound. Despite that reduction, the department ended the year with a greater surplus on sewerage than it had the year before, and it had a surplus of £55,219.

For the year ended the 30th June, 1957, on a rate of 1s. 9d. in the pound, there was a surplus in the sewerage account of £34,347. For the year ended the 30th June, 1958, on a rate of 1s. 9d. in the pound, there was a surplus of £59,149. For the year ended the 30th June 1959, the rate still being 1s. 9d. in the pound, there was a surplus of £23,619. And for the year ended the 30th June, 1960—and that is right up to date—on a rate of 1s. 9d. in the pound, the department had a surplus of £31,804.

Yet the Government proposes to raise an additional £160,000 on sewerage accounts alone, with the increased rates. I want somebody to justify to me the increasing of the sewerage rate, which has not failed, since the year 1953-54, to show a surplus over all charges, including interest and sinking fund on capital works.

Another point which must be kept in mind is that the surplus for 1960 was bigger than the surplus for 1959. So there was no indication that the department was going downhill with regard to this rate.

Mr. Graham: The Government is going downhill.

Mr. TONKIN: The valuations then in force, and the rate in the pound then in force, were quite adequate to meet all requirements. Yet the Government introduces a measure aimed at raising an additional £160,000 in sewerage revenue on a section of the department which has shown a surplus year after year, despite two reductions in the rate in the pound.

There is a responsibility upon someone to show why those people who are called upon to pay sewerage rates should have their rates increased, when it has been demonstrated beyond doubt that those rates have been perfectly adequate through all those years and have met rising costs, and two reductions in the rate in the pound have been made during the period.

Whatever people are being charged for water this year, those who pay sewerage rates are being charged 16⅔ per cent. more for sewerage than for water—for a section of the department which has shown a surplus each year for years; where the rate has been adequate year after year; and where last year, there was a bigger surplus than the previous year. Yet the Government sees fit to impose a charge which is 16⅔ per cent. higher for sewerage than it is for water. It must be remembered that not every consumer of water pays sewerage rates; so it is a sectional tax. This rate to raise £160,000 additional from sewerage rates is a sectional tax which every consumer of water does not pay—only those who are unfortunate enough to have the sewerage service.

Let us have a look at the position regarding water rates. At the 30th June, 1954—that is, for the year 1953-1954—the water rate was 1s. 9d. in the pound; the drainage rate was 5d.; and the sewerage rate was 1s. 11d. The price of excess water was increased that year by 3d. a thousand gallons to make it 1s. 3d. a thousand gallons.

The cash collections for the year on those rates amounted to £1,431,077, and the operations for the year showed a surplus of £64,991. There was a surplus on sewerage; a surplus on drainage; and a surplus on water of £22,066.

For the following financial year—the period ended June, 1955—the department showed a surplus of £86,649. It had a surplus on sewerage, a surplus on drainage, and a surplus on water of £20,498. The cash collections for the year were £1,692,027.

For the year ended the 30th June, 1956, the department showed a surplus of £100,661. The surplus on water was £35,661; and as I have already said, there was a surplus on sewerage and also one on drainage. The price of excess water during the year was raised by 6d. per 1,000 gals., one of the reasons being an attempt to try to restrict the consumption of water in order to assist the difficult

position because of the inadequacy of the conduit capacity to bring the water from the hills to the service reservoirs.

But even though the price of excess water was increased, the Government reduced the rate in the pound for water, from 1s. 9d. to 1s. 6d. The sewerage rate was reduced 1d. from 1s. 10d. to 1s. 9d., and the drainage rate was reduced 1d. from 5d. to 4d. So the total rate then levied in the pound amounted to 3s. 7d. as against 4s. 1d. when the Government came into power. Despite these reductions, the department, as I have already said, ended the financial year with a surplus of £100,661—a surplus on the three sections of its departmental activities despite a reduction of the rate in the pound. The cash collections for the year were £1,865,000.

For the year ended the 30th June, 1957, the department ended with an over-all surplus of £44,678. It had a surplus in all three sections of its activities; the surplus on water was only a small one—£6,803. The cash collections for the year were £2,002,935.

For the financial year ended the 30th June, 1958—and this was the last complete year during which the Hawke Government was in office—there was a surplus of £45,031. But there was a deficit on water of £15,757. That is a very minor sum with regard to rating; but it is the only deficit on water that was experienced during the whole period the Hawke Government was in office. There was a surplus on sewerage and a surplus on drainage, so that there was an over-all surplus of £45,031.

For the financial year ended the 30th June, 1959, the department experienced its first deficit over this long period—it had a deficit of £23,443. The deficit on water amounted to £40,134; and there was a deficit of £6,928 on drainage. There was, as I previously mentioned, a surplus on sewerage. At no time has there been a deficit on sewerage. The cash collections were £2,288,877.

Now we come to the last complete year—the financial year ended the 30th June, 1960; and for that period the department had a deficit of £252,227. There was a surplus on sewerage, but a deficit of £258,346 on water.

As a result of questions that were asked in the House this session, the Minister informed us that the amount lost by the department, owing to the severe restrictions on the use of water, was £250,000. So it is perfectly clear that had it not been for the unfortunate experience the department had of not being able to sell any excess water, the accounts would have about balanced; there would have been a small deficit of about £2,000.

So we can see that the position in which the department found itself was due not to any extraordinary expenditure, or to any great increase in costs, but to the fact that its revenue collections fell away because it was not able to sell excess water; and that is not likely to happen again even with a dry summer, because the department now has available to it additional storage capacity at Serpentine.

At Serpentine today there are more than 8,000,000,000 gallons of water—enough to supply the metropolitan area, at the peak period of consumption, for 70 days without using water from Canning Dam or anywhere else. That is additional water available to the department. So the department had no reason to anticipate it would not have been in a position to sell excess water this year.

In order to learn why the department needed another £500,000, I tried to find out what additional expenditure it expected to be faced with this year. But I did not get very far. On the 10th August, I asked this question—

> What are the separate items of expenditure to be met out of the £315,000 additional revenue which he stated on the 10th June last was required to meet departmental needs for 1960-61?

This was the Minister's answer—

> The department's annual revenue requirement is assessed to meet the total amount of estimated revenue expenditure inclusive of interest and sinking fund charges. Consequently, the sum of £315,000 will be applied towards that expenditure as a whole, and it is impracticable to specify its application to separate items.

From that reply, the only assumption I can make—and I think it is a fair one—is that the Government is not faced with any extraordinary expenditure; that there is no special item which has to be met this year which did not have to be met in previous years. So I assume that the Government considered it necessary to have this money to meet the ordinary increases in expenditure, to meet which there are the ordinary increases in revenue which, as I have shown, have taken place throughout the years.

The department is not in a position to indicate that it is involved in the expenditure of any large sums of money of an extraordinary nature. So it is budgeting for increased revenue to finance operations in the ordinary way. It is true that interest and sinking fund payments will be higher this year than they were last year; but proportionately they will be no higher than they were last year in relation to the year before, or the previous year in relation to the year before that. The ordinary progressive valuations have been adequate to finance the requirements of the department except for last year when we had very severe water restrictions as a result of which the Government lost revenue through not being able to sell excess water.

I have taken out some specific examples to show the effect of what the Government has done. Example No. 1 deals with a valuation last year of £120, which has been increased this year to £165. That represents an increase of 37½ per cent. only; and there are very few places this year where the increases are below that figure. As a matter of fact, there are many places considerably above it; and I have had brought under my notice a number of cases where the increase in valuation has been more than 70 per cent., compared with last year. But I have taken an example here where the increase is only 37½ per cent. This means that the new valuation will be £165. The rate in the pound has not altered, so it is common to both figures.

A person on a valuation of £120 would have paid for water rates, £9; for sewerage, 10 guineas; and for drainage, £2. A person with a property valuation of £120 would most probably have required some excess water last year; so I have just selected the first figure that came to my mind as being a reasonable figure for that valuation, and I have allotted an excess consumption of water of 40,000 gallons. I use much more than that myself, so I think that is not an unreasonable figure for a valuation of that type.

For that excess of 40,000 gallons, the consumer would have paid at the rate operating for excess water last year—1s. 9d. per 1,000 gallons—a sum of £3 10s. So, adding that amount to the £9 for the water rates in order to get the total figure that he would have paid for the water he consumed, we get this result: For water, sewerage, and drainage, including the £3 10s. for excess water, he would have paid £25. His valuation has now risen to £165. Therefore he now pays for the same quantity of water as he consumed last year. He will get more for the rates he pays; and, as a result, will pay for less excess water than he did last year. His rates will be—

	£	s.	d.
Water rate	14	5	6
Sewerage rate	14	8	9
Drainage rate	3	0	0
	£31	14	3

So, for all the services, he will pay £6 14s. 3d. more than he paid last year, or an increase of 26.8 per cent.

As an example, let us take a small block —with a 45 ft. frontage and scarcely any garden—which, last year, had a valuation of £60. At 1s. 6d. in the pound for water, the owner of that property would pay a water rate of £4 10s. on an allowance of 51,000 gallons. That is an adequate allowance for a person in a small place such as that, and therefore he does not use any excess water.

What is the position this year? The owner pays £6 3s. for his water, even though he did not use all that was available to him last year, and is granted an allowance of 61,000 gallons, which is much more than he requires. Actually, he pays £1 13s. more for his water than he paid last year, or an increase of 36.6 per cent. for water alone. The over-all position would be as follows:—

	£	s.	d.
Water rate	4	10	0
Sewerage rate	5	5	0
Drainage rate	1	0	0
	£10	15	0

In applying to his valuation the 37½ per cent. increase which would be applied to the block with a valuation of £120, it gives him a valuation, this year, of £82. So he will now pay—

	£	s.	d.
Water rate	6	3	0
Sewerage rate	7	3	6
Drainage rate	1	7	4
	£14	13	10

That shows an increase in rates of £3 18s., or 36.6 per cent., as against 26.8 per cent. for the place that is twice as large and receives double the water allowance.

That is typical of what is happening in regard to the levying of rates in all those places. The people who are shouldering most of the extra burden are not those who are using the water. They are carrying part of the burden which was previously being carried by the people who used the water. But in my view it is not necessary for either of those groups to carry as large a burden as the Government has imposed upon them.

I have endeavoured to show that with the ordinary, progressive increases in valuations that have taken place in the metropolitan area over the last six or seven years, the departmental income has been adequate and enabled it to show a surplus year after year with the exception of last year, which was an extraordinary one.

I would like to know what the Government proposes to do with this additional revenue which I am confident will amount to between £400,000 and £500,000 when the department will not possibly face that additional expenditure. It will deprive itself of a great deal of revenue which it would ordinarily get from excess water because it has received payment in advance from a number of people for excess water by increasing the rates and therefore, in turn, increasing the allowance.

I will give the House a simple illustration. If my allowance for water is 100,000 gallons this year and—because I will be paying more rates this year—I am allowed 140,000 gallons, that is 40,000 gallons less

excess water I can expect to use if my consumption is the same this year as it was last year.

Mr. Crommelin: But surely you would not get an extra 40,000 gallons this year?

Mr. TONKIN: Yes I would; I would get more than that. Surely the honourable member appreciates that if some people have their rates increased by more than 60 per cent.—even making allowance for the fact that rebate water is going to cost 2s. per 1,000 gallons instead of 1s. 9d.—there will be an increase of more than 50 per cent. in the water allowed for many houses. In some cases it will be less, of course; and in some cases it will be more, depending on the circumstances.

I have already indicated that the charge for sewerage is going to be 16⅔ per cent. higher than it will be for water. Not everybody pays the sewerage rate, but practically every domestic consumer of water will have to pay an increase of at least 25 per cent. in rates because of the increase in valuations; and those who have had, in addition, a progressive valuation made this year, are paying 60 per cent., 70 per cent., 80 per cent.—and I saw one which had been increased by 97 per cent.—more than they paid last year. That increased valuation will give to those ratepayers a much higher water allowance, and so they have more water to use before they go on to excess.

So the department must expect that even if it is able to sell all the excess water that people require this year, it will not sell the same quantity as it would have sold last year—that is, if it had been an ordinary year—because it is taking payment in advance for a great deal of it by increasing the rates and thereby increasing the allowance available for rebate water.

That is why I emphasise the point I tried to make earlier—that, whereas the consumer who invariably uses a large quantity of excess water will get some advantage this year, inasmuch as the consumption of excess water will be much less, the person who previously did not use any excess water, and had a surplus because of the rates he paid, will get a larger allowance which he does not require. Nevertheless, he will have to pay for it and so would not get that advantage which will be enjoyed by the person who uses excess water.

That is why I drew a comparison between a small property in East Fremantle, with a 45-ft. frontage, a very small garden area, and only a pocket-handkerchief piece of lawn that hardly uses the allowance, and my own place, which has an extensive area of lawn and garden from front to back. In my place it is impossible for me satisfactorily to go through the summer without going on to excess; but this year I will use less excess water because I get a greater basic allowance.

However, the small property owners in Subiaco, East Fremantle, and other places where they do not use the quantity of water available to them now, will get no beneficial result from the increased rates they are called upon to pay, but the full impact of the 100 per cent. increase will be felt by them.

So a situation is reached whereby many people will bear only a small proportion of the increase in rates because they use excess water and are simply paying for it in advance, and the other group of householders will have to carry the full 100 per cent. increase imposed upon them. Yet this is the Government which was going to give consideration to reducing the rates to those people who use less water in order to encourage them to use less water.

But what has it done? It has encouraged them to use more! This is because of the fact that it has in effect said to all those people who are entitled to a greater quantity of water than they paid for before, "Use more water because you are entitled to use another 40,000 gallons. You may as well use it up because it will not cost you any more." That is the very opposite to what was advocated by the Government during the last general elections.

So it should be pointed out that this policy is wrong and quite unfair. It is placing the burden in the wrong place; and, what is more, the burden is greater than it need be. If the ordinary progressive valuations will enable the department to show a surplus year after year—there has not been one single year in the last seven years, even including last year, when the sewerage rate on the existing valuations was not completely adequate—why has the Government got to gain another £160,000 on the sewerage rate alone this year? Further, that additional revenue is being obtained by that section of the department which had a greater surplus last year than it did the year before.

I will take a lot of convincing that that increase is justified. In effect, we are saying to all the people who pay sewerage rates, "Despite the fact that the rate you have been paying for the last seven years has enabled the department to show a surplus every year, collectively you are required to pay another £160,000 to the department this year". For what?

Mr. Hawke: There is no comment from the Minister.

Mr. TONKIN: I ask: For what? Because the ordinary costs have applied year after year. In the figures I have quoted, showing the departmental income each year, it is remarkable how the increase in income and the increase in expenditure nearly always balance. That happens year after year, so it can be expected to do that this year because of the new

services—approximately 4,000 every year—that come into operation. With the buildings that are being erected there are these extra 4,000 consumers; and with the ordinary progressive valuations taking place over triennial periods, up to now they have been sufficient to finance the requirements of the department without this radical departure now adopted by the Government, which means an imposition of an arbitary increase in all valuations in order, as the Minister has said, to put them on the same basis as commercial places.

Mr. Court: Was that so with all valuations? Were there not some already on a 75 per cent. increase?

Mr. TONKIN: I do not admit that. I have no recollection of any decision of mine enabling the department to make a distinction in one district as against another, because my instruction was that we were to adopt our own valuations in place of local authority valuations, which were unsatisfactory—for the reasons I have previously given—and the underlying principle was complete uniformity throughout the metropolitan area. How on earth, in view of that instruction, anomalies in some districts could be created, compared to what happened in other districts, I am at a complete loss to understand.

Mr. Court: There were some on 75 per cent. and some on 60 per cent.

Mr. TONKIN: Not to my knowledge.

Mr. Court: It was during your administration.

Mr. TONKIN: I would like some evidence to show how this arose, and some proof that it was an actual fact.

Mr. Court: That was why I raised the query as to whether it was a matter of policy to try to balance out the water charges. You are advocating a differential percentage in different suburbs.

Mr. TONKIN: I did not at any stage advocate a differential treatment as between suburbs or between consumers. I would not agree to that suggestion at all. The department is charged with the responsibility of financing its operations, but it cannot use rating as a taxing method. It is supposed to raise sufficient finance, by way of rates, to meet its costs.

A small surplus of £15,000 to £20,000 a year cannot be avoided in an income of millions a year. A surplus of £250,000 was built up over many years, but that was completely wiped off because last year the department was not able to sell excess water. That is not likely to occur again in our lifetime, so that aspect can be set aside and taken out of our calculations entirely.

When the department is seeking to raise £400,000 to £500,000 additional to the ordinary increase which can be expected from progressive valuations, one is entitled to ask the Government what it intends to spend the additional amount on. We were given the answer. We were told it was to be absorbed in the general expenditure of the department's operations. I refuse to believe there was any circumstances last year which made this year different in any respect from the seven previous years, and which would require the extraordinary increase in income I referred to. Such an increase has not been required previously.

The Government cannot argue that the additional sum is needed to meet interest and sinking fund in respect of the Serpentine Dam and the sewage treatment works at Subiaco, because the answers given to questions I asked in Parliament showed that the total sum required for the sewage treatment works, plus the anticipated increased costs due to the recent rise in wages and salaries, would not absorb £100,000.

All of those items would not require an additional £100,000; but the department, on its own admission, expects to obtain £380,000 from the increased charges. I think the figure will be nearer £480,000. I want to know what the department intends to do with that extra sum. I say there is no justification whatever for imposing this additional heavy burden upon all water consumers.

I reiterate that on the ordinary progressive valuations, which the Minister said were too conservative—he felt they ought to be raised because they were too low—and which caused the Minister for Railways, when he was a member on this side of the House, to complain about the increases, the department was able to continue to show a surplus and to reduce the rate in the pound. It was not the case in an isolated year; it was the case year after year.

Twice we, as the Government, reduced the rate in the pound on water; we reduced the rate in the pound on sewerage; and we reduced the rate in the pound on drainage; while at the same time we continued to show a surplus in the three sections of the department, year after year. With regard to sewerage there was not a single exception; and a surplus has been shown, even as late as the 30th June, 1960.

Despite the fact that the amount of the surplus is more than adequate to meet the additional charges for interest and sinking fund for the Subiaco sewage treatment plant, the department is levying a rate which will produce an additional £160,000 on sewerage alone. No wonder the people are groaning under this heavy burden which has been placed upon them. There is unrest from one end of the City to the other; and this unrest will increase because, in some districts, progressive valuation has not taken place this year. Their turn will come next year.

This progressive revaluation and the arbitrary increase of 25 per cent. have been applied to only a limited number of people. Two districts in my electorate have been included in that category. They are Palmyra and Bicton, where the revaluations are to have effect as from the 1st July, 1960; and, over and above that new valuation, the 25 per cent. arbitrary increase has been imposed. That is why there has been such an extraordinary increase in the revenue of the department.

Some districts which were not revalued last year will be revalued this year, and these new valuations will take effect as from the 1st July, 1961. So one can imagine what will happen when the people in those districts are rated on the new valuations, besides having the arbitrary increase of 25 per cent. imposed upon them. Kelmscott is one of the districts which will be due for revaluation either this year or the next. It is within the electorate of the Minister for Works; so when that district is revalued, the situation will be brought home to him more closely.

In this cycle of revaluations, whereby properties are valued every three years, only certain sections of the metropolitan district will be revalued in the current year; but it so happens that two districts in my electorate have been caught up in this situation this year—a revaluation plus the 25 per cent. arbitrary increase.

I struck a case a few weeks ago of an old-age pensioner whose rates have been increased from £9 to over £16 this year. He asked, "What can I do about it?"

Mr. Fletcher: He knows what to do at the next elections.

Mr. TONKIN: He asked, "How am I going to pay the increased rates?" In some cases the increase in water charges will absorb completely the recent increase in the old-age pension. The people are not getting a corresponding advantage from the increased water rates, because they are not using the quantity of water which is available to them. Now they are to be permitted to use more water which they do not want. I cannot understand why the Government did not examine the position as soon as attention was drawn to it, and effect some change after that. In my view the increases cannot be justified in any shape or form.

The people will put up with increases, if they feel that the increases are warranted and inescapable. If they feel that the costs of a department have risen, and therefore the additional expenditure has to be met, they will put up with increases, even though the increases may be irksome. In this case it cannot be shown that it is necessary to raise the additional amount.

Let me return to the sewerage illustration, which is a particularly good one. Here is a department which, year after year, has shown a surplus on the existing method of valuation and the existing method of rating. Its surplus last year was bigger than the surplus of the year before; that shows there was no deterioration in the finances of the department which had to be arrested. Despite that, the rate has been increased and the Government has budgeted for an additional £160,000 in revenue from that source. It is asking people who are already financing the Government's undertakings to contribute another £160,000 towards that undertaking. But for what purpose?

The only way in which we can approach this question reasonably is to take off the 25 per cent. arbitrary increase which was imposed on revaluation. Let the Government do that. It can rely upon the progressive revaluations which are made from year to year, and on the same conservative basis of 60 per cent. of the net annual rental value—which basis has proved to be adequate all down the years.

Even on that basis, the rating drew from the Minister for Railways complaints that the charges were too high. I wonder what his constituents are thinking about the new rates now, or what they will think when their turn for revaluation comes around.

Mr. Hawke: I think the member concerned is putting the commercial accounting system over his constituents.

Mr. TONKIN: If we give a direction to the Government that this arbitrary increase be removed, all we do is to say to the Government, "Adopt the same principle which was adopted by the McLarty-Watts Government for six years and found to be adequate; and which was adopted by the Hawke Government for six years and found to be adequate. There is no need to change it."

I want to point this out: The McLarty-Watts Government suffered the disability of having to levy rates on annual rental values which were 20 years out of date. How much better off financially would it have been if all revaluations had been up to date? Only a portion of the properties upon which the McLarty-Watts Government levied rates bore the current valuation. Properties in Claremont were being rated on values which were 20 years out of date. Even under that disability the revenue was adequate to meet the requirements of the department.

From the 1st July, 1957, the Hawke Government was able to use its own valuations throughout, so it was not restricted when some local authorities would not revalue properties. Having advantage of those up-to-date revaluations, the rate in the pound raised sufficient money to meet the requirements of the department.

In view of the fact that this method has served the State well in the past, we have every justification today to revert to

it, and thereby rely upon the ordinary progressive revaluations, and upon the conservative basis of allowing a 20 per cent. deduction for repairs and renewals and another 20 per cent. for rates and taxes; and then take only 60 per cent. of the net valuation, instead of 75 per cent. as is now the case. I am sure that method would provide the department with sufficient revenue to meet its commitments.

One only has to study very carefully the rise in cash collections which has taken place from year to year to realise that the figure of £1,431,077 for the year 1953-54 increased to £2,288,877 in 1959; that is, almost double. The cash collections almost doubled in five years under the ordinary progressive-valuation method. What need is there then for this radical departure which acts so unfairly on people who do not consume the quantity of water to which they are entitled, as compared with those who do?

I have made good the two points which I set out to prove; namely, that the charges are high and unnecessarily high, and that the 25 per cent. arbitrary increase should be removed.

On motion by Mr. Wild (Minister for Water Supplies), debate adjourned.

BILLS (4)—RETURNED

1. Firearms and Guns Act Amendment Bill.

   Bill returned from the Council with an amendment.

2. Coroners Act Amendment Bill.

3. Legal Practitioners Act Amendment Bill.

4. Licensing Act Amendment Bill.

   Bills returned from the Council without amendment.

DEATH PENALTY ABOLITION BILL

Second Reading

Debate resumed from the 7th September.

MR. WATTS (Stirling—Attorney-General) [6.3]: I have given a great deal of consideration to the speech with which the member for East Perth introduced the measure now before the House, and I say at the outset that the views I am about to express are the views of the Government. I would also say that I propose to endeavour to adhere to the same level of debate as the honourable member used a fortnight ago when he introduced the measure to this Assembly, save to make one comment; and that is, that I can hardly believe that the honourable member is so naive that he felt really justified in saying to this Assembly that this should be a non-party measure but that the Labor Party is pledged to support it. I thought that was a naive suggestion.

Mr. Graham: That was the position when the Bill was last before the House.

Mr. WATTS: I have no doubt that that is so, but I do not think it was stressed as neatly as the honourable member put it. However, I do not propose to make any reference to matters of that nature. I think it would be well, as a fortnight has passed, and the House may feel that it should know a little more clearly what the major points of the honourable member's speech were, that I should endeavour to summarize them. I think that the summary which I am about to give fairly covers the major points of the honourable member's speech. I do not suggest that there are not some minor points which he raised also, but these are the major ones which I think need attention. They are as follows:—

(1) That the taking of human life with the sanction of the law is abhorrent, and should find no place in modern civilisation.

(2) That capital punishment is irksome and repugnant to very many sentient beings in our midst, and the Legislature should have regard to the public conscience.

(3) That there is a trend throughout the world towards the elimination of the death penalty.

(4) That the death penalty is not a deterrent.

(5) That the death penalty causes a reluctance on the part of juries to find a true verdict on the evidence.

(6) That the death penalty is contrary to the teachings of religion and Christian principles.

(7) That all murderers are persons suffering from some degree of insanity (whether observable or not).

(8) That the law should be directed solely to the detention, treatment, and reform of murderers.

(9) That there is no such thing as degrees of murder.

It is my intention, so far as I can, to deal with some of those aspects. The first —that the taking of human life with the sanction of the law is abhorrent and should find no place in modern civilisation—must be, I think, a matter of individual opinion. It is true that within the sphere of that argument one could embrace the whole debate upon this question if one wished. Members might perhaps be able in general to disagree with the punishment as a matter of principle, but yet they might still feel it expedient to retain such a punishment for the time being.

The next item was that capital punishment is irksome and repugnant to very many sentient beings in our midst, and the

Legislature should have regard to the public conscience. The difficulty is, as we see it, to be satisfied as to what the public conscience is on this question. The view is held by many that if a referendum were conducted on the subject there would be a clear majority at present in favour of the retention of the present law, curiously enough; and I hope to be able to mention subsequently after the tea suspension, that there have been a couple of places in which a referendum has been held, and about which I have obtained some information. In both of these cases there was a majority for the retention of the law similar to that which now exists in our Criminal Code.

The third item is, I think, one of the most important of those mentioned by the honourable member. I am referring to his contention that there is a trend throughout the world towards the elimination of the death penalty. That may be substantially true; but at the same time it is a significant fact that in some jurisdictions where the death penalty has been abolished it has been subsequently reinstated—or perhaps "reintroduced" is the better word.

Of particular interest in this matter are the reasons attributed in the British Royal Commission's report for the restoration of capital punishment in New Zealand in 1950. It will be noted that the honourable member confessed that he had been unable to discover the reasons behind the restoration of this punishment in New Zealand.

I have here some information on this subject which may be of interest to members. The material I am about to quote is taken from the report of the Royal Commission on capital punishment in the United Kingdom held between 1949 and 1953, and is on pages 373 to 375. It is as follows:—

> Capital punishment was abolished in New Zealand in 1941 after being in abeyance since 1936. In August, 1950, a Bill was introduced into the New Zealand House of Representatives with the object of restoring capital punishment. The Bill was considered by a Select Committee of both Houses of Parliament, which took evidence in public, was susequently debated in both Houses, and became law in December, 1950.

That is, the restoration of capital punishment. The following arguments were put forward in favour of that restoration—

(1) The attitude of murderers towards the penalty for murder (see paragraph 16). Representatives of the Department of Justice told the Select Committee: "We attach great importance to the fact that in New Zealand there have been a number of recent cases which suggest that the question of hanging was in the mind of the murderer before he committed the crime."

(2) The belief of the police that capital punishment is a pronounced deterrent. The Commissioner of Police told the Select Committee—

> "In my opinion, the abolition of capital punishment is a reduction of the penalty and thus the deterrent is reduced and the gravity of the crime also reduced. The majority of persons charged with murder are below average mentality, and these are the people who are so easily influenced by any reduction of the gravity of the crime and easily impressed by the many newspaper reports and headlines stating that the penalty for murder is less than death. The lower the mentality of the subject, the stronger the deterrent must be."

(3) The evidence in favour of restoration given by a leading New Zealand pathologist and by the Director-General of Mental Hospitals, who considered that there were cases where the murders would not have taken place if the death penalty had remained in the Statute Book.

(4) A number of notorious sexual murders which took place during the period of abolition. These may have influenced the many women's organisations which favoured restoration.

(5) An increase in the number of murders by professional criminals. One speaker in the House of Representatives said that in the 16 years prior to 1935 there had been only two murders associated with robbery, while in the nine years of abolition there had been five.

(6) Newspaper reports about a considerable increase in the number of murders after capital punishment was abolished (see paragraphs 32-34, Table 14 and diagram 1).

It must be emphasised that those reasons for the restoration of capital punishment were also the reasons given in the debate in Parliament, and the hearing of evidence of the Select Committee. I do not propose to endeavour to analyse the merits of the argument. As a matter of fact, I think the bulk of them, or the majority of them, are self-explanatory.

Mr. Hawke: Was there a minority report from that commission?

Mr. WATTS: Not to my knowledge. Some of the arguments were, of course, rejected by witnesses opposed to the restoration of capital punishment.

Similar things have taken place in the United States. The most interesting of those States are Kansas and South Dakota

which restored capital punishment after a long period of abolition. It was thought that the main reason for the restoration of capital punishment was always the same: Something happened which aroused popular feeling, and the Legislature imposed the death penalty. If we look at some of the States which abolished the death penalty around 1914, we find that they restored it during the demobilisation period. There were things happening then; and it was assumed that it had been a mistake to abolish the penalty, and it was reintroduced.

In the State of Washington capital punishment was abolished in 1913 and restored six years later. The Attorney-General in Washington, said in 1922—

> The Legislature evidently regarded capital punishment as a deterrent force, for it was restored after a trial of six years of life imprisonment as the maximum penalty.

Sitting suspended from 6.15 to 7.30 p.m.

Mr. WATTS: Prior to the tea suspension I was dealing with places in the United States where the death penalty had been abolished, and restored. I was referring to the State of Washington, and the remarks of the Attorney-General of that State made subsequent to the restoration of the provision for capital punishment. I do not propose to weary the House by quoting too many of these places; but there is one which I think would be of sufficient interest to quote; and that is in regard to the State of Oregon where capital punishment was abolished in 1914 and restored in 1920.

The Governor called a special session of the Legislature for the purpose of restoring it, and in his address to that Legislature he said—

> Since the adjournment of the regular session in 1919 a wave of crime has swept over the country. Oregon has suffered from this criminal blight, and during the past few months the commission of a number of cold-blooded and fiendish homicides has aroused our people to a demand for greater and more certain protection . . . Because of a series of dastardly homicidal offences a distinct public sentiment has developed that the people of the State should once more be given an opportunity to pass an opinion upon the question of the restoration of capital punishment and that there should be no unnecessary delay in bringing this question before the electors.

This particular Legislature ordered the holding of a plebiscite, in which 81,756 voted in favour of capital punishment and 64,589 against—a majority of 17,167 in favour. As a result of that plebiscite, capital punishment was restored. Lastly, so far as the American States are concerned, I would like to refer to Missouri.

Mr. Jamieson: What were the voting rights in Oregon?

Mr. WATTS: Adult suffrage. Capital punishment was abolished in the State of Missouri in 1917 and restored in 1919. In 1922 the Attorney-General of Missouri said—

> In the period immediately following abolition, capital crimes occurred with such frequency that the public sentiment of the State demanded the restoration of the death penalty . . . One of the reasons why the death penalty was believed to be necessary was because of the argument that professional robbers about to be caught had no hesitation in killing the police officers since conviction for murder would bring no greater penalty than conviction for robbery.

Those crimes aroused public opinion and capital punishment was restored.

Mr. Graham: I suppose you read the review of the British Royal Commission on all those changes, indicating that the reimposition did not have any deterrent effect?

Mr. WATTS: I would not go so far as to say that it did not have any deterrent effect.

Mr. Graham: There was no evidence to prove it did.

Mr. WATTS: I have an illustration here, and I propose now to discuss that aspect. I thought that was a reasonable sequence to follow. During his speech, the honourable member referred to a passage from the British Royal Commission's report. I think when it has been read as I will read it to members it will not be accepted as sufficient authority for this proposition. I think there could be some misconception of the observation made by the Royal Commission as to the value of statistics from various countries of the homicide rate before and after the abolition of capital punishment.

I think what the commission was really saying was that statistics are inconclusive and cannot be relied upon to prove or disprove the case for capital punishment as a deterrent. In paragraph 68 on page 24 the commission proceeded to state its conclusions in these words—

> We recognise that it is impossible to arrive confidently at firm conclusions about the deterrent effect of the death penalty, or indeed of any form of punishment. The general conclusion which we reach, after careful review of all the evidence we have been able to obtain as to the deterrent effect of capital punishment, may be stated as follows. *Prima facie* the penalty of death is likely to have a

> stronger effect as a deterrent to normal human beings than any other form of punishment, and there is some evidence (though no convincing statistical evidence) that this is in fact so. But this effect does not operate universally or uniformly, and there are many offenders on whom it is limited and may often be negligible. It is accordingly important to view this question in a just perspective and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty.

I think that opinion on the question of deterrence is pretty well divided. It is no doubt strongly held by some people that it is a very great deterrent; and in other cases, and just as sincerely I have no doubt, the contrary view is held. I do not think anybody can establish by the available evidence that it is one thing or the other; all I am seeking to do is to show just that—that we have no clear statistics or evidence actually to determine the extent to which it is a deterrent; and therefore it is, as I see it, a matter upon which individuals or communities must make up their own minds.

Mr. Bickerton: You admit that it is doubtful as a deterrent.

Mr. WATTS: I do not admit that it is doubtful. I say that there is not sufficient evidence to determine whether it is or it is not.

Mr. Bickerton: In a layman's mind it would be doubtful.

Mr. WATTS: Some people would hold quite the opposite view; in fact, I know a great number of people who do hold that view.

Mr. Graham: But there is no evidence to support them in that view.

Mr. WATTS: I question whether there is no evidence to support them—because there is evidence in some places that in the absence of such a penalty there has been an increase in crime and—

Mr. Graham: And conversely, too.

Mr. WATTS: —acts which are covered by the title of homicide; because, generally speaking, with the exception of such things as treason and piracy, which for the moment I am ignoring, the death penalty is, in some places where its exists, applied only to murder in some degree.

The honourable member expressed the opinion that there can be no degrees in murder. I will discuss that point in a minute or two in the light of our Criminal Code. I think that references in some other places to murder in the first degree, murder in the second degree, and so forth, are by no means clearly understandable; but I think our own Criminal Code is crystal clear as to the difference between murder and wilful murder; and later on I will quote that particular paragraph of the Criminal Code.

As I mentioned earlier, the honourable member made a point that in his view the death penalty caused a reluctance on the part of juries to find a true verdict on the evidence. I think he based this proposition on a quotation referring to juries in England; and he referred to a period of time over 100 years ago when stealing property to the value of 40s. or more was a capital crime; and also he alleged an instance in recent times in the City of Perth when apparently a juror said that he would never have convicted the accused had he known that the death penalty could be exacted.

Here again it is impossible to establish this argument beyond the realms of conjecture. The British Royal Commission discussed this matter in its report on pages 7 and 8, and its conclusion was that verdicts unwarranted in law, if returned by the jury, were to be attributed to sympathy for the accused in that particular case rather than to disapproval of capital punishment or of any shrinking from responsibility. I think that is so; I think it was demonstrated in the trials of the man Thomas, who was recently convicted. There was no hesitation on the part of the jury here, on at least two occasions, in returning a verdict of wilful murder, although they were well aware of the possibility in the face of the provisions of the Criminal Code—

Mr. Graham: Probably the last thing they expected was that the death penalty would be carried into effect.

Mr. WATTS: I would not like to say that for one minute; I do not think there is any substantial grounds for anybody to believe that at the time; because, without desiring to make specific reference to this case, it was undoubtedly one which was far more serious than the majority of those with which we have been faced in Western Australia in recent times. I think we can safely say that without going too far or impugning anybody more than we must.

The honourable member then drew attention to the position that in his view the majority of murderers were insane. I think the phrase he used was "whether the insanity was observable or not"—at least that was the tenor of it. I do not think we can say that that is a valid statement. Surely the whole matter depends on the definition of "insanity." I would say it is certainly not true if regard is had to the meaning of "insanity" in the Criminal Code. Section 26 of the Code reads—

> Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

Section 27 reads—

> A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission.
>
> A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.

I think the major words in that section are as to his capacity to know that he ought not to do the act or make the omission at the time of making it or doing the act. If that can be established—as it has been established on a number of occasions—then, unquestionably, the verdict is "Not guilty of wilful murder or murder." The jury is quite able to return another verdict, and has done so.

I would like also, as I said, to quote the Criminal Code in relation to the two types of murder which are prescribed in Western Australia. Section 278, dealing with the definition of "wilful murder," says—

> Except as hereinafter set forth, a person who unlawfully kills another, intending to cause his death or that of some other person, is guilty of wilful murder.

There, of course, is the distinct intention to cause the death of another person. That intention must be proved before we can establish the guilt of the crime of wilful murder. Then the definition of murder follows in the succeeding section 279. It states—

> . . . a person who unlawfully kills another under any of the following circumstances, that is to say:—
>
> (1) If the offender intends to do to the person killed or to some other person some grievous bodily harm;
>
> (2) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;
>
> (3) If the offender intends to do grievous bodily harm to some person for the purpose of facilitating the commission of a crime which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such crime;
>
> (4) If death is caused by administering any stupefying or overpowering thing for either of the purposes last aforesaid;
>
> (5) If death is caused by wilfully stopping the breath of any person for either of such purposes;
>
> is guilty of murder.

I think wilful murder, in Western Australia, is clearly separated by the provisions of the first section I have read, from the crime of murder. It is perfectly true that as the Criminal Code stands at present, the death penalty can be inflicted for both. In regard to that, I shall have something to say a little later on.

It may be of some interest to know what has been done in Great Britain. Here, of course, there has been for a considerable number of years a good deal of controversy as to the retention of the death penalty. I have here some details of the legislative changes in Great Britain during this century. They are as follows:—

(1) The Sentence of Death (Expectant Mothers) Act, 1931, substituted life imprisonment for death in the case where a pregnant woman was convicted of an offence punishable with death.

(2) The Infanticide Act, 1938, substituted the felony of infanticide for that of murder in the case of an "unbalanced" mother causing the death of her infant child.

(3) The Homicide Act, 1957. This Act changed the law of the United Kingdom with respect to constructive malice, persons suffering from diminished responsibility, provocation, suicide pacts and liability to the death penalty. The Act also made several procedural amendments which are not pertinent to this memorandum.

Section 2 provides "that persons suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts or omissions in doing or being a party to the killing" shall be convicted of manslaughter instead of murder.

Section 5ff. The sections dealing with the liability to suffer the death penalty, in effect, confine capital punishment to the following categories of murder (described as "capital murders"):—

(a) any murder done in the course or furtherance of theft;

(b) any murder by shooting or by causing an explosion;

(c) any murder done in the course or for the purposes of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody;

(d) any murder of a police officer acting in the execution of his duty or of a person assisting a police officer so acting;

(e) in the case of a person who was a prisoner at the time when he did or was a party to the murder, any murder of a prison officer acting in the execution of his duty or of a person assisting a prison officer so acting.

The death penalty is also retained for a second conviction for murder, both murders having been committed in Great Britain.

I do not desire to be too critical of the law which is enforced in England in the Homicide Act of 1957, but I venture to suggest it would not be desirable to adopt such a law here; because a few moments' analysis by members of some of these provisions would, I think, indicate the strangest approach to one or two of the aspects mentioned here. For example, if a murder is done by shooting or causing an explosion, it is a capital offence; but if a person were to take a dagger two feet long and perform a similar act, it would apparently not be a capital offence.

I do not know in exactly what circumstances section 5 was inserted in the English legislation; but speaking, for a moment, quite personally, I would suggest it should have had a great deal more consideration before it found its way on to the statute book. I might say that in 1947 there was a proposal to suspend capital punishment in the United Kingdom, but it was never enacted in the law. However, it was, I understand, effected by administration for a period of years.

So the situation is that, throughout the world, there have been various types of consideration given to the altering of the law where the death penalty was applied. Some of them have only reached the stage where we are, so far as our Criminal Code in Western Australia is concerned; or approximately so. Some have reached a stage such as I have referred to in Great Britain, and of which I have offered some mild criticism. It seems to me there are a great many more angles in the matter that ought to be examined, unless we are prepared to subscribe to the point of view enunciated by the member for East Perth a fortnight ago.

Before I proceed to wind up and explain the additional attitude of the Government towards this matter, so far as I can, I would just like to make some reference to the statistics of convictions for murder, or wilful murder, in Western Australia since 1924. They are as follows:—

Year	No. of Convictions
1924	2
1925	3
1926	6
1927	1
1928	3
1929	nil
1930	2
1931	3
1932	5

For the next three years—1933 to 1935—the record shows nil for each of them.

Mr. Graham: Do you mean for the years 1933, 1934, and 1935?

Mr. WATTS: Yes. In order to make the position of these statistics perfectly plain, and not to mislead anybody, I might say that the statistics I will give later for the years 1947 to 1960 have been derived from records now maintained by the Crown Prosecutor, and maintained during those years. For the period 1924 to 1946, reliance has been placed on information collected from the Crown Law Department file which, I understand, is available if anybody cares to ask for it. To continue with the number of convictions for murder and wilful murder over the years—

Year	No. of Convictions
1936	2
1937	nil
1938	1
1939	nil
1940	1
1941	nil
1942	1
1943	nil
1944	nil

Mr. Graham: Where did you say these figures came from?

Mr. WATTS: For the years 1947 to 1960 they are from records maintained by the Crown Prosecutor.

Mr. Graham: I have a list that appeared in *The West Australian*, which is totally different.

Mr. WATTS: For the years 1924 to 1946 the figures are contained in Crown Law Department file No. 5069/60. I said the file was available if the honourable member wanted to look at it.

Mr. Graham: I am placing some reliance on the statistics in *The West Australian*.

Mr. WATTS: I might say to the member for East Perth, and to the House, that I specifically requested the Crown Prosecutor, the day after the honourable member made his speech, to give this matter close research, so that we would get all the data we could in regard to the matter, as it seemed to me the House was entitled to be given any information on the subject that was available. I will now continue

with the number of convictions for murder and wilful murder for the years 1945 to 1960—

Year	No. of Convictions
1945	1
1946	2
1947	2
1948	5
1949	3
1950	2
1951	nil
1952	4
1953	6
1954	nil
1955	4
1956	1
1957	3
1958	1
1959	1
1960	2

It was mentioned to me also, and brought to my recollection, that during last year there were three murders of young women, the perpetrators of which have not so far been detected. So it will be observed that over that period of years there have been a substantial number of convictions on which, of course, under the Criminal Code the death sentence had to be passed, or recorded, by the judge.

By far the greater number of those sentences have been commuted. No natives have been executed in the period from the 1st January, 1924, to the present time. The list, I am advised, includes quite a number of persons of the aboriginal race who were convicted; but since 1924 none have been executed.

Mr. May: Have you the number who paid the death penalty over that period?

Mr. WATTS: Yes. I will give the figures. The executions were: The 2nd August, 1926, 1; the 25th October, 1926, 2; the 21st May, 1928, 1; the 3rd September, 1928, 1; the 18th May, 1931, 1; the 13th June, 1932, 1; the 23rd June, 1952, 1; and the 18th July, 1960, 1. That makes a total of nine in the period of 34 years.

Mr. Evans: All by a Liberal Government.

Mr. Bovell: No; the Collier Government was in office between 1924 and 1930.

Mr. WATTS: The situation is that Governments of all types were in office during this period. As I said, I had no intention of raising that point at all; and would not have done so only for the interjection.

Mr. Graham: It is since 1960 that we are interested in.

Mr. WATTS: The honourable member made strong reference to the need for reform. Unfortunately, up to date, and through the years to which I made reference a moment ago, the opportunities available in Western Australia for reform during imprisonment have been very slender. This matter has been discussed with the Comptroller-General of Prisons; and there is very little scope for reform, according to information received from him.

At present there is one prisoner serving a life sentence at Barton's Mill and one prisoner serving a similar sentence at Pardelup; but it is general practice that such personnel serve their sentence in the Fremantle gaol. The gaol is not suitable for the classification of prisoners and for encouraging any real reformative activity. There is, of course, present a psychiatrist whose efforts in a particular case may bring about some improvement in the mental outlook of a prisoner; but he has to deal with a great number of prisoners, and not only those convicted of this particular offence.

So, at the present time, the opportunities for reform in Western Australia are very scanty and have been over the period of years to which I have referred. Unquestionably it is desirable that some provision shall be made, not only for this type of prisoner, but for others to be given better opportunities for reform than have been available. At the same time, it seems to me there will be considerable delay before that can be dealt with, even supposing it were practicable to make a start immediately. The erection of premises, the completion of them, and the obtaining of staff would take a considerable time and involve a considerable expenditure. So, even if it were decided to make such a move immediately, the effect would not be felt for a period of years—two, three, or four anyway.

I would say there are a great number of aspects of the Western Australian Criminal Code which require attention other than such as come within the ambit of the sections of the Code which are affected by this Bill. For some little time consideration has been given to the preparing of suitable amendments to the Criminal Code to deal with those various factors.

As long ago as April or May of this year the matter was first discussed with the officers concerned, particularly the Crown Prosecutor; and some research has been made as to amendments to various parts of the Criminal Code. One which might be easily understood by members as being included in that category is the alternative offence—if I might call it such—to manslaughter, which was incorporated in the Criminal Code some 10 to 11 years ago when Sir Ross McDonald was Attorney-General, and which provides for a penalty of five years' imprisonment for negligent driving causing death.

So as to provide the jury with an alternative of conviction for that offence rather than manslaughter, I understood at the time when Sir Ross McDonald introduced that legislation it was his intention it should be an alternative indictment where

it was considered that a charge of manslaughter was unwarranted. That is not the practice today—mainly because, I think, of a judgment of the High Court of Australia which in effect, as I understand it, said they were both the same anyhow, because the jury could convict for one or the other.

It seems to me many of these cases where death results from a motor accident and where negligence can be demonstrated should be given the opportunity of being actually charged under the alternative section; and it would, as I said, be easily understandable to every member that it might be a desirable amendment to the Criminal Code to make such provision. There are many other aspects which have been given some consideration. I could relate a list of them, but I do not think I would be justified in taking up the time of the House.

All I want to say is this: The Government has decided—and I might say the decision was reached some two or three months ago—to have a review made of the Criminal Code in respect of the sections which are covered by the Bill introduced by the honourable member. I would say it is not intended, as I understand the Government's decision in this matter, to abolish the death penalty; but it is intended to make substantial changes and in all probability to limit the cases where the death penalty can be recorded in specified cases of murder.

Mr. Graham: Meanwhile, this Bill is before us. Can it not be decided on its merits and not on a decision of the Government?

Mr. WATTS: The House will decide it. As far as I am concerned I am only endeavouring, to the best of my ability, to explain to the honourable member and other members of the House just what has been in the mind of the Government in this matter. The House is already well acquainted with what is in the mind of the honourable member; and I, for one, take no exception whatever to those thoughts being in the mind of the honourable member or in the mind of any of his colleagues who hold the same view. However, it is for me to tell the House exactly what the Government thinks about the matter.

Mr. Graham: Some of the views you are expressing are a complete divergence from what you said on this matter the last time you spoke.

Mr. WATTS: If the honourable member wants me to deal with that aspect, I will; but I have been endeavouring, to the best of my ability, to keep away from personalities. I made no reference to personalities until an interjection was made a moment ago in regard to the Governments which were in office during the period when executions were carried out.

Mr. Graham: I think some sort of explanation is due to members of why you, as a responsible member, having adopted a certain attitude previously, are now adopting your present attitude.

Mr. WATTS: I prefaced my remarks by saying I was speaking on behalf of the Government.

Mr. May: Give us your version.

Mr. WATTS: My version is what will probably appear in the amendments to the Criminal Code next year, if I know anything about it. I have said we have been considering these amendments; and I do not suppose for one minute that the recommendations I make will be entirely ignored, even if they are not accepted in their entirety. They will be given careful consideration.

The remarks I made in 1941 were made 19 years ago, and a lot of water has gone under the bridge since then. I must say I do not subscribe to those views entirely now. I believe in the principle of tempering justice with mercy. With that principle in mind, any recommendations I make will be given due attention by Cabinet, I have no doubt.

That, as far as I am concerned, is the position. What I am saying tonight it is my duty to say, as it would be the duty of the honourable member if we were to change places. I am putting forward the views of the Government, the matter having been gone into very carefully. I told the honourable member a fortnight ago that I would like to adjourn the matter for a fortnight in order that it could be dealt with properly. I forget the exact phrase I used.

Mr. Graham: Worthily.

Mr. WATTS: That is right; and I have been endeavouring to do that in the intervening period.

Mr. Graham: I readily agreed to a fortnight.

Mr. WATTS: I concede that point immediately. That has been done; and as I say, and as I understand it, the intention of the Government, as soon as this legislation can be prepared—I do not think it will be before next year; I am fairly certain of it in view of all that has to be done in the intervening period—amendments to the Criminal Code will be introduced into the House; and they will include more aspects than those dealt with by this Bill. As I have said, the legislation will not be likely to abolish the death penalty, but it will unquestionably make changes in the law as it is at present.

Mr. Bickerton: It is possible that the death penalty may not be in the Criminal Code when you amend it.

Mr. WATTS: That is so; but if that is the situation one deals with it in the light of circumstances at the time. I am

assuming for the moment that the law will remain as it is. If that assumption is unsound, as the honourable member knows, one can start thinking all over again, which I shall be able to do, I have no doubt, provided the honourable member does not interject too many times.

Mr. Graham: As a Minister, put me right on this point: Has a party decision been made by the Government parties which is binding on its supporters in connection with this Bill?

Mr. WATTS: I know of no such decision. I must admit I was not at yesterday's meeting and I do not know what transpired. As far as I am aware, there was none.

Mr. Crommelin: Has a decision been made by your party?

Mr. Graham: It was made at a conference of the Labor Party in 1919. If your parties are free on the matter, we expect you to vote freely.

Mr. Court: It ceases to be a non-party measure so far as your party is concerned.

The SPEAKER: Order!

Mr. WATTS: I think I can sum up by saying this: While it may be considered that the law as to capital punishment should be revised—and I have already said that is being undertaken—it could be argued that the matter should be deferred until other aspects of reform have been effected. I believe that an argument in favour of capital punishment—or it might be considered to be one—is to be derived from the consideration that in preserving this extreme penalty the community underlines its view of the importance of human life. In other words, it is the measure of the value placed by the community upon life; and I think it would be well for the House to await an opportunity of dealing with reforms in this matter which I trust the House will have before it early next session. In the meantime, as far as the Government is concerned, it opposes the Bill.

Mr. Graham: You fobbed me off with something like this in 1952.

Mr. GUTHRIE (Subiaco) [8.16]: This Bill deals not only with murder, but with four crimes altogether; namely, treason, piracy, murder, and wilful murder. In considering the Bill, we must not lose sight of the fact that the abolition of the death penalty is proposed for all those crimes, even though we do not come across some of them very often.

I think it is mentioned in the report of the Royal Commission that in England, during the last war, there were two convictions and executions for treason; and I think it was stated that there was one during the previous world war. So treason is not to be completely left out. It is true that most treasonable actions these days would have to be dealt with by the Commonwealth Government; but if one studies section 37 of the Criminal Code it will become obvious that there could be treason in the right of the State, and a person could be charged with treason under our Criminal Code and duly convicted.

Similarly concerning piracy. If one studies sections 76 and 77 of the Criminal Code, it will be appreciated that piracy is not the type of piracy we read about in books when we were schoolboys. It covers a lot more than merely putting up the Jolly Roger and purely looting ships on the high seas. Taking charge of one of Her Majesty's ships could, in certain circumstances, be called piracy. In consequence of this, one can form the conclusion that in certain circumstances both treason and piracy can amount to acts of war. I do not propose to deal with those crimes at this stage, but to confine myself to wilful murder and murder.

Mr. Graham: When were charges of piracy and treason last imposed in Western Australia?

Mr. GUTHRIE: I would not know. There has never been a case of kidnapping in Western Australia before; but nevertheless we passed legislation on it recently. We cannot say with certainty what charges there will be. If there is no likelihood of charges, we should take treason out of the Criminal Code altogether. I did not hear the member for East Perth suggest that treason should be taken out of the Criminal Code.

Mr. Graham: Nobody did anything so silly.

Mr. GUTHRIE: Nevertheless the honourable member has introduced legislation to remove the death penalty for treason.

Mr. Graham: Of course.

Mr. GUTHRIE: The honourable member was allowed to make his point, and perhaps he will extend the same courtesy to me.

Members: Hear, hear!

Mr. Graham: I notice that some of those members who interjected during my speech are now saying "Hear, hear."

Mr. GUTHRIE: I did not interject. Dealing with murder and wilful murder, the first section in the Criminal Code which is of some importance is section 277. It defines unlawful killing, and states that the crime can be either wilful murder, murder, or manslaughter. Section 278 defines wilful murder. I am not quite sure whether the Attorney-General read the section, but I will read it again. I quote as follows:—

> Except as hereinafter set forth, a person who unlawfully kills another, intending to cause his death or that of some other person, is guilty of wilful murder.

The exception to that is, I think, referred to in section 281. Section 281 provides that in certain circumstances the accused person is relieved of liability for conviction of wilful murder or murder when he has acted under provocation. Section 279 defines murder. It is too long to read out, but it sets out a series of circumstances where unlawful killing can amount to murder.

It is important to mention at this stage that in this State we have two degrees of murder; namely, wilful murder and murder. I gained the impression, from reading the report of the Royal Commission, that the English Homicide Act—although I have not checked with the Act—at the time of the report contained only one crime known as murder. Section 281 of the Criminal Code is of some importance because it covers some of the circumstances which the member for East Perth mentioned in the course of his speech. It reads as follows:—

> When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute wilful murder or murder, does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for his passion to cool, he is guilty of manslaughter only.

It must be borne in mind that where a man is suddenly faced with an emergency—such as finding his wife in the act of adultery. or finding his wife being raped—such circumstances do amount to provocation in law. In such circumstances it is not open to the jury to bring in a verdict of guilty of wilful murder or murder, but the proper verdict would be one of manslaughter. In those sets of circumstances, the question of the death penalty would not arise.

To sum up the situation on the types of crimes for which, under our Criminal Code, a person can be sentenced to death, they can be said to be in two categories; namely. cases which in some circumstances could amount to an act of war, and certain cases of unlawful killing.

Regarding the question of what penalty should be imposed, it must be borne in mind what have been—I do not necessarily say what should be, but what have been—the basic principles behind the law as to infliction of punishment on any offender—not necessarily only an offender committing a capital crime. They are set forth in this report as being (a) retribution; (b) reformation; and (c) deterrent.

Those matters are dealt with in some degree in the report of the Royal Commission, and the commission dealt with what was meant by the term "retribution." It pointed out that in some circumstances it had been held or treated as being synonymous with vengeance; and, in other cases, synonymous with reprobation. I would submit, for the consideration of the House, that it would be quite wrong to regard any penalty as being imposed in terms of vengeance; and reprobation should be one of the factors to be taken into account. We should not, at any stage, contemplate any penalty out of any sense of vengeance against a wrong-doer.

Mr. Bickerton: But that is what it is, though, isn't it?

Mr. GUTHRIE: In any event, this commission—which, it is interesting to note, sat for four years, from 1949 to 1953—examined the law throughout the British Commonwealth, throughout the countries of Western Europe, and in nine States of the United States; and actually visited the United States in the course of its deliberations. It dealt with the various matters with carefulness and careful study, and I do feel that some very great reliance should be placed on some of the conclusions it reached.

It is noteworthy that on page 18 of the report the commission quoted with approbation some of the remarks of Mr. Justice Denning, now Lord Denning, sitting in the House of Lords, who said as follows:—

> The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objectives of punishment as being deterrent or reformative or preventative and nothing else . . . The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime; and from this point of view, there are some murders which, in the present state of public opinion, demand the most emphatic denunciation of all, namely, the death penalty.

Having also referred to some comments given to the commission by the Archbishop of Canterbury, the commission then made its own comments, which were to this effect—

> Whatever weight may be given to this argument, the law cannot ignore the public demand for retribution which heinous crimes undoubtedly provoke; it would be generally agreed that, though reform of the criminal law ought sometimes to give a lead to public opinion, it is dangerous to move too far in advance of it.

Those were the conclusions reached by the commission on what one might call the retribution portion of the consideration to be given to imposing a penalty; and in this case the commission was dealing with the penalty for murder.

On the same page, paragraph 54, the commission gives its views on the aspect of reformation to the extent that it formed an essential ingredient in determining what was the appropriate remedy or penalty. I read as follows:—

> The *reformation* of the individual offender is usually regarded as an important function of punishment. But

it can have no application where the death penalty is exacted, if "reformation" is taken to mean not merely repentance, but re-establishment in normal life as a good citizen. Not that murderers in general are incapable of reformation; the evidence plainly shows the contrary. Indeed, as we shall see later, the experience of countries without capital punishment indicates that the prospects of reformation are at least as favourable with murderers as with those who have committed other kinds of serious crimes.

The commission then went on to deal with the question of the death penalty as a deterrent, and devoted many pages to reviewing the evidence. At page 24, paragraph 68, it reached its conclusions, and I read as follows:—

> We recognise that it is impossible to arrive confidently at firm conclusions about the deterrent effect of the death penalty, or indeed of any form of punishment. The general conclusion which we reach, after careful review of all the evidence we have been able to obtain as to the deterrent effect of capital punishment, may be stated as follows.
>
> *Prima facie* the penalty of death is likely to have a stronger effect as a deterrent to normal human beings than any other form of punishment, and there is some evidence (though no convincing statistical evidence) that this is in fact so. But this effect does not operate universally or uniformly, and there are many offenders on whom it is limited and may often be negligible. It is accordingly important to view this question in a just perspective and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty.

The British Royal Commission was dealing only with the question of capital punishment in relation to murder. Its royal warrant limited it to investigating only that aspect. The Royal Commission was forbidden to consider the effect the death penalty would have in relation to the crimes of treason and piracy.

I feel that at this point of time, no case has been made out by the member for East Perth to abolish the death penalty for treason or piracy. I do not say that there is none: I simply say that the honourable member has not established to my satisfaction that we should remove the death penalty for treason or piracy; and until such time as such a case is made out, I would leave the law as it is.

As the member for East Perth has interjected, it is not likely to be exercised, and it might as well stay as it is—at least until someone can justify a change; because, bearing in mind what treason or piracy can amount to in a case of war, different considerations can apply in the public mind; and bearing in mind what the British Royal Commission said, it is unwise to get the criminal law too far ahead of public opinion. We must carry public opinion with us, because society must feel that their Criminal Code is an adequate protection. If they feel the Criminal Code is out of step, then they cannot have confidence that the law is their protection.

Having said that, I will now turn to the subject of wilful murder and murder; and I will agree with the member for East Perth that there is quite a case to be considered as to the desirability of abolishing the death penalty so far as it applies to wilful murder and murder. I agree with the honourable member that it causes great abhorrence to a large number of people; and it does appear to many people in the community as an act of inhumanity by man to his fellow man.

I recently saw the figures of a Gallup Poll—I interpolate that I do not place great reliance on Gallup Polls, but they indicate public thought; and how informed public thinking is on a subject like this, I would not know—which indicated that 40 per cent. of the community are opposed to hanging, and 60 per cent. are in favour of retaining hanging.

Mr. O'Connor: I think it is about 30 per cent.

Mr. GUTHRIE: I will not argue with my friend from North Perth; nevertheless there is a substantial majority of people who do view hanging with some horror. It is also true to say that there are people who believe in hanging but who do not raise their hands to heaven in horror when a guilty murderer has his sentence commuted to life imprisonment. Similarly it must be remembered—I disagree with the Attorney-General here—that the possibility of the penalty does have a considerable effect on the ultimate verdict of juries. If we want any evidence of that, we have it in this State in respect of the situation which developed here some years ago.

Prior to the amendment of the Criminal Code introducing the crime of dangerous driving causing death, it was common knowledge—I think Sir Ross McDonald introduced the amendment to overcome the position—that juries would not, other than in exceptional cases, convict of the crime of manslaughter, car drivers who had caused death. It is unfortunate that the High Court subsequently held that it meant the same thing, but that is another story.

Nevertheless, despite that High Court decision in Callaghan's case, the decision has not produced the great disadvantages that were feared. In fact, now the difficulty in obtaining convictions for car-driver cases, where the stigma of manslaughter does not apply, certainly has had a psychological effect on juries. I do believe, although I could not prove this by

statistics or otherwise, that the possibility of the death penalty does have an effect on a jury.

If we take the figure of 40 per cent. of the public not believing in hanging, it stands to reason that we have, when taking a cross-section to face up to the fact that 40 per cent. of the jurors do not believe in hanging; and there is a distinct possibility that lesser verdicts are brought in as a compromise to what would have been true and just verdicts on the evidence.

It has been said by the member for East Perth, and by many other people, that in the main murderers are almost entirely, at the moment of the crime, in some degree insane. Sometimes I wonder whether that is so; particularly when I think of three rather notorious cases in Western Australian history. Firstly, there was the series of murders committed by a man who was arrested at Southern Cross —a man named Deeming, who did not commit any of his murders in this State. He killed five or six wives for gain. I find it very hard to believe that Deeming was at all prompted by insanity.

The second major case that I would mention is the Kalgoorlie murder case of Coulter and Treffene—who killed two members of the Police Force. Again I doubt whether there was any insanity there. The final case is that of Snowy Rowles, and again I doubt whether there was any insanity.

I do not think we can assume—although I do not entirely reject the possibility—that we can explain every murder away by reason of a temporary fit of insanity at the time. But I do feel there is a strong case to consider in regard to the inadequacy of our Criminal Code on the question of insanity on a charge of murder. Consideration of that section in the Code is long overdue.

That section, which the Attorney-General read—section 27, from memory—has its derivation in what is known as the M'Naghten Rules. M'Naghten was a man who, in 1843, killed a man in London in the belief that he was killing the then Prime Minister of the United Kingdom, Sir Robert Peel.

Consequent upon that case, the House of Lords was asked to define, for the benefit of the jury, what amounted to insanity to give relief or a true defence to a charge of murder. This is what the House of Lords said—and I quote from *Harris's Criminal Law* at pages 14 and 15—

> The substance of their answers was to the following effect: "To establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong."

That may have fitted the law in 1843, but I venture to say it is a little archiac under the conditions of 1960. It is interesting to note that the British Royal Commission devoted 37 pages of its report to a consideration of the desirability of altering the M'Naghten Rules. They could not reach unanimity; but at page 116 of the report, in paragraph 333, they gave their conclusions; and I shall read them for the benefit of the House—

> Our conclusions on this part of our Terms of Reference are as follows:—
>
> (i) (Mr. Fox-Andrews dissenting) that the test of responsibility laid down by the M'Naghten Rules is so defective that the law on the subject ought to be changed.

I point out that Mr. Fox-Andrews was a barrister—the only lawyer, I think on the commission. Continuing—

> (ii) That an addition to the Rules on the line suggested in paragraph 317 is the best that can be devised, consistently with their primary object, for improving them; and (Mr. Fox-Andrews dissenting) that it would be better to amend them in that way than to leave them as they are.
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> (iii) (Dame Florence Hancock, Mr. Macdonald and Mr. Radzinowicz dissenting) that a preferable amendment of the law would be to abrogate the Rules and to leave the jury to determine whether at the time of the act the accused was suffering from disease of the mind (or mental deficiency) to such a degree that he ought not to be held responsible.

I do comment for the consideration of the House that a great many of the problems that arise on the desirability or otherwise of the death penalty could be solved if some satisfactory solution could be found to the question of criminal irresponsibility through insanity.

If we leave out the question of sanity or insanity in regard to being an essence in the crime, and are not affected too much by that issue, the real problem that arises on the question of the abolition of the death penalty is to satisfy the person in the community who says, "What would you do with the cold-blooded killer of the Deeming variety?" I would answer that by posing another question: "Is the death penalty a deterrent at all to the cold-blooded killer?"

Frankly, I cannot see that it is. If one takes Deeming's case—he committed, I think, six murders—the fear of being hanged did not deter him. I would think that is the case with most cold-blooded

murderers of the professional gunman type that we read about in the United States of America. Whether they hang or not does not seem to be a deterrent. I have never been convinced that the fear of spending the rest of one's life in gaol is not as great a deterrent as hanging; or even a greater one. Furthermore, there is always the fear that when we execute a man other evidence may come out later showing that an innocent man had been hanged.

If my memory serves me correctly, in about 1921 there was a case in England where a man named Saville was found guilty of murder; but fortunately he was not hanged. Subsequently he received a Royal pardon, and he was given a substantial sum by the Crown in restitution for the wrong done him. It will therefore be seen that up to this point of time I have very great doubts as to the desirability of retaining the death penalty.

I interpolate at this stage that I do not offer any criticism against any Government which has, in the past, executed people and carried out the law; because it is the duty of Executive Council, as I see it, to abide by the law and execute it as enunciated by Parliament. We should also bear in mind that during the last thirty-three years Parliament has had three opportunities to amend the law but has not taken any one of them and is now being given a fourth opportunity.

Mr. Graham: This might be it.

Mr. GUTHRIE: I come now to another point in this very difficult problem which caused the Royal Commission in England a great deal of concern; and, to my mind, it produced a most unsatisfactory part in its report, because it did not appear to reach any conclusion on it. That is the undesirability of the penalty for any crime being decided by the exercise of the Royal prerogative of mercy.

As the Royal Commission pointed out, the principle underlying the Royal prerogative of mercy is that it shall be used to give a reprieve only in exceptional circumstances. Unfortunately, however, the way our Criminal Code is drafted, and as the Royal Commissioner pointed out, the penalty of death resolves itself into the fact that the final penalty is left to the Executive Council and, in England, to the Secretary of State for Home Affairs, although I do not think he makes the decision himself. I am open to correction on that. However, it is not a very satisfactory way, from the point of view of principle.

This method does lead to public criticism of actions where reasons are not given. In the normal course of events a court imposes its penalty and gives its reasons and the public understands what is being done and the reason for it. In paragraph 49, appearing on page 17 of the report, the English Royal Commission on Capital Punishment had this to say:—

> The only question is whether that anomaly can be got rid of without creating another and perhaps more serious one. It is clearly our duty, in considering by what means the liability to suffer the death penalty can be limited or modified, to consider whether the limitation at present effected by the prerogative could be secured in some other way that would result in those murderers whose execution would offend the public conscience being relieved of the death penalty as a matter of right by the law itself, and not as a matter of grace by executive mercy.

That was one place in the report where the commission dealt with the question, and it also referred to it in paragraph 607 appearing on page 212 when it was dealing with its final conclusions. In that paragraph, the commission had this to say—

> We cannot regard this as a satisfactory solution of the problem posed by a mandatory death penalty for murder. The prerogative ought to be invoked only as an exceptional measure; it is open to objection that in such a matter so wide a discretion should be habitually exercised by the Executive. This has, moreover, another questionable consequence.
>
> It means that the sentence of death must be pronounced in many cases in which it is not carried out, and in some where at the very time it is pronounced everyone knows that it never will be carried out. On the question whether this is a reproach to our system of criminal justice we heard conflicting views, but we ourselves feel no doubt that the existence of so wide a gap between the number of death sentences pronounced and the number carried out is an anomaly that ought not to be accepted with complacency.

Finally, at the bottom of page 213 and continuing on to the top of page 214 the commission dealt with four alternatives. The fourth point has some merit with the commission, although it rather staggers me that it could. Nevertheless, I will read it to the House for the benefit of members. It is as follows:—

> The fourth is the proposal to give discretion to the jury to decide in each individual case whether there are such extentuating circumstances as to justify the substitution of a lesser sentence for the sentence of death. We have reached the conclusion that, if capital punishment is to be retained, and at the same time the defects of the existing law are to be eliminated, this is the only practicable way of achieving that object.

> We recognise that it involves a fundamental change in the traditional functions of the jury in Great Britain and is not without practical difficulties.
>
> For these reasons its disadvantages may be thought to outweigh its merits. If this view were to prevail, the conclusion to our mind would be inescapable that in this country a stage has been reached where little more can be done effectively to limit the liability to suffer the death penalty, and that the real issue is now whether capital punishment should be retained or abolished.

I merely read that to the House without making any comment; but, quite frankly, without giving it a lot of thought, I would not be prepared to comment upon it favourably. However, that is the recommendation of the Royal Commission. It must be stressed that the Royal Commission was dealing with the exercise of the Royal prerogative as it operates in England. As I mentioned, it operates on the advice of departmental officers and solely on the decision of the Home Secretary. I have always understood that to be so; but if I am wrong I will be the first to apologise. In this State, of course, we know it is Cabinet that makes the decision.

I do not want to introduce party politics into this question; but I must make the point that it is known, in this State, that the viewpoints of those who sit on this side of the House and those of members who sit on the other side of the House at present are quite different. This does have the effect that the fate of a murderer can be different according to the colour of the Government in office.

That, in itself, should weigh with the House; although, as I have already pointed out, members opposite cannot deny that the law of the land does provide for the death penalty. But the statute itself also states in black and white that it does not overrule the Royal prerogative of mercy. I do think, as the Royal Commission has stated, that the Royal prerogative of mercy has been perverted into something that was never intended, and we must face the facts coldly and squarely.

We have the benefit of the report of the Royal Commission which investigated the question very exhaustively, and found that the removal of the death penalty for murder would not produce any great change, but would give satisfaction to many other people; and I feel, therefore, that the proposals contained in the Bill, so far as they are limited to wilful murder and murder, are worthy of careful consideration.

I believe, as was mentioned some 33 years ago by the late Mr. T. A. L. Davy, when he spoke on a somewhat similar Bill introduced by the late Mr. Harry Mann, that perhaps the time is ripe for some sort of a committee of inquiry to be set up to obtain the views of people who are concerned. I do not suggest the appointment of a Royal Commission or a Select Committe, but the appointment of a committe of persons who are completely unbiased; who could well collate the views of men such as the Chief Justice, the Comptroller of Prisons and other people interested in this question; and who, at the same time, could analyse the report of this English Royal Commission more carefully than I have been able to do and prepare some sort of submission that would be of benefit to all parties in this House.

The time has come when we could face up to some proposition whereby the law could well be changed. I find myself in rather a difficult position in regard to this question. In some way or other, I would be inclined to preserve this Bill to enable such an inquiry to take place; but, on the other hand, I find that in the set-up of this House at present there are 24 members out of 50 who will undoubtedly vote in favour of the Bill; and if only one member on this side of the House was also to vote in favour if it, it could become law against the will of the people.

It could become law not necessarily with a majority in this House; and, therefore, for that reason at this point of time I prefer to allow the Government the opportunity—which the Attorney-General has mentioned—to bring down a measure next year which would incorporate some of the changes which I hope it would include.

For that reason, with considerable regret, I will have to vote against the Bill unless there is a great deal of support for it from this side of the House, which I feel is unlikely. I repeat that I would be pleased to see some sort of inquiry set up such as that I have already indicated, because I have very grave doubts of the efficacy of the death penalty for murder.

MR. BICKERTON (Pilbara) [8.57]: This Bill seeks a very necessary and overdue reform in our way of life, and for that reason I support it. In doing so, I congratulate the member for East Perth on introducing the measure to the House. I was rather hopeful that this was to be a non-party Bill. In the short time I have been here I have seen other measures introduced into this Chamber, of much less importance than this, which were treated on non-party lines.

The member for East Perth, in introducing the measure, mentioned the fact that Labor members generally are against the carrying out of the death penalty. I have no doubt that they were probably against it—I know I certainly was—before they joined that political party. So it is reasonable to assume that when they joined the Labor Party they still felt that

way; but that is no reason why the Bill cannot be introduced into this House as a non-party measure.

If corridor rumours are correct it appears that the Bill was discussed in the party rooms in this House; and I would say, in the terms of the Attorney-General that the possibility of its being treated as a non-party measure would be fairly remote; because since he said he was expressing the Government's view, I think that was sufficient in many respects, to influence members who support the Government. So if it is not too late in the debate, I still think this should be treated as a non-party Bill.

From the words of the member for Subiaco, I gained the impression that he went to great lengths to show why he could not vote for the Bill. That is his business. The Attorney-General also seemed to go to great lengths to show why hanging, as it exists as a penalty in the State at present, is legal. We are all aware of that. What we are endeavouring to do is to have the death penalty abolished. That is the question; and it is the only one, in all due fairness, that should be dealt with when considering this measure.

I contend that this reform must, and will come about. It is just a question of when. I would not be so naive as to believe that all people agree with me. I have no doubt the people who introduced such a measure in the past, and those who have supported them, believed the time was ripe for reform; but they were only to be frustrated by the actions of others.

However, I repeat that this reform will take place in our civilisation. It seems to me to be only a question of how long this matter can be left as it is through the natural fear of the majority for changes, which prevents civilisation from implementing one of the planks of the platform of Christianity.

I believe capital punishment to be an unchristian act. One would find it hard to conceive a more unchristian act, even against a sinner who has sinned to the maximum, than the taking of the life of a man by men, after trial and judgment by men none of whom—except perhaps the most egotistical—would claim to have created that life. That is what takes place under the present system.

One would find it difficult to discover a more brutal method of executing that vengeance than the method of breaking a person's neck by suspending his body at the end of a hemp rope. That is virtually what hanging amounts to. The whole thing is made more brutal, if not more cowardly, by the fact that the decision to execute is made by one body of persons, and the actual act of execution is performed by another person who up to that stage had no connection with the wrongdoer or his wrong-doings—if, in fact, he was a wrong-doer.

The fact that the act of execution has to be paid for—thus bringing the matter on to a commercial basis—seems to me to be unchristian even to the non-Christians. It should be looked upon as sinful as the sin that caused the execution. Under our system as it stands, the penalty for murder is, in fact, to be murdered. This, I contend, is vengeance.

Why, then, do not the people who advocate vengeance, in preference to other forms of punishment, advocate it for all crimes? Would they say that the penalty for brutal assault should be brutal assault of the guilty; or the penalty for theft should be to be stolen from; or the penalty for rape should be to be raped; or the penalty for knocking down a pedestrian by a motorcar should be to be similarly knocked down by a motorcar? The answer is "No." Such a penalty would be termed unchristian, and would be frowned upon by our civilisation.

Strangely enough, that type of vengeance is condoned in the case of murder. I guess the reason is that it has always been that way. Those who do not like taking the risk of making a change prefer to leave the position as it is. This is another case of the many inconsistencies of our system which we, in this country, call justice.

Let us look at another side of our system of capital punishment—one that is not often viewed—that is, the role of the person who carries out the execution of the guilty person—the hangman. We cannot have executioners without executions. So the executioner can be looked upon as the most important man in this drama.

Under our system there is a body of persons who decide whether or not a person shall die for his crime. Having made the decision, their responsibility in the matter appears to cease. It is then handed over to another body, whose job it is to carry out the execution. Of all the duties performed by the latter group, I suppose the most responsible would be borne by the hangman. From the way officialdom surrounds this fellow with secrecy, it would appear that his job is not one of which he can be proud. There are 50 members in this House; yet not one would be prepared to carry out this job. Of all members who intend to vote against this Bill, not one would be prepared to perform the hanging.

If they maintain that a murderer should be hanged, why would they be so reluctant to carry out the hanging? If it is so easy to advocate capital punishment, why is it so difficult to perform the execution? Let any member who intends to vote against this measure take the most dastardly crimes which have been committed in this country over the last two or three years and pick any one which is still unsolved. Should the murderer be apprehended and

be convicted to be hanged, not one member of this House would be prepared to give an undertaking that he would personally and actually do the hanging. I know that challenge will not be accepted. There must be a perfectly good reason.

To start with, I believe the normal and average person could not perform this job. Is it because that, to take the life of another man, even though he be a murderer, is unjust? Or is it perhaps because it would leave a slur on the character of the individual who became the hangman, or a slur on his children? Why should it leave a slur? If anyone maintains that the death penalty is just, why should he not be prepared to do the hanging?

Having carried out the execution, why should the executioner not be looked upon as a hero? Surely he has done a worthwhile job! One can only conclude that the system of taking the life of another is wrong; and that the average man, whilst he may agree that a man guilty of murder should die, agrees only if he does not have to do the killing.

Who carries out this job? Let us look at the hangman himself. What manner of person is this man, or woman?—because I have no undertaking from the authorities that they are worried about the sex of the person who is paid to carry out the hanging. Is it desirable to have this person mixing in our society? What is the mental outlook of such a being? Can he face the world with a clear conscience? Is he a Christian? If he is, does the hereafter worry or concern him? Is he not haunted perhaps by the last words and expression of his victim? If he is, would he not be receiving the punishment that rightly should belong to his prisoner? These are the things which the public should know.

If he carries out the act of execution with a feeling of satisfaction, should we encourage him to gain further satisfaction by this means? If he does it from a feeling of profound sense of duty towards his fellow man one might well ask who gave him this feeling of profound sense of duty? Was it given to him by another more forceful person, or did he convince himself, as his own judge and jury, that he was placed on this earth to execute his fellow men? Whichever way we look at it, I would say that, for a mere mortal, he was assuming a huge responsibility, to say the least.

For this task, how much does he receive? That is another aspect which the public does not know. What does he do with the money? Does he give it to charity because his conscience would not let him do otherwise? Does he buy food and clothing for his family with it, and perhaps presents for his children? Does he live to a ripe old age with a clear conscience; or does he have mental breakdowns and normally lead a tortured kind of life? Is he a reputable person, or is he a scoundrel? Is he a coward, or is he a hero? Is he a law-abiding citizen, or is he perhaps a previously-convicted criminal?

If the public knew the answers to these questions, many people who now advocate capital punishment might change their minds. If the executioner is motivated by a feeling of duty towards mankind, how come that he chooses this method to serve man in this year of 1960? I would have thought there were many other ways in which he could serve man if he was motivated by a feeling of goodwill towards man.

If we as members of this Parliament, who are responsible for making the laws of this State, are not and would not be willing to carry out the job of executing a person, then we have no right to hand the responsibility on to somebody else. And that alone, to my way of thinking, is sufficient reason to abolish the death penalty.

I would say that because of our method of disposing of the murderer, we could quite well ask ourselves, "Are we not creating one?" If we advocate the abolition of capital punishment, as I do, we must be prepared, no doubt, to look at the arguments of those who advocate its retention; and I think some of the more common points that are submitted in favour of its retention are well worth analysing.

One that is particularly common—and more so at present—is the question whether if it were our own son or daughter who was murdered we would then agree to the abolition of capital punishment. That, I suppose, could be answered by asking another question: If it were our son or daughter who was the murderer, would we agree to the retention of capital punishment?

But further to that, the whole question itself is unfair; because how can the injured party give an unbiased opinion on a matter of this nature? How many of us would feel pleased about the fact that if we were charged with, say, theft, we were to appear before the judge whose goods we had stolen? Therefore I do not think that the argument of what we would do if this or that were the case should come into the matter.

Another point which has arisen, and particularly again over the last few months because of some very unfortunate and wicked occurrences in this direction, is that people are asking, "What would you do to the murderer of so and so?" Those who advocate the abolition of capital punishment are not dealing with a particular murderer. They are dealing with the abolition of the death penalty in favour of another type of punishment, and they are dealing with the matter generally. They are thereby taking a realistic and Christian look at what the advocates for its retention are viewing when they look on particular crimes emotionally. Matters of this importance cannot be viewed emotionally.

We also have the old argument raised of "An eye for an eye and a tooth for a tooth." All I have to say to that is: What does it mean? Does it mean that we take an eye for an eye and a tooth for a tooth; or does it mean that we give an eye for an eye and a tooth for a tooth? I contend that that is purely a matter of individual interpretation of the expression.

Some say that a murderer has taken a life and therefore he must die; but no one can tell me really why he should die. They do not know whether that is a just punishment for the crime, and they are not even sure that it is an adequate punishment for the crime. The situation is that the punishment has always been that way; and as those people are not directly affected—they do not have to do the actual hanging or even watch it—they naturally argue along those lines because that is the popular opinion.

I believe that it is our job to place a man convicted of murder in safe custody, and in such a position that he is unable to commit a similar crime again. Beyond that I do not believe we have any right to go.

Much has been said on the matter of the deterrent effect of capital punishment. I would say from the remarks of the Attorney-General and the member for Subiaco that neither of those gentlemen would definitely assert that capital punishment was a deterrent to murder. I suppose if we analyse the matter we have to agree that it is some type of deterrent; but it has never been proved that it is a greater deterrent than the punishment proposed in this Bill—life imprisonment; or even than whipping has been in some other countries.

There is no proof that the death penalty is a greater deterrent than life imprisonment. If it were a deterrent to murder, I have no doubt we would have heard of cases of intended murderers enticing their victims to a State where the death penalty does not apply. For instance, we do not hear of people being enticed to Queensland in order that the murderer could commit his crime knowing that he would not, if caught, be subject to the death penalty. We do not hear, either, of more murders being committed during Labor administration, although it is known that Labor Governments do not agree with the death penalty.

For those reasons I think it can be fairly generally accepted, all figures and statistics aside, that the death penalty has not been proved to be a greater deterrent that the alternative punishment which has been introduced in this Bill by the member for East Perth.

I have often wondered whether the death penalty is not perhaps a deterrent to confessions by murderers. I know I have no figures to prove my statement, but I feel sure that more confessions would be received in States or countries which did not impose the death penalty. I think it may be reasonable to assume that a murderer who had been successful in avoiding arrest would be more unlikely to give himself up if he thought he was to be hanged than he would if he knew that the maximum penalty was life imprisonment. At least that suggestion is food for thought by the officials who deal with these matters.

The abolition of the death penalty would have some effect on close relatives or even close friends of the murderer. If they knew where he was hiding and had a fair idea that he had committed a certain crime, I feel that perhaps they might be more reluctant to supply information that would lead to his conviction if they felt they were going to have his hanging on their conscience for the rest of their lives. This is, as I have said, worth consideration, although there is nothing to prove it is the truth.

The thing I ask myself is: What does this death penalty achieve? If it is not a deterrent to murder, or any greater deterrent than the other punishments, what have we achieved by it? We certainly have not achieved any reform. I very much doubt, and I think most people would, that the unfortunate relatives of the murderer's victim would really derive any satisfaction from the hanging of the murderer.

I have never heard it said that a hanging gives satisfaction to such people, or makes some amends for the loss of their relative. It certainly does not bring back the one they have lost; and, I repeat, I am doubtful if it gives them any satisfaction. On the other hand, it could add to their grief, as such a hanging takes place some time after the crime and consequently revives the whole matter. In that way it could definitely do more harm than good, and certainly would cause much grief, I should imagine, to the innocent relatives of the murderer himself.

I believe there is one way in which we could abolish this death penalty and that would be to stage the actual hanging in this Chamber. I believe that if the next hanging were to take place here on the understanding that all those who agreed with the death penalty were to be present, whilst we might find that that one hanging would take place—after all, principles die hard—I am convinced—and I think most people would agree with me—that there would not be a second hanging. Therefore, we must be putting the responsibility on to someone else, a responsibility which we ourselves are not prepared to shoulder.

Most people seem to imagine that a criminal in a condemned cell peacefully transports himself from there to the gallows and there obligingly dies. However, I venture to suggest that there would be

many criminals who could possibly be described as the cringing and depraved types of humanity who would have to be forcibly transported from their place of detention to the gallows; and, no doubt, would have to have the rope forcibly put around their necks.

If we have no sympathy at all for such persons—and assume that we have not—what about the officials who have to undertake this unfortunate task? Have they ever been considered in regard to this matter? Think of that bit of hell on this earth that would be suffered by them as a result of their duties! I assume that they would be normal people. Therefore, if for no other reason but to relieve of that unfortunate task those people who have to deal with a convicted man, I feel that we should abolish the unchristian act of punishing a person by hanging him.

The only other matter with which I wish to deal is the Attorney-General's attitude 19 years ago and his attitude today. I do not deny him the right to change his opinion. I do not really look upon it as a change of mind, as I do not think one changes one's mind. It boils down to the fact that the Attorney-General was either right in 1941 and is wrong on this occasion, or that he was wrong in 1941 and is right on this occasion. That is the issue; and I would say in conclusion that quite apart from the remarks that have been made about this Bill not being a non-party Bill on this side, I sincerely trust that it will be treated as a non-party Bill; and I, for one, support it.

MR. FLETCHER (Fremantle) [9.29]: I support this Bill; and in so doing, I admit that there must be some alternative action in relation to reforming a criminal, other than by destroying him. The Attorney-General mentioned on some authority that those with a low mentality should receive a greater penalty. I cannot subscribe to that contention, because I ask myself the question: Is the person who has a low mentality conscious of the crime he has committed? If he were unconscious of the crime he had committed added penalties would not influence him. As a consequence, I would say that such a line of reasoning falls to the ground.

The bringing up of a child is the responsiblity of the parents; and if a child subsequently commits murder, why should the child pay the penalty? Because the crime is not his. The child's character has most likely been moulded by the environment in which he has lived. Maybe his parents have had certain shortcomings, or have not given him all the care and attention that should have been given. If the child, on becoming an adult, commits murder, the crime is not his fault but could be the fault of the parents because he is not a normal human being; and the threat of death for the crime will not be a deterrent to a person who is not normal.

The first crimes of such a person may be theft and the like; and then, eventually, as a result of being incarcerated in prison on a number of occasions, and because of the atmosphere of the prison, he becomes unstable and progressively worse as a consequence of mixing with criminals, and eventually commits murder.

If he is in prison on several occasions, he feels that is the only association he knows. He whispers with other inmates in asides, and becomes a part of their society. He develops a hostile anti-social outlook, and swears that when he gets out he will seek retribution in the only manner he can. I submit that that man is a victim of the social order, or the social disorder that exists today.

His association with hardened criminals brings about that state of affairs; and I suggest that the fault lies with our penal code. As I have said, the atmosphere of a gaol is not conducive to the sweetening of a fellow's temperament. He may go to gaol first for theft, or for some minor crime; and slowly he becomes a hardened criminal—and, later on, a murderer.

I am not interested in statistics, because they are unpredictable. Also, I admit it is difficult not to generalise and philosophise on these matters. Statistics, like traffic accidents, are unpredictable. During his speech, the Attorney-General read out the number of murders that had been committed for each successive year. The number varied just as the number of traffic accidents varies each year. Sometimes there were more murders in one year than in another; and I suggest this demonstrates that the prospect of hanging is not a deterrent. That was exemplified by the fact that the figures fluctuated year by year. If the possibility of hanging was a deterrent, I would assume that the number would be reasonably stable.

Reference was made to the work of the psychiatrists in the prisons. I cannot imagine anything more hopeless than a psychiatrist trying to treat persons in an overcrowded prison, and talking to potential murderers, and trying to get them into a different attitude of mind. The prison atmosphere is not conducive to saving these people to society.

After listening closely to the Attorney-General, I felt he adopted a rather humane attitude in relation to this problem, and there was a certain degree of impartiality about his remarks. He definitely did not express his own opinion as distinct from the Government's opinion. I got that impression.

The member for Subiaco, although he may have been on sound legal grounds, gave us nothing more than a legal diatribe —or at least that is how it appeared to me. He gave me the impression that a person so cluttered up with legal technicalities would not be in a position to be able to see the wood for the trees. Looking at the

matter purely from a legal point of view, it is possible that a legal person could drop the humanitarian view in favour of an essentially legal view.

To be quite frank, I doubt the impartiality of the law. Maybe there is an attempt at impartiality; but on the part of the person who sits in judgment, irrespective of whether he is a member of the jury or an advocate for or against the person on trial, I would say that there is no such thing as impartiality. Such a person might make a genuine attempt to be impartial; but, after all, we are only human, and we are all subject to certain frailties. Like the member for Pilbara, I say that we should not take unto ourselves the right of expressing an opinion as to whether or not a man is guilty.

There is one other aspect which I would like to mention and this concerns war. A person who goes away to a war is involved in a mode of legalised killing. It cheapens the value of human life; it brutalises and it degrades the individual. Anybody who has been involved in a war cannot look upon or value human life as something sacred in the same way as a person who has never been to a war. If a soldier kills a man at war he finds it proportionately easier to do the same thing when he returns to civil life.

Many members here have been involved in a war; and without going into the tragedy of it, I would say that many of us have seen some terrible happenings. During one's childhood, the thought of a person lying dead is frightful; and yet, as a result of war, we see people accepting it with complacency. When one has that attitude of mind it makes things difficult when one returns to civil life. A person can be decorated for killing a man overseas while defending his country; and yet for killing another man just as easily, by pulling a trigger, he can be hanged. It seems a little inconsistent.

Reference has been made to whether this matter is party-political or whether it is not. We on this side say that those who fight in a war—and a cross-section of the community fight in a war—are the victims of the social order which creates war. So the average working person is the victim of the social order which creates delinquency.

Through the ballot box, we on this side have attempted to change the social order; but, unfortunately, up to date that has not been possible. The false sense of values that is engendered in society through the medium of literature, pictures, and so on, creates delinquency; and from delinquency there is a steady progression to crime; and, unfortunately, frequently to murder.

It is the false sense of values that is engendered in our society that makes the delinquent—the potential criminal—and from there the potential murderer. We on this side say that society is responsible for such a state of affairs; and, as a consequence, all the legal paraphernalia in the world will not alter the situation and will not correct the disease. In effect, we are trying not to prevent the complaint from breaking out but are rather, once it has broken out, trying to cure it when it is too late.

I was reading recently that in America the number of murders is steadily increasing annually. In America people can be hung, killed by poison gas, or electrocuted. The Attorney-General quoted certain statistics in regard to the matter; and, although I have no actual figures, I know it is a well-established fact that the number of murders in the United States is increasing annually, despite the fact that there is a death penalty. On those grounds alone, surely the case for capital punishment—the taking of a life for a life—falls to the ground.

I should now like to read an article from *The West Australian* of the 9th September, 1960. It is headed "Doomed Killer's 3 Suicide Bids." I shall read this article to illustrate that this person was not normal. I quote—

> New York, Thurs: A convicted murderer in San Quentin, California, went to his death in the gas chamber last night after three attempts to commit suicide on the eve of his execution.
>
> George Albert Scott (38) had been sentenced to death for killing a film executive with a shotgun blast during the armed robbery of a Hollywood bar and its patrons in 1958.
>
> The night before he was to die he smashed a light globe and tried to swallow the shattered pieces. He was not hurt seriously. Two hours later he stood on his death row cell cot and jumped on to the floor, head first.
>
> Restrained, he eluded prison guards and began bashing his head against the wall.
>
> Finally subdued, Scott was taken to the prison's Roman Catholic chaplain. He came away calm after a long talk, and walked peacefully into San Quentin prison's gas chamber.

A person behaving like that is not normal; he acted like a trapped animal. Who is to say that that fellow was aware that the shotgun had cartridges in it? Who is to say that he meant not to kill that film executive but merely to intimidate him? Admittedly, the gun had bullets in it, but the decision of whether or not to pull the trigger decided that man's destiny. That could freqently happen. I know it is a crime to carry a gun; but who is to say what influences a person to pull the trigger?

Because of what he did, that fellow went to the gas chamber. He was accompanied by law officers and a member of the

church. So yet another murder was perpetrated; and, despite all the legal paraphernalia, he was murdered in cold blood with the sanction of the law as distinct from the case where the film executive was shot. Probably in the latter instance the person did not mean to pull the trigger.

There is another aspect of this matter which involves the medical profession—and in that I include the psychiatrists—as distinct from the legal profession. The world's most learned and eminent men cannot be sure of sanity. The bridge between sanity and insanity is very narrow. We all know that there are such people as schizophrenics. Are they responsible for being born with split personalities? If such a person commits a crime are we, as a Parliament, to condemn him to death for killing a person even though he has this mental illness, and is not responsible for his actions? We cannot get into the other fellow's mind and see how it works. But because he is an embarrassment to us, we just sweep him aside as we would dirt from under a carpet. We would do that rather than try to treat his malady.

It is difficult not to philosophise on this matter. Some of us may go into the legal angle, and others may approach the matter from a different point of view. But we all know that down the ages we have been told that the sins of the fathers are visited on the children. The member for East Perth mentioned that when he talked about genes, and enzymes, and so on. There is a destiny that not only shapes our ends; but also shapes our future.

Whilst not wishing to philosophise, I submit that we are not responsible for the end to which we are moving. That has been recognised down the centuries. Can any of us be sure that a murderer is not predestined to his fate? I am not a religious man, but I have heard some people talk about this being the destiny of God; while others liken it to Nemesis or fate. All or any of the above forces could be responsible for the afflictions, mental or otherwise, imposed on us.

A murderer who has such mental afflictions is not responsible for his actions, and hanging him is not the answer. Like the member for Pilbara I feel we, who are purely humans, usurp the right of Divine law to kill a murderer, thus creating another murder. If a murder is committed by a quick-tempered person, is he responsible for his quick temper? To revert to heredity for a moment, I would say that that man is no more responsible for his quick temper than he is for the colour of his hair.

Mr. Bovell: Piffle!

Mr. FLETCHER: The member for Subiaco said that the Criminal Code must not get out of step with public opinion. I would suggest that the average man in the street knows relatively nothing about the Criminal Code. The honourable member said that he did not know how reliable Gallup polls were in this matter. If that is so, then is it a majority opinion that determines that the Criminal Code shall insist upon a life for a life? If we subscribe to a democracy, then we subscribe to a majority opinion; and if Gallup polls are unreliable, as admitted by the member for Subiaco, then his argument also falls to the ground.

The legislation in the Criminal Code is inflicted on the public, as is industrial legislation. I admit it is passed by Parliament, but the public merely accepts it. It is the responsibility of the majority of the people to say whether or not they will accept it. We on this side of the House know that people do not accept capital punishment by hanging, gassing, or any other method of destruction. It is alleged that doctors bury their mistakes. I would say that the legal profession buries society's mistakes, by hanging, or by some other inhuman method of disposing of these victims of society's mistakes.

It has been said we should not adopt a party-political attitude on this matter; but conservative Governments throughout the world, down through the ages, have killed people for even petty offences. This was particularly so in the Middle Ages, in feudal times, and even up to as recently as 100 years ago. Through the killing of people for such petty offences it has now come to be realised that killing is not the answer.

Capital punishment has been abolished in many countries of the world; and we ask the people of Western Australia to accept what the people throughout the world are beginning to accept. I believe I illustrated from the cutting I read that there is a steady annual increase in crime in America, despite the various methods of disposing of those who have killed. The case therefore falls to the ground when it is alleged that capital punishment deters potential murderers.

I accept the contention of the Attorney-General that the jury has the final say; and that there is also the Royal prerogative to be considered. But the jury must still interpret the law in the light of its provisions. The law is there and it sanctions hanging. I commend to the House the Bill submitted by the member for East Perth together with his and our party's desire to abolish capital punishment.

MR. O'CONNOR (North Perth) [9.55]: I listened with a great deal of interest to the member for East Perth when he introduced his Bill. While respecting quite a number of points made by the honourable member, and by other members on his side of the House, I feel, quite apart from my opinion, that it is my duty to support the remarks made by the Attorney-General. It

seems strange to me that the member for East Perth should have said the following in his speech:—

> Members will be free to determine their viewpoints on the merits of the case and the Bill will not be made a party one.

The honourable member went on to say—

> I desire to be perfectly fair and point out that at an Australian Labor Party conference held in Perth in the year 1919, abolishment of capital punishment was written into the platform of that party; so members of the Labor Party are bound by that platform.

According to those views, as the Bill has been submitted by the member for East Perth—a Labor member—all the other members on his side will be obliged to support it. This would mean that 24 members over there would favour the Bill; and if only one member on this side gave his support, the Bill would be passed. Even though perhaps 48 members in reality wished to oppose the Bill, it could be passed because of the Labor platform.

Labor Governments, since 1919, have been responsible for the death penalty being imposed on various individuals. One was the case of a young man who ravished and murdered a young girl at Darkan. The other was the case of goldstealing at Kalgoorlie, where two men brutally murdered two policemen in the course of their duty. After one policeman had been wounded and was lying on the ground pleading for mercy, one of these men shot him as he lay there. Are those the types of people who deserve leniency? How far must we go to protect the people against them?

There have been quite a number of instances in this State of people committing more than one murder. I feel that the fear of capital punishment must deter some people from committing this crime. What leniency is deserved by a killer with a criminal record who murders defenceless people?

Quite recently we had the case of a man who murdered a taxi driver by shooting him in the back of the head on Stirling Highway. He then threw him into the gutter, and went on to Mosman Park where he murdered a man and his wife who were asleep in bed while their child lay in bed also asleep. He said he would have murdered the child had he known it was there. This man then shot a policeman in the stomach, and endeavoured to murder several other people.

What would be the position if that man had been sentenced to life imprisonment? There would have been the possibility of his being released amongst the public again; and also the possibility of his taking a pick and shovel and murdering one of the warders in the gaol. Would he then be given another term of life imprisonment? What parent would condone the abolition of capital punishment after having read about the recent Thorne case?

The member for East Perth said that in New Zealand the date of the last execution was 1935, and that capital punishment was abolished there in 1941. He went on to say—

> although, for reasons I am unable to ascertain, it was restored in 1950.

I feel that part of the reason for that could have been the case I wish to quote. It is the case of a law officer in New Zealand who went to a certain householder to carry out a legal process. When he called at the house the man shot him. Two other policemen went along later to investigate, and they in turn were fatally shot. The householder then took to some dense timber with the rifle and a large quantity of ammunition, and held the police off for several days. When he did come out eventually and surrendered himself he was shot.

He did not die on the spot; but while he was in hospital he complained that the police would not permit him to surrender. Probably those men were incensed at the fact that their comrades had been brutally murdered; and because the death penalty had been abolished they took the law into their own hands. I do not say, for one moment, that that is right; but it does happen on occasions.

A recent reprint of an American article in an Australian newspaper stated that for a period of 12 months in America there was an average of one murder per week of a member of the Police Force. Because of the fear of gangland reprisals, the juries would not convict those murderers; and eventually, when a policeman was murdered, the police merely stated that the murderer was killed while endeavouring to escape from custody. In this way, quite a number of murderers were eventually murdered themselves; and it did have the effect of reducing the number of policemen murdered in the city of Chicago.

We are supposed to be responsible citizens and we represent the people of our electorates. We are expected to maintain laws to protect the Police Force, taxi-drivers, and the men, women, and children of our State from many things, including attacks by brutal murderers. In conclusion, I say that reason with justice should prevail and that only the worst of the offenders should receive the worst punishment.

MR. ANDREW (Victoria Park) [10.2]: I support this Bill. I was rather amazed at the concluding sentence of the member for North Perth when he said that reason with justice should prevail. That is what we are asking. We do not want to remain in the Middle Ages. It seems

a terrible thing to have to listen to a man advancing that sort of an argument —if one could call it an argument.

Mr. Mann: Perhaps he won't listen to you.

Mr. ANDREW: It was dreadful for the honourable member to say that we should not be lenient with these people. We are not asking for leniency. So far tonight we have had three speakers from the Government side: the member for North Perth, the member for Subiaco, and the Attorney-General. If the member for Subiaco acted in accordance with the way he spoke, he would support this Bill because his arguments were on the same lines as ours. He said he could not support the Bill because of the crimes of treason and piracy. I would say that treason would be a matter for the Federal Government; and I am sure that piracy is also a matter for the Federal Government.

Mr. Graham: It is as dead as a dodo.

Mr. ANDREW: That is correct. Therefore, the member for Subiaco should support this Bill. The member for North Perth said something a moment ago which I heard in the corridors; and it was also mentioned by the member for Pilbara. Mention was made of the fact that we are bound in regard to this particular matter because it is in the platform of the Labor Party and it is not in the platform of the Liberal Party. I would point out that we have split more times in this House since I have been a member than have members of the Government side of the House. They are more regimented than we are.

If members check *Hansard* they will find more divisions among the Labor Party than among the other parties in this House. It is not even necessary to go through *Hansard* to prove that. I voted against the provisions of a number of Bills introduced by the Labor Government because I did not agree with them. I was not bound by the Labor Party platform.

Mr. I. W. Manning: The Independent member for Victoria Park!

Mr. ANDREW: The honourable member is talking drivel as usual.

Mr. Graham: Stand up and make a speech.

Mr. ANDREW: I have heard no arguments advanced against this Bill. The member for Subiaco supported it; and the Attorney-General tried to justify his change of attitude since 1941. However, no argument has been advanced against the Bill. In last week's *Sunday Times* this same question was asked of Professor Murdoch, who is a very reasonable man, and both civilised and thoughtful. This is what he had to say—

> To say truth, there is not a single argument for retaining capital punishment for the two kinds of crime to which it still applies which would not be a valid argument for reviving the old habit of hanging people for 60 different forms of felony.

In other words, the arguments advanced in favour of capital punishment could be applied to the 60 different forms of crimes for which capital punishment was the punishment in England quite a number of years ago.

We should approach this matter as reasonable people. We know there are quite a number of people who let their emotions rule their minds. My idea is this: As civilisation advances, we should throw off these uncivilised actions which were indulged in in the past. Capital punishment is one of the things we have to throw off, as has been done in quite a number of countries. I do not intend to quote figures as I have not any with me, but I have read considerably on this subject.

From my reading I find that capital punishment is not a deterrent and people still commit murder. In the olden days when capital punishment was inflicted for practically every crime in the calendar there was more killing than there has been since those times. There must have been a reason for that; and it is this: Because the State held life so lightly so did the people hold life lightly.

It is necessary for us to consider this particular question from many angles. That is why I said I was amazed at the manner in which the member for North Perth spoke when he just related a few murders and how gruesome they were. If we do not approach this matter in a civilised manner we are doing a disservice to the country. An argument was advanced a few moments ago that capital punishment was a greater deterrent than life imprisonment. Figures do not support that contention. Figures quoted by members on a number of occasions in this House prove it is no greater a deterrent than imprisonment for life.

There are other factors which have to be considered, and one is this: When a person is hanged or killed by the State, there is no return. That person cannot be brought back to life. I would like to quote from a speech made by the Attorney-General on the 1st of October, 1941, which can be found on page 996 of *Hansard* of that year. It reads as follows:—

> There is always the possibility of a miscarriage of justice. Such miscarriages of justice have occurred elsewhere, in large numbers, too, comparatively speaking. In England several persons have been paid compensation because it has been subsequently discovered they were innocent of the crimes of which they had been convicted. I shall refer to the Beck case, which was mentioned by the

member for Avon (Mr. Boyle). I quote from "Capital Punishment in the 20th Century" by E. R. Calvert:—

> The Adolf Beck case will be remembered by many as an extraordinary instance of wrongful conviction. Beck was sentenced in 1896 to seven years' penal servitude for a series of robberies from women, was released after five years, and in 1904 re-arrested and again convicted for further offences of a smiliar character. On the first occasion he was identified by no less than ten women: and at the second trial by five women, each of whom swore to his identify as the man who had swindled her; a handwriting expert called by the prosecution at each trial testified on oath that the letters written by the real culprit were in Beck's handwriting; two prison officials wrongly identified Beck as a previously convicted man—Smith—who was afterwards proved to be the real perpetrator of the crimes for which Beck was found guilty. Rarely has evidence been so overwhelming as it was in this case, yet Beck was subsequently discovered to be absolutely innocent. "There is no shadow of foundation" stated the official report, "for any of the charges made against Mr. Beck" and the Home Office awarded him £5,000 compensation, yet it took Adolf Beck nine years to establish his innocence; had he been convicted of a capital offence and executed in consequence instead of imprisoned, the error would probably never have come to light. There is obviously far less chance of discovering a miscarriage of justice when a person is executed, since he is no longer able to prosecute his claim, yet many people have been sent to the scaffold on evidence far less overwhelming than that upon which Beck was wrongly convicted.

Mr. Moir: Who said that?

Mr. ANDREW: The Attorney-General. I am wondering if that is one of the things to which the Attorney-General does not entirely subscribe today. At the end of his speech tonight he said he does not entirely subscribe to what he said in 1941. If he still subscribes to that view, he must support this Bill.

There is one famous case—I mean infamous case—concerning a man called John Christie. This happened in London some years ago. A man named Evans was convicted for a murder, mainly on the evidence of a person named John Christie. Evans was subsequently hanged. Later on it was found that John Christie himself was a murderer. I think he killed about eight women. It was found that Evans was not guilty of the crime for which he had been convicted. If that man had not been hung—

Mr. O'Neil: Hanged.

Mr. ANDREW: It would not make any difference.

Mr. Tonkin: The result would be just the same.

Mr. ANDREW: The Attorney-General quoted a case; I have quoted a case; and there have been many others in regard to innocent people being convicted for crimes which they did not commit. In the case I have just quoted the person was hanged and afterwards found to be innocent. On that point alone I think this Bill should be supported. It is very easy for people to be convicted of a crime. Evidence is sometimes given by corrupt witnesses. This has occurred in our own courts.

The member for Pilbara asked the question: "What is it like for people who are charged with the responsibility of killing a murderer?" Some years ago I visited the Fremantle Prison and saw the gallows. It is rather a gruesome place. One of the officials there informed me at the time that he had had to witness some hangings; and he remarked to me, "I wish those who condemned a man to be hanged could be made to witness the hanging." He also said, "I hope never again to witness another hanging." He gave me to understand that he was very much opposed to it.

There is a grapevine in all organisations, and I heard a little bit about a hangman who went to the Fremantle gaol. My informant told me that the sheriff was contacted and the hangman arrived at the Fremantle gaol the night before. One of the officials of the gaol inquired of the hangman whether everything was in order. The man replied that it was, and that he had a good rope. He opened his suitcase and produced a brand-new rope. In doing so, he remarked that he only used a rope six times. My informant told me that the officer was appalled by the callousness of the hangman. This bears out the contention of the member for Pilbara as to what sort of a man the hangman is. In many instances, he is worse than the man he is required to hang.

I now refer to what I consider to be a very strong point. A moment ago I mentioned that when people were hanged for many and varied crimes years ago, violence was general. Hanging did not act as any deterrent. Now that we have become more civilised, there is less crime compared with those days, and the same emphasis is not given to the penalty of hanging in that if a man commits murder he may be under an emotional stress; the

crime may have been committed in anger; or the murderer may have wished to gain something for himself.

In indulging in cold-blooded killing, the Government is setting an example to the country to the effect that it does not believe in the sanctity of life. What an example that is to young people today, when the State itself does not believe in the sanctity of life! I believe it has a very bad psychological effect on the people of a country, and particularly unstable people in our midst; and also on the minds of young people—minds that have not yet formed like those of more mature people. This, I think, is one of the strongest points which can be brought forward in support of the abolition of the death penalty.

I think we can sum up the situation by posing to ourselves the question: "Is hanging a greater deterrent than the penalty of life imprisonment?" In my opinion it is not a greater deterrent. There are no facts to prove it. The second major point is the bad psychological effect it has on the people of the State. What I quoted earlier still stands. If members of the opposite side are reasonable and sensible, they will put up an argument against the Bill before the House. If this Bill fails to be passed on this occasion—and I fear there has been a ganging-up on it—I feel it is inevitable that at some time in the future we will become more civilised and will pass such Bills as this.

On motion by Mr. Rowberry, debate adjourned.

House adjourned at 10.25 p.m.

Legislative Council

Thursday, the 22nd September, 1960

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CONTENTS—*continued*

The PRESIDENT took the Chair at 2.30 p.m., and read prayers.

QUESTIONS ON NOTICE

LICENSING ACT

Operation of Licensees Under Section 122

1. The Hon. H. C. STRICKLAND asked the Minister for Mines:

   Will the Minister explain whether licensees have the option of trading or remaining closed under the provisions of subsection 2 of section 122 of the Licensing Act?

   The Hon. A. F. GRIFFITH replied:

   In the opinion of the Licensing Court the answer is "Yes."

DERBY AND BROOME

Deep-Water Shipping Facilities

2. The Hon. H. C. STRICKLAND asked the Minister for Mines:

   When can the Government be expected to make known its decision in relation to the provision of deep-water shipping facilities at Derby and Broome?

   The Hon. A. F. GRIFFITH replied:

   A decision on a deep-water port for the West Kimberleys will not be made until the results of the water boring now being undertaken at Broome are known.

BEETE GOLD FIND

Crushings, Value, Etc.

3. The Hon. J. J. GARRIGAN asked the Minister for Mines:

   In connection with the Beete Gold Find south of Norseman will the Minister inform the House—

   (a) the total tonnage of ore which has been crushed;

   (b) the total number of fine ounces which has been produced;