

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

CRIMINAL CODE AMENDMENT BILL 2008

Second Reading

Resumed from 4 December 2008.

MR J.A. MCGINTY (Fremantle) [3.11 pm]: The Labor opposition supports our police officers and it supports measures to offer them greater protection. We support extending the equal protection of the laws, in addition to what is in this bill, to nurses, firefighters and teachers. We also agree with the government's decision today to exempt certain assaults causing bodily harm at the lower end of the scale from the operation of the new laws. Labor will therefore not oppose this legislation.

The bill was introduced on 4 December 2008. It provides for mandatory prison terms for all people who assault police officers causing grievous bodily harm or bodily harm. Since then, there have been two significant developments: firstly, the announcement yesterday by the government following significant public disquiet that, in addition to police officers, the class of people who should be protected by the legislation will be expanded to include ambulance officers, prison officers and some security officers. To that we will seek by way of amendments to add three further classes of people. I am thinking particularly, but not exclusively, of nurses who work in our emergency departments, who face the reality of violence on a daily basis as they go about their jobs caring and tending to the needs of members of the community. We believe that the legislation should be amended to incorporate that class of worker. To that extent, I was disappointed today to hear that the Minister for Mental Health and the Minister for Education are prepared to extend greater protection to contract security officers than to our nurses and teachers in this state. I urge the government and the ministers to reflect on that because when the bill related only to police officers there was a certain integrity about the argument. Once we extend protection to contract security officers, who are not employed by the government, but do not extend that same protection to emergency department nurses, community mental health nurses, schoolteachers and the like—I will deal with schoolteachers in a minute—then I think we have got it wrong. The amendments that we will move to include those three classes of people in the bill should be supported.

The second significant development, in addition to yesterday's announcement of expanding the range of people who would be included, is the publication today of the police guidelines. I think the guidelines can be succinctly summarised in the bottom paragraph on the first page of the document from the Attorney General. It reads —

Officers are to be aware that due to the mandatory imprisonment requirement for persons found guilty of a s 318 offence in prescribed circumstances, there should not be an allegation that bodily harm has occurred to a complainant unless the bodily harm can be fairly and medically assessed as reaching a level of significance which would exclude any reasonable description of the injury as being insignificant or trivial or minor or transient.

In other words, once it is established that bodily harm has been suffered by the police officer or other public officer covered by this legislation, an offender will be exempt from the legislation if it is at the minor end of the scale. I do not understand how “mandatory sentencing” can be described as a regime that exempts people. It ceases to be mandatory. It is no longer something that will apply in all circumstances. We must bear in mind that under the government's guidelines we must reach the threshold of it being “bodily harm”.

The Premier misled the house today—and it might have been that he was not aware of the full contents of this document—when he said repeatedly that a person who inflicts bodily harm on a police officer, without exception, will go to jail if found guilty. That is not true. It is the case under the guidelines that a person who inflicts bodily harm at the lower end of the scale will not be charged with that offence as a means of exempting those people who would be unfairly imprisoned if the full charge were laid. The Premier was disingenuous in the way he described the situation today because we no longer have mandatory sentencing for anyone who causes bodily harm to a police officer. There are administrative instructions now in place to say that if it is at the lower end of the scale, but still bodily harm, the prosecution against that person will not be proceeded with. That provides exceptions to the generality of the mandatory nature of what is otherwise proposed. The Premier is obviously uncomfortable with that reality, but it is the wording used in his document that certain bodily harm inflicted on police and other public officers will not attract mandatory prison sentences as a result of this instruction that was issued today.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

I think those two developments yesterday and today, both to expand the range of people in addition to police who will get the benefit of the protection of this legislation and the publication of the list of exemptions in the police guidelines, are very significant developments in the way in which we should deal with this legislation.

The previous Labor government enacted the Criminal Law and Evidence Amendment Act 2008. It amended the Criminal Code to provide increased penalties and better categorisation of the offences of assaulting public officers. Previously, all assaults on public officers were treated as serious assaults with a maximum sentence of 10 years. Following a report from the Director of Public Prosecutions, supported by the police commissioner, Karl O'Callaghan, we arranged into three categories assaults against public officers. Firstly, at the most serious end of the scale, under section 297, are assaults causing grievous bodily harm—those are the most serious offences. Constable Butcher is a classic example of that: somebody who has a permanent injury to his health and who also satisfies, arguably, the other definition of “grievous bodily harm”—that is, life-threatening circumstances. We increased the penalty for that offence from 10 years’ to 14 years’ imprisonment to reflect the growing concern about police officers, nurses, emergency department staff, ambulance officers and public transport operators who were being exposed to violence in the community and who, until now, have not been afforded the equal protection of the law. As I have indicated, the definition of “grievous bodily harm” in the Criminal Code relates to any bodily injury of such a nature as to endanger or be likely to endanger life or to cause or be likely to cause permanent injury to health. Again, there are very serious consequences to the assault in question. That law was introduced only last year; it has not yet been on the statute book for 12 months. It was done with the agreement of the police commissioner and the Director of Public Prosecutions.

The second category of offences is those serious assaults on a public officer contained in section 318 of the Criminal Code. If the assailant was armed or in company, a penalty of 10 years’ imprisonment would apply. In all other cases of common assault, which this legislation does not deal with, the penalty is seven years’ imprisonment. That was the new regime introduced only last year.

I now briefly refer to two other relevant sections of the Criminal Code. Firstly, section 313 provides a penalty of 18 months’ imprisonment for common assault, which is increased to three years in circumstances of aggravation. It is important to bear in mind when looking at the level of protection now being afforded to two classes of public officer—those who will get the benefit of this legislation and those who will remain covered by the existing legislation—that the penalty for common assault is 18 months’ imprisonment, compared with 14 years for grievous bodily harm to a public officer, 10 years for assault in circumstances of aggravation against a public officer or seven years for a common assault that does not do grievous bodily harm to that particular public officer. There is already a massive difference between the 18 months provided for a common assault and the seven years if it is against a public officer. The second relevant provision of the Criminal Code is section 317. It provides a penalty of five years’ imprisonment for an assault occasioning bodily harm. That is increased to seven years in circumstances of aggravation—again, less than that provided for comparable assaults on public officers.

I have already referred to the fact that grievous bodily harm requires either a threat to life, causing a life-endangering injury, or one that causes permanent injury to health. They are the two legs of the definition of “grievous bodily harm”, both of which carry the notion that the consequences of the injury are very serious. There is no question that those people who inflict those injuries should be dealt with severely. On the other hand, bodily harm—this is where a number of the problems arise and where the police guidelines that have been referred to today have, of necessity, moved to ameliorate some of the harsher and more unjust provisions in the way in which this legislation would operate—means any bodily injury that interferes with health or comfort. Something that interferes with comfort is all that is required to satisfy the jail term that is mandated by this legislation. That was obviously too severe, and that is why the new guidelines that have been introduced today to ameliorate the harsh effects of the operation of this law on assaults at the lower end of the scale of assaults are a sensible initiative. I will come back to how I think that should be dealt with in a few minutes.

This bill, as it was originally introduced last December, deals only with assaults on police officers. The amendment which was foreshadowed only yesterday, and which does not yet appear on the notice paper, intends to expand the legislation to include ambulance officers, prison officers and some, but not all, security officers, including contract security officers. The bill provides for 12 months’ mandatory imprisonment for assault causing grievous bodily harm to a police officer by an adult. That is contained in the provisions to be included in section 297 of the Criminal Code.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

The bill provides for an amendment to section 318 of the Criminal Code to provide for six months' mandatory imprisonment for assault occasioning bodily harm to a police officer, and increased to nine months in circumstances of aggravation, such as being armed or in company. The bill also provides for three months' mandatory imprisonment for any assault occasioning grievous bodily harm or bodily harm to a police officer by a juvenile. Also, a conviction under these provisions for juveniles cannot be a spent conviction, and a mandatory term of imprisonment cannot be suspended. Both of those are propositions that we also support.

I turn now to deal with the issues to which this legislation gives rise. The Premier, during the course of the election campaign, was crystal clear that he would extend this legislation to cover every public officer in Western Australia. We all know what that means. It is well defined in the Criminal Code. It means each and every public officer, plus more. I am thinking particularly of assaults on taxi drivers, who are regarded as public officers for the purposes of the Criminal Code. It also includes people who work in a variety of private settings, including a number of private contractors who provide a public service.

Dr J.M. Woollard: And nurses.

Mr J.A. McGINTY: Indeed, and nurses, and for that matter anyone who is providing a service to the community. It therefore includes people working in private hospitals as well as public hospitals; however, most importantly, and where this issue is brought into sharpest focus in the health setting, it includes people working in the emergency departments of hospitals where hundreds of assaults occur every year. A figure was given in this morning's newspaper of more than 100 assaults on nurses alone at Royal Perth Hospital last year. That gives members an idea of the scale of the problems with which hospital staff, in particular nurses, are dealing.

However, the Liberal Party promise was contained in a press release entitled "Liberals will protect police and public officers with legislative backup". That was the heading. There is no doubt that the promise was to protect all public officers. It promised mandatory prison terms for people convicted of assaulting police or any other public officer and causing grievous bodily harm or bodily harm. Undoubtedly—it is very clear—it is a broken promise by the Barnett government. It is a broken promise because the legislation will not be extended to nurses. It is a broken promise because it will not be extended to teachers. It is a broken promise because it will not be extended to firefighters and to numerous other public servants. The promise was crystal clear, it was repeated on many occasions during the campaign and it has been broken.

It is our view that this legislation should be extended. If it is not extended to cover all public officers, it ought to be extended to cover those public officers who are confronted with violence in their workplace on a regular basis. There is a demonstrable need to offer whatever protection is offered to other people and equally to these people. Those public officers I have indicated are those whom we will seek to be included in the legislation. That is, therefore, the first issue that I wanted to raise to put on the record that the promise was made, it was a rash promise at the time and, for the government to retrieve lost ground, it is now a broken promise. The government has retrieved some of the ground that it lost from its initial decision to extend this protection only to police officers by offering to extend it to some other public officers; however, there remains a great number of other public officers who should be entitled to the equal protection of the law. That is why the responses today from the Minister for Mental Health and the Minister for Education were disappointing, in that they turned their backs on those public servants in their portfolios for whom they have a responsibility to be the champions—nurses and teachers—and refused to move to protect them. They have failed in their duty to offer that protection and to be advocates on behalf of those people. The questions that were put during question time today were crystal clear. First, did the Minister for Mental Health stand up for mental health nurses and argue that they should be included in the legislation? He could not answer the question and the reason is that he would have been mightily embarrassed to say, "No, I did not." That is the truth of the matter. Similarly, the Minister for Education did not go in to bat for schoolteachers.

The second issue I will raise is the unintended effect of this legislation. Members have seen over the past week the great media interest in the question of assaults, particularly on police officers but also more broadly than that. I will confine my remarks to police officers, but the same is true of other public officers. To the best of my knowledge there is no record of anybody who has caused grievous bodily harm to a police officer not having gone to jail. As much is acknowledged by the Attorney General in the way that he has addressed that question in his statements in his second reading speech and as he did during the course of the election campaign. Nobody has ever pointed to a case of grievous bodily harm to a police officer that did not result in the person going to

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

jail. That is how it should be. Anybody who commits a serious assault to endanger the life of a police officer or cause permanent injury to that officer's health—Constable Butcher is a very good example of that—should go to jail. There should be no exception to that. It is totally appropriate that that be the case.

The real problem that arises is that the definition of “bodily harm” includes minor injuries, such as a bruise or scratch. Minor injuries can be caused by relatively insignificant behaviour that does not need to be punished by a prison term. That is the reason we have seen today the publication of police guidelines that say, “Even though it is an assault occasioning bodily harm, it won't be prosecuted, resulting in a mandatory term of imprisonment, because to do so would be unjust in those offences at the lower end of the scale.” It is an appropriate response, but both the Premier and the Attorney General tried to dress up those exceptions to the mandatory nature of this legislation as somehow or other not impacting on its mandatory nature. Frankly, that is a nonsense. As soon as we exempt people, for whatever reason—in this case I agree that those minor technical assaults should be exempted—we no longer have mandatory sentencing.

The police union has been calling for a lot of people to attend today's rally for the simple reason to make sure that this legislation is not watered down. It has been watered down by the Attorney General and the Premier saying that there will be some people who cause bodily harm to a police officer or other public officers who will not be mandatorily sent to prison. That is the import of the guidelines that were published today.

Dr K.D. Hames: You have always known that it was serious bodily harm. It has been debated in this Parliament over and over again. If it is so easy, why didn't you bring it in when you were the Attorney General? You could've agreed to sentencing for serious bodily harm by bringing in those guidelines; it could have been done four years ago.

Mr J.A. McGINTY: When did the government say that this bill would not apply to all circumstances of bodily harm?

Dr K.D. Hames: It has always been said that injuries of a minor nature were not included in the legislation.

Mr J.A. McGINTY: Never. Today is the first time, and if the Deputy Premier had listened to his leader in question time today, he would know that it was made crystal clear that anybody who causes any bodily harm to a police officer will go to jail.

Dr K.D. Hames: If that was your only concern, why didn't you bring in mandatory legislation and put those caveats on it?

Mr J.A. McGINTY: I will show the Deputy Premier why he is wrong by referring to the Attorney General's second reading speech on this bill. I hope members opposite listen, because it demonstrates that what the Deputy Premier is saying is wrong. The Attorney General concluded his second reading speech with this comment —

Simply put, if a police officer is assaulted and sustains bodily harm, the perpetrator of that offence will go to prison.

Dr K.D. Hames: You have already heard that the definition of “bodily harm” has been changed to ensure that it means people suffering serious injury, and that matches the legislation, matches the debate and matches the position that we presented over and over again to this house.

Mr J.A. McGINTY: The government has never put its position.

Dr K.D. Hames: Yes, we have.

Mr J.A. McGINTY: The government has always said, as the Attorney General said in his second reading speech, that if anybody causes bodily harm to a police officer, that person will go to jail—no ifs, no buts and no qualifications. That is what the government's position has constantly been.

Dr K.D. Hames: You should read *Hansard* to see what we have said; that will make it clear.

Mr J.A. McGINTY: The Deputy Premier in his contribution to this debate can point out that there will be exceptions to people who cause bodily harm to police officers when it comes to them going to jail. If that is right, the Attorney General's speech is wrong. The government cannot have it both ways. That is what members opposite have constantly said—no ifs and no buts.

Dr K.D. Hames: Why didn't you bring it in if it is so easy?

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr J.A. McGINTY: I am pointing out that what the government has said is not what it is doing.

Dr K.D. Hames: I know and you are refusing to answer the question.

Mr J.A. McGINTY: I am more than happy to answer the question.

Bodily harm covers a range of events, including minor technical assaults—and the member for Kalgoorlie gave the example of a grandmother hitting a police officer over the head with an umbrella and causing him a scratch. Does the Deputy Premier want her to go to prison?

Dr K.D. Hames: Obviously not.

Mr J.A. McGINTY: That is what the government’s legislation said until today, when it published the guidelines that contained exemptions. Obviously, I would not want such people to go to prison and that is the reason we did not bring in legislation that said “mandatory imprisonment”. “Mandatory” means no exceptions.

Dr K.D. Hames: Exactly. All you needed to do was to change the guidelines of what constituted bodily harm versus serious bodily harm to resolve that issue. You could have done it four years ago.

Mr J.A. McGINTY: I have listened to this debate very closely, as the Deputy Premier would imagine. The government is watering down its legislation. I support that, because it would have been grossly unjust for people in those circumstances to go to prison.

Dr K.D. Hames: It was always intended to be serious bodily harm.

Mr J.A. McGINTY: The Deputy Premier should tell the Attorney General that he misled the house when he made that statement.

Dr K.D. Hames: I will tell him when he comes back.

Mr J.A. McGINTY: He said that.

I have listened very closely to this debate and there has never been a statement that the definition of “bodily harm” will be changed or that there will be exceptions. Today is the first we have heard of exemptions. Those sorts of unintended, low-level offences should not result in jail, notwithstanding the heavy rhetoric in which the Premier and the Attorney General have been engaging in the broader community. We know that they are politically posturing. They are not serious and they are not genuine in what they are saying, such as in the closing sentence of the Attorney General’s speech, when he said that for any bodily harm caused to a police officer, the offender would go to jail. He did not mean that. He could not have meant that and then publish guidelines that say that some bodily harm at the lower end of the scale will not carry a jail sentence.

Let us have an element of rationality in this debate. We understand that what has occurred in the court system is an emotive issue. This legislation does not relate in any way, shape or form to what happened to Constable Butcher. All members can say that they are deeply offended by what occurred both outside the Old Bailey Tavern and in the court. It should not have worked out that way. This legislation would not have changed that outcome because Barry McLeod was not found guilty. That is the problem. This legislation will apply only when somebody is found guilty. Similarly, as I understand it—and this has been a recent development—for the officer who was hospitalised on the weekend, having been hit in the back by a full bottle of alcohol that caused significant injuries to him, mandatory sentencing will have no impact, because the offender has not been caught. The offender has to be caught first and a conviction must then be secured before this legislation will come into play. It suited the government’s purpose to muddy the waters and make people think that this legislation is about securing a conviction, which clearly it is not, or about securing an arrest, which clearly it is not.

Let us try to proceed on the basis of what the legislation says and does—not the heavy-handed rhetoric that the Deputy Premier is trying to excuse away. There has never been a statement, including in question time today, from the Premier or the Attorney General that the definition of “bodily harm” will be changed in this legislation or that there will be exceptions. They have constantly said that it would be without exception. That is clearly not the case. All I am seeking to do is to introduce an element of honesty and rationality into this debate. Anybody who assaults a police officer and causes grievous bodily harm should go to jail. There is no argument about that. The problem that arises is at the lower end of the scale. We believe that rather than giving to the police, or to an individual police officer, the discretion to decide whether a person will go to jail, as the police guidelines do, that function is far better vested in somebody independent of that process, such as a judicial officer. That is

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

preferable to having a police officer determining whether a person who assaults a police officer should go to jail, as that is determined by the nature of the charge laid.

Those are some of the unintended effects that this legislation could bring about. Members can readily think of 1 001 factual situations that become very real situations in the interaction between police and members of the public, in which the nature of the offence is minor, in which the circumstances are completely compelling, in which the nature of the injuries suffered is minor and for which an offender should not go to jail. I give one example. Somebody might have been standing outside the Old Bailey Tavern the night of the incident last year who was a mere bystander, and who said, "Give him one." Such a person would face nine months', or perhaps 12 months', imprisonment if found guilty of counselling and procuring an offence. Section 7 of the Criminal Code makes those who are, to use the old language, "aiding and abetting" or, in today's language, "counselling or procuring" an offence, which can be by either words or actions, guilty of an offence. The words can be simple words of encouragement to somebody to do something such as, "Give him one." Therefore, that person, who has not lifted a finger, would be compulsorily jailed if found guilty of that offence under this legislation. Nobody of right mind would argue that such a person should be jailed for simply mouthing words, even though what that person did was despicable. That would be the effect of the legislation. Part of the problem with the guidelines that are being brought in today is that they do not cover that situation. The effect of the assault is serious. The individual who spoke words of encouragement but did not lift a finger would be caught by this legislation. That is what I mean by unintended consequences. That would be the legal effect of the operation of section 7 of the Criminal Code on counselling and procuring offences. Section 7 states —

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say —

- (a) Every person who actually does the act or makes the omission which constitutes the offence;

In the case of the Old Bailey Tavern incident, that would be Barry McLeod. Section 7 continues —

- (b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) Every person who aids another person in committing the offence;
- (d) Any person who counsels or procures any other person to commit the offence.

Quite clearly, somebody who made that simple, albeit stupid, comment would face, in the circumstances of what happened at the Old Bailey Tavern, 12 months' imprisonment. That is an absurd outcome. That is the problem with mandatory provisions that contain no exceptions, and that is why the opposition is broadly supportive of the exceptions announced today. The opposition believes that the exemption for assaults with minor consequences should be incorporated into the legislation. This would transfer the decision from a police officer, who otherwise would determine whether somebody who assaulted a police officer will go to jail, to a judicial officer. That should be contained in the legislation. The opposition thinks it is a very straightforward proposition to incorporate the police guidelines, as they have been referred to today, into the legislation. This should happen on the basis that if it is clearly unjust that somebody be sent to jail, as in the examples I gave earlier, and it is clear that the assault is at the lower end of the scale, as essentially stated in the guidelines, those circumstances should be outlined as exceptions to the general rule contained in the legislation.

During question time today, the Attorney General made the point, by reference to a document of which I was the author, and by analogy with the offence of murder, that there is a requirement that somebody who commits murder and is found guilty of the offence must go to jail. They must be sentenced to life imprisonment unless that sentence is clearly unjust. The Attorney General seemed to think it was all right for people to go to jail even though it would be clearly unjust for those people to go to jail—that is judging by the response he provided to the house. I think the amendment that the opposition suggests provides a sensible way forward in offering greater protection to our police and other public officers, whilst at the same time ensuring that unjust outcomes do not result.

Extract from Hansard

[ASSEMBLY - Tuesday, 17 March 2009]

p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

The Premier seemed all at sea during question time today when asked about people who commit bodily harm on a police officer, and the effect of the exemptions contained in the police guidelines. The Premier seemed to be of the view—one stated by the Attorney General in the second reading speech—that every assault causing bodily harm would result in a term of imprisonment. It clearly will not, because the instructions are crystal clear; namely, that charges are not to be laid in certain circumstances. That is the way in which the application of this legislation is avoided.

The other issue of concern to the opposition is that the legislation could well have an unintended effect through putting in a mandatory minimum penalty of 12 months' imprisonment that must be imposed by a court when grievous bodily harm is done to a police officer or other public officers when the harm endangers human life or causes permanent injury to health. These offences have very serious consequences, and the court has made it quite clear that offenders are, under current law, to be punished severely. As I have said, I am unaware of a single case involving grievous bodily harm in which the offender has not gone to prison. The going rate of sentence for somebody who commits grievous bodily harm on a police officer is significantly more than one year. I have a concern that by writing one year into the legislation, the signal will be to the judiciary that one year is okay for somebody who inflicts grievous bodily harm on a police officer; frankly, it is not. The courts have not treated it that way, certainly in the last decade or so. They have established a tariff of many years, and had a conviction been recorded for the incident at the Old Bailey Tavern, I have no doubt that the flying headbutt that was delivered and caused the injury to Constable Butcher would have been met with many, many years' imprisonment, not the one year proposed by this legislation. One year, I think, is soft, and could well lead to a downgrading of penalties generally if courts take their lead from Parliament that one year is okay for somebody who commits grievous bodily harm on a police officer.

The next issue upon which I do not think this legislation goes far enough is that of spent convictions and suspended imprisonment. During the election campaign, the Labor Party promised to remove those two sentencing options from all assaults on public officers; that is, spent convictions and suspended imprisonment. If somebody knows that, at minimum, he or she will have a criminal record, and if any deterrent effect results, that might deter that person from any assault. Often the more serious assaults are caused by escalation and the way in which things are handled, such as the flying headbutt that occurred to Constable Butcher. It would have been far better for this legislation to remove those two sentencing options; in other words, to convey to the courts that if somebody is convicted of assaulting a public officer, that person must walk away with a criminal record—it is not to be waived. That was what the previous government promised to do. We also said that if somebody deserves to be imprisoned for an assault causing grievous bodily harm on a public officer, the resulting sentence should not be suspended. Such a change would be a sensible strengthening of the legislation that would send a very clear message to the judiciary.

As I have indicated, the Labor Party supports the thrust of this legislation and will move amendments to it during the consideration in detail stage. We will move amendments to include nurses and health workers, who are already defined as public officers for the purposes of the existing provisions of the Criminal Code. I strongly disagreed with the Minister for Mental Health today when he said that mental health nurses do not need any more protection than that which is already afforded to them by the Criminal Code. We have seen some horrific examples of assaults on those people. Mental health nursing in particular is a dangerous and unpredictable occupation, given the patients with whom they must deal. I have met on many occasions with Debbie Mellican and her husband Kevin and seen firsthand the effect that that assault has had on her life and her prospects from here on in. I cannot for the life of me understand why nurses who work in emergency departments should not be appropriately afforded the equal protection of this legislation. Many hundreds of assaults occur on hospital staff, particularly nurses, at the very time they are lending a helping hand to patients who need it. If there is a group in addition to police officers who need this protection, it is the emergency department staff in hospitals; they, more than anyone else, should be afforded the protection of this legislation. The attacks on those people when they are often trying to save someone's life or to improve a person's life are cowardly and are always unprovoked. I will be very interested to listen to the Minister for Health's explanation about why emergency department staff, particularly nurses, do not deserve the same protection as he is offering to contract security officers under this legislation. It is not good enough. Hopefully, that amendment will enjoy the support of the house.

Firefighters are directly analogous to ambulance officers. They attend car accidents and fires, often when people are quite distraught, and from time to time they are assaulted by members of the public. Why should they be excluded from the equal protection of the law? During question time I was very disappointed with the Minister

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

for Education when she refused to answer a question about parents. I put this proposition to the house: a bitter custody dispute or a relationship breakdown occurs and an estranged parent goes to a school demanding to take the child to which the person is not legally entitled. The teacher knows that and refuses to allow the estranged parent access to the child, which then results in an assault by the estranged parent on that teacher. Why should the teacher be denied the equal protection of the laws which are being proposed here and which the government promised to provide to teachers before the election? I cannot understand why, if this legislation is good legislation, it should not be extended to these good people who do a great job on behalf of the public generally.

We also support including in the legislation the thrust of the police guidelines that have been published today. Perhaps I could draw the Minister for Health's attention to this. I will briefly read one section of the police guidelines that were published today; it clearly states the way to get around the mandatory sentencing law. The police guidelines state —

Officers are to be aware that due to the mandatory imprisonment requirement for persons found guilty of a s 318 offence in prescribed circumstances, there should not be an allegation that bodily harm has occurred to a complainant unless the bodily harm can be fairly and medically assessed as reaching a level of significance which would exclude any reasonable description of the injury as being insignificant or trivial or minor or transient.

Clearly, this is a device which is designed to get around mandatory sentencing laws and which waters down this legislation to ensure that a person who does bodily harm to either a police officer or other public officer does not face jail, as has been promised. Let us be honest about what this legislation does and what the police guidelines do. The legislation, coupled with the police guidelines, can no longer be fairly described as mandatory sentencing because there are exceptions. "Mandatory", as the Attorney General was at pains to point out during question time today, means without exception; it is compulsory. Not everyone who commits an assault causing bodily harm to a police officer will be sent to jail because of the operation of these guidelines, which we believe should be incorporated into the legislation itself.

With those comments, I indicate again that the opposition will support this legislation. We believe that the amendments I have foreshadowed are sensible. They will take the legislation into the realm of reality rather than the highly emotional and rhetorical effort of the Premier in particular today. It will deal with the reality of this issue in a sensible way, and it will be judged that way by the community.

MR J.C. KOBELKE (Balcatta) [3.55 pm]: I support toughening the laws against assaults on police officers. The rhetoric involved in this debate, as the member for Fremantle pointed out, does not fit the facts. Therefore, we need to look at some aspects of the matter. Clearly, we have a problem in Western Australia with respect to assaults against police officers. I want to support legislation that creates offences that will see people go to jail for assaulting and injuring a police officer. The police play an essential role in our community. When we look at the risks taken by other people in the community, we find very few people who are put in danger when they protect a member of the community. The police do that day in and day out. Later I will refer to some of the other public sector workers who do that on occasion. However, that is part of the daily work of police. They seek to protect people and property, quite often at risk to themselves. Therefore, we need to make sure that the laws have special respect for the police in Western Australia.

Respect is a major issue. Although the vast majority of the population respect our police and the great work that they do, there has been a loss of respect in the community for not only police officers—although that is what I will mainly speak about—but also teachers, nurses and for one another in the community generally. Unfortunately, a sizeable minority of the population does not have that respect. We must generate that respect and this legislation has a role to play in that. However, it is just a role; it will not do it of itself. We have a role to play by putting on the statute books good laws to strengthen our laws to the extent that they will help generate a greater respect for our police. We must do many other things to try to generate that respect in our community. That is a role for not only the police, but also members of Parliament and members of the community generally. We must have respect for one another as citizens and for the rule of law. People must recognise that our police officers are given a very special role to play in upholding the law and protecting people, and we expect our citizens to respect that. There will always be a very small minority of people—criminals—who do not respect that. Our concern is that a growing minority of people think the police are there simply to be abused. The police

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

do not have from some people the respect that they should get as members of the WA Police, and this applies also for other people in our community who take on roles of responsibility.

To the extent that this legislation will help in some small way to create an atmosphere of respect in the community, it is a very positive step. However, we cannot create respect through this legislation if we do not speak the truth. The government will undermine the respect in the community that I hope this legislation will be a means of achieving if, when espousing this legislation, it does not actually know what it is talking about, gets it wrong and says things that are false.

It is my view, and I think the view of the opposition, that a person who is convicted of a serious assault on a police officer should be sent to jail. In most cases such a person is sent to jail. However, our system has failings. It certainly had failings in the case of Matthew Butcher. There is an overwhelming view in the community that the system has failed Matthew Butcher and failed WA Police. However, this legislation has nothing to do with that. This legislation would not have changed the outcome in that case. The government is trying—and we want to support it—with this bill to patch up the complex fabric of the law and the judicial systems that surround the law, to ensure that if a person assaults a police officer, and that assault results in serious injury, that person is apprehended, charged and prosecuted, and is sent to jail.

However, there are many steps to that process. This legislation is just one element of that. Of course the police will endeavour to get all the evidence that they can to arrest and charge a person whom they suspect is guilty of assaulting a public officer, particularly a police officer. However, the police often need the help of the community to do that. We need as members of Parliament to encourage our constituents and our communities to work with and support the police. We all know that the majority of people in our community do support our police. However, that is not always the case. In many cases—not just assaults on police—people in the community are not willing to come forward and give evidence to help secure a conviction. I regularly have constituents come to me to make a complaint—as I am sure do members on the other side—but they then say they are not willing to give evidence and to go to court because they fear retribution. We have a role as leaders in our community to try to overcome that resistance and to encourage people to speak up and give evidence. We need to ensure that the community supports our police, particularly when there has been an assault and evidence is needed to procure a conviction. Just this past weekend a police officer was assaulted by being hit with a bottle. The officer did not see who threw that bottle. Therefore, the only way the police are likely to get any evidence in that case, in addition to forensics, is if someone is willing to come forward and give that evidence so that the person who threw that bottle can be apprehended and brought to justice. We need to build that confidence in the community so that we can provide greater protection for our police officers.

This legislation will succeed in providing greater protection for our police officers only if we know what we are talking about and we tell the truth. We should not seek to just bang the political drum and in doing that mislead people and say things that are not true. We need to put in place the best possible set of laws. This legislation has the potential to improve our laws and to offer greater protection to police officers and other public officers who provide vital services for the community and on whom we rely for help and protection. I certainly want to support the strengthening of the law to provide that greater protection.

When we were in government we increased the penalties for assaults on police officers and public officers. The former Attorney General also rearranged the charging provisions to ensure that serious charges are heard by the District Court, because that court can impose heavier penalties. I thank the Attorney General for acknowledging that in his second reading speech, when he said —

I shall speak further on the former government's legislation shortly, save to say here that although it had its limitations, it was good legislation.

Of course this legislation has not been in place long enough to know how effective it will be. We will be able to judge that only in the fullness of time. However, the government has certainly treated this as a serious issue and has brought this legislation forward. We have always said—I said it publicly as Minister for Police—that we are open to doing more if we need to. Of course, that is what the government is doing. The government is seeking to ensure that people who commit a serious assault against a police officer are brought to book and serve a jail sentence.

As the former Attorney General has outlined, the government has not fulfilled its commitments. It has not done that in three ways. The government promised that it would introduce this legislation as a matter of priority.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

However, we are debating this bill now—six months later—when we could have done that last year. Even though we offered the government extra sitting weeks, the government did not want to be in this place last year. Therefore, the government did not meet its time line. Secondly, the government promised that this legislation would extend to all public officers. Again, the government has backed off from that. Thirdly, the government said that this legislation would apply to all cases in which serious assault and bodily harm had been committed against a public officer. I will quote again from the Attorney General's second reading speech when he introduced this bill —

Simply put, if a police officer is assaulted and sustains bodily harm, the perpetrator of that offence will go to prison.

We know that is not true. We know now that the prosecution guidelines will mean that at the lower end, police officers will be assaulted.

Mr T.R. Buswell: Are you going to vote for it or not?

Mr J.C. KOBELKE: I have just said I want to support it. Has the Treasurer not been listening? However, we want to see whether we can improve it, and we will then certainly support it. We now know, through the sentencing guidelines, that there will be a number of assaults for which people will not be charged. The government has been beating the drum on mandatory sentencing. However, it is saying that it will leave it to the prosecution guidelines and to the prosecutors to make the decision as to whether an assault on a police officer should result in charges being laid. It will leave it to the judicial system to deal with the matter, and, if a conviction is obtained, the person will be sentenced to serve a minimum period in jail. Under this legislation, the minimum penalty for a conviction of committing serious bodily harm against a police officer is imprisonment for 12 months. It is my understanding that the average sentence is a term of imprisonment in excess of two years. Therefore, if the minimum that has been set is 12 months, the judge will impose that minimum, rather than a sentence at the higher end. We need to look very carefully at increasing that 12-month minimum sentence for committing a serious assault against a police officer. I will say more about that during consideration in detail. We have already seen that the government simply wants to play politics and beat the drum on mandatory sentencing —

Mr T.R. Buswell: We want to get the laws changed!

Mr J.C. KOBELKE: We want to support changing the laws. However, we also want to see a bit of honesty. In question time today we saw a Premier who was caught out. We saw a Premier who did not know what he was talking about. The Treasurer has come in late. I have been saying —

Mr T.R. Buswell: I have been out there listening to people!

Mr J.C. KOBELKE: I am in this place debating this matter, because I want to get this bill through! The Treasurer is just playing politics. Instead of playing politics —

Mr T.R. Buswell interjected.

The DEPUTY SPEAKER: Order, Treasurer! Member for Balcatta, continue.

Mr J.C. KOBELKE: What we want to do on this side is offer the best possible protection for members of the WA Police and other public officers who protect us, who serve us and who put themselves in a situation of danger. However, we will not be able to do that by saying things that are not true. We will not be able to do that by misleading people. We do not want to see a situation in which, because of the prosecution guidelines, people are getting a lighter penalty than they should be getting. If that does happen, it will be an administrative decision that we will not have any say over. I do not want people who should be going through the court system and who should have serious penalties awarded against them to get off more lightly because the prosecution guidelines will be the gatekeeper and will be determining whether heavier or lighter penalties are imposed. There is a concern that this government simply wants to bang the drum on mandatory sentencing. The Premier showed today that he did not understand what he was talking about. The prosecution guidelines make it absolutely clear that there will be —

Several members interjected.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr J.C. KOBELKE: Here again, we hear the cackling from some of the ministers on the other side who have been caught out because they do not understand their own legislation or how it will work. They simply want to beat the drum with the phrase “mandatory sentencing” when the legislation does not deliver that, as has been shown by the sentencing guidelines. The Attorney General said in his second reading speech —

Simply put, if a police officer is assaulted and sustains bodily harm, the perpetrator of that offence will go to prison.

We now know from the sentencing guidelines that that assurance is no longer there. We need to make sure that the Parliament decides what is in or out of the legislation. We need to make sure that there is a statutory basis, and not just sentencing guidelines that can be changed administratively from time to time.

The previous government took the issue of serious and violent offences very seriously. That is why the average minimum prison sentence ordered by the courts increased from 17.8 months in 2003 to 21.7 months by 2006. Overall, the time actually served by offenders released from prison increased from 13 months in 1996 to an average of 20 months in 2006. That is a 53.8 per cent increase. The tougher laws have been applied, and that is why there are a lot more people in our jails and they are staying there for longer periods. We have a major problem in that we have seen assaults on police end up resulting in no conviction or no jail sentence. That problem has to be addressed. To the extent that this legislation helps with that, I want to support it. However, we need to do this with honesty rather than just beating a political drum. The Premier does not know what he is talking about. It is a disservice to the WA Police when the Premier cannot tell the truth and cannot understand the legislation. The Premier should do his homework and do something to look after police rather than using them as a political football. That is the Premier’s only interest.

MR J.R. QUIGLEY (Mindarie) [4.12 pm]: I was somewhat taunted by the Premier during question time. He looked at each of us and asked whether we would support this bill and told us he would be informing our electorates if we did not support it. I cannot support this bill in its current form, and I invite the Premier to tell the electors of Mindarie why I do not. I would have liked to have attended the meeting outside the house this afternoon, but this debate was brought on at the time that coincided with the gathering on the steps of Parliament House. I am somewhat heartened by the fact that some officers of the Western Australia Police have now found their way into the public gallery and will hear my comments.

I think I started with the Western Australian Police Union in 1975 or early 1976. I spent the next 28 years of my life defending police officers, many of whom were the subject of the most vicious assaults. I am sure that Detective Sergeant Max Kiernan would not mind me mentioning his name—the Premier might know him; he is also the advocate for the Swan Districts Football Club. Max was the subject of a most vicious assault outside the Lynwood Arms Hotel. I appeared for him during the criminal injuries compensation hearing and ultimate appeal against the award. The charge cannot be levelled against me that I have not had a lifetime commitment to the protection of, and advocacy for, serving police officers. I have travelled to all parts of Western Australia to lend my advocacy and support when police officers have been under siege and under attack. I can well remember the Geraldton riots of 1988, when the Police Union asked me to go there lickety-split. Some members might remember that event, when the whole of the police station was under siege and the police had to put mattresses against the glass. The town had gone off its rocker, and the police were in a dreadful situation.

I have also defended police who have been charged with most serious offences resulting from their response to violent situations. The most controversial one of those was my defence of five police officers who were charged with manslaughter over the death of an Aboriginal man in a Roebourne in 1984, and the subsequent acquittal of all five officers. There were protests after that trial, directed at me and the officers, as a result of the acquittal. The charge cannot be levelled at me that I do not have a genuine interest in the welfare of all Western Australian police officers.

It is true that my honorary life membership of the Police Union was revoked during my advocacy on behalf of Andrew Mallard, but I said at the outset in 2002 to Police Union president Michael Dean, who has been my friend for over 20 years, that this would end in tears for both of us, because the system had put an innocent man in jail. Apart from that one occasion where I had to go head-to-head with elements within the union, I have spent a lifetime of service supporting officers.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

When a Parliament and a government seeks to impose mandatory sentencing, it is sending a message to the judiciary that it is not trusted, and is doing the wrong thing. The government is saying that the judiciary cannot be trusted to carry out proper sentencing, and therefore we as a Parliament must intervene to override either the ignorance or the incompetence of the judiciary. This is a very serious step for any Parliament to take, bearing in mind that our Constitution has always contained a separation of powers between the legislature and the judiciary. On this occasion, the legislature wants to come in and say that the judiciary is doing the wrong thing. I will quote from volume 36, issue 2 of *Brief*, the Law Society Journal, published in March 2009, which is a question and answer session with the incoming Attorney General. The Attorney General is asked this question —

On 23 September 2008, you were sworn into the positions of Attorney General and Minister for Corrective Services as part of the new Liberal/National government. What do you see is the role of an Attorney General?

The thoughtful response of the Attorney General was —

I think that an Attorney General is two things. In one significant and primary sense you are the guardian of systems that you inherit from previous generations of Attorneys General, legal systems, criminal justice systems, systems of civil law, systems of courts, and you have to maintain the integrity of those systems. The second part of the job is about understanding the public's desires with respect to those systems and engaging in law reform and doing so in a cautious and scholarly fashion.

I agree with both of those comments by the Attorney General, and I appreciate that the Attorney General, like me, is a committed member of a party room. However, before the legislature and the government embark upon telling the judiciary that it is doing the wrong thing, it is incumbent upon the government or the Attorney General to say here in the chamber where the judges are going wrong, and to identify those cases in which an offender convicted of seriously injuring a police officer should have been imprisoned, and the judiciary did the wrong thing by not doing so.

Mr J.M. Francis: Constable Michelle Ball. The offender did not spend a single day in jail. He punched her in the face.

Mr J.R. QUIGLEY: That is the only one I have not been able to track down. It was referred to in the second reading speech of the Attorney General. That case certainly was not the hallmark case of the argument; it was the case of Sergeant Fleskens, whose leg was badly injured. The accused was charged with causing this injury. In the course of the hearing, the prosecutor withdrew that charge. He said that the injury to the leg was caused by an accident and that the charge would be withdrawn.

Several members interjected.

Mr J.R. QUIGLEY: The member will have his chance soon to lay out the facts of that case, but it is incumbent upon the government to lay before the Parliament—I would say that there must be a body of evidence—the cases in which the judiciary has failed. I understand that in the Michelle Ball case, no appeal was lodged by the police against the decision of the magistrate. It has not been demonstrated within the debate so far that there is a compelling case, or any case at all, that the judiciary has failed. What I find disturbing is the vilification of the judiciary without supporting evidence. Many people are quick to say that judges are doing the wrong thing and are failing this community, but the people who are saying that are not identifying which judge and which cases. For example, I heard the honourable Minister for Police talk on radio yesterday about serious assaults on police. He said that these people are getting off with cautions in some instances or that no convictions are being recorded. I challenge the Minister for Police to identify a case in which there has been a serious assault involving a serious injury, not the sort of injury that forms part of the exception in the Commissioner of Police's guidelines—that is, not an injury that is considered transient and minor, but a serious injury to which the minister referred on radio. When has the judiciary failed the police?

Mr R.F. Johnson: Shall I tell you when?

Mr J.R. QUIGLEY: Yes.

Mr R.F. Johnson: I've got loads of examples. This one was published in *The West Australian* of 23 July 2008. Mr Jones, the magistrate, sentenced Benjamin Joseph Hansford, 25, to suspended jail terms for assaults on police in August and September. Adam Wayne Riley, 33, pleaded guilty to four charges, including the assault that left

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Acting Sergeant Brad Smith needing knee surgery. What was he given? He was given 60 hours on a community-based order, which he probably never even started, let alone finished!

Mr J.R. QUIGLEY: Certainly, I have the transcripts of those cases. It was said in that case to the magistrate by both the prosecutor and the accused's lawyer that the injury to the leg did not result from the assault charge. In fact, the charge relating to the injury to the leg was withdrawn by the police. They said that the injury did not result from the assault; it happened when the officer got up, twisted and fell over. They withdrew the assault charge.

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Mr J.R. QUIGLEY: How can Magistrate Jones have failed the police when the police withdrew that charge? That is the question. The Minister for Police has not even taken the first step in making out the case. The police prosecutor withdrew the charge. The other thing that disturbs me, and I have said it to my friend Mr Dean directly —

Mr R.F. Johnson: I don't think he thinks you're his friend anymore. They took away your honorary membership because of your disgraceful remarks.

Mr J.R. QUIGLEY: It was because of my remarks against the police in the Mallard case. Members opposite can laugh, but I stand by my record of 28 years. My honorary membership was revoked in relation to the Mallard case. I do not have the slightest bit of embarrassment about that.

When the police say that the judiciary is out of touch with society and is destroying the reputation of the police, it is an unfortunate, unspecific and general slander on all the judiciary of Western Australia, and it is totally unjustified. It is said that in response to this situation, this particular form of legislation must be passed. It is flawed. As the honourable member for Fremantle has already pointed out—unfortunately, the member for Alfred Cove is not present, because she has sought to make this point—a mother who, while in a line at Woolies late in the afternoon, bangs her pram into someone could face mandatory sentencing.

Mr R.F. Johnson: I think she probably got that advice from the member for Fremantle, which is a nonsense.

Mr J.R. QUIGLEY: I, of course, disagree with that example on a number of grounds. First, there would be the defence of accident; and, secondly, there must be a bodily injury, not just discomfort. The member alluded to the fact that there are many circumstances that we in this chamber cannot now contemplate. After 28 years in law, I know—I am sure that the officers in the public gallery today would agree with me—that fact is weirder than fiction. We in this chamber could not begin to imagine the things that people can come up with and the circumstances that can arise. In a system of justice that has been traditionally represented by the blindfolded lady holding the scales—blind to bias and blind to failure, but weighing everything in the balance—this legislation seeks to take out that weighing aspect by saying that, because judges have failed this community so badly, the legislature will override them.

The Commissioner of Police can contemplate these unusual situations, and that is why he includes in his guidelines that the prosecution division in Perth will have the ultimate discretion; that is, it is not mandatory. As the Attorney General reminded the chamber this afternoon, discretion means that it may or may not be done. Members might remember that colourful passage in the Attorney General's comments this afternoon when he said that discretionary means not mandatory. The prosecution division will have the ultimate discretion to decide whether a charge of this nature is to proceed. It may remove the circumstances of bodily harm if it decides the charge is not to be proceeded with, even if a medical certificate is attached. The significance of that condition is that, as the Attorney General said mockingly this afternoon, the officer must get a medical certificate. According to the standard operating procedures manual, the officer has to get a medical certificate. Therefore, even if an officer gets a medical certificate from a doctor that evidences bodily harm, and, notwithstanding that a medical certificate is attached to the brief, the police will have discretion on whether to plead this in the charge. The police will have a discretion. Mr Deputy Speaker, I seek an extension of time.

[Member's time extended.]

Mr J.R. QUIGLEY: Those cases in which the bodily harm would have been at the lower end would have been dealt with summarily, as in the case of, I think, Lewington, which went on appeal to Mr Justice McKechnie in

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

the Supreme Court. In that case, a student, whilst drunk in Northbridge and being spoken to by police, grabbed the policeman by the arm and bruised his arm. It was not Lewington, I am sorry. The case was so minor that the Supreme Court also held that it should not incur a term of imprisonment. Cases do exist that have been recognised by the judiciary as being of a minor nature, although they are technically “bodily harm” cases because there has been an injury to a blood vessel that has caused a bruise. Those sorts of cases are recognised in the prosecution guidelines.

What worries me immensely, and on calm reflection should worry lots of people, is that this discretion—the cut-off point—is now being taken away from judges. It is not coming to this chamber. It is not we in this chamber as an assembled Parliament who will decide what the cut-off point will be. The cut-off point will now be decided by a police sergeant somewhere. This is a very serious step. The cut-off point is being taken away from the judiciary. The judiciary, as in the case I cited —

Mr R.F. Johnson: You are talking a lot of rubbish—you know that, don’t you?

[Interruption from the gallery.]

Mr J.R. QUIGLEY: As in the Fitzsimons case —

Point of Order

Mr M. McGOWAN: Mr Deputy Speaker —

Mr R.F. Johnson: Here we go—boy wonder. I made an interjection, and now you are going to raise a point of order because the people in the public gallery support what we are trying to do.

Mr M. McGOWAN: I am seeking a point of order on the basis that the standing orders are quite clear that proceedings in the chamber should not be interrupted by extraneous events. The Leader of the House should understand that. This is a debate of some emotion; we understand that. I request that members treat each other respectfully during this debate because it is an emotive matter in which interjections —

Mr R.F. Johnson interjected.

The DEPUTY SPEAKER: Order, Minister for Police!

Mr M. McGOWAN: — could naturally cause some response from the gallery. I just ask—and I think, more broadly, that the general public would want it—that members of Parliament behave themselves in this chamber. This is one of those occasions on which I think members of Parliament should adhere to the view in standing orders that all interjections are disorderly. Perhaps this is an occasion on which the Speaker should be in the chair because this is one of those debates that requires a level of management that ensures that sort of outside activity does not impact on this chamber.

The DEPUTY SPEAKER: I do not think that interjection was meant to garner the response that came from the gallery. I ask that everyone in the gallery not interject or disturb the proceedings in the Assembly.

Debate Resumed

Mr J.R. QUIGLEY: Thank you, Mr Deputy Speaker. Apart from that last interjection, I thank government members for their attention during this speech. It has not been the subject of general heckling because we are addressing an important subject, at a very difficult time of high emotion in light of the acquittal of the McLeods last week, which has nothing to do with this legislation. It must be made clear once again that had this legislation been in force prior to the McLeods’ trial or, indeed, the incident at the Old Bailey, it would not have made one jot of difference to that trial or the outcome of it. As far as clear messages goes —

Mr C.J. Barnett: A clear message?

Mr J.R. QUIGLEY: I will come to that in a moment, Mr Premier. Thank you for being attentive so far. The clear message has already come from the judiciary that there are no cases of serious assault—the Attorney General looks up—for which judges have failed to imprison someone who should have been imprisoned.

Mr R.F. Johnson: In your view.

Mr J.R. QUIGLEY: I have referred to the Attorney General’s second reading speech of March last year and he does not cite examples there. He refers to the tragic circumstances of Constable Butcher, but he does not say how that threads into this legislation.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr C.C. Porter: Are you saying there has never been a section 318 that has ruled for anything other than imprisonment?

Mr J.R. QUIGLEY: I said of a serious injury.

Mr C.C. Porter: We are referring to the heading of section 318, which is “Serious assaults”.

Mr J.R. QUIGLEY: We are talking about the nature of the injury. I am talking about a police officer suffering bodily harm involving significant injury to the officer. That is what we are addressing in proposed subsection 318(2).

Mr C.C. Porter: What is the heading for section 318?

Mr J.R. QUIGLEY: “Serious assaults”. They are not assaults that necessarily involve bodily harm.

Mr C.C. Porter: I agree, but they can involve bodily harm.

Mr J.R. QUIGLEY: I agree, but I am talking about those circumstances in which serious assault results in bodily harm not being the sort of bodily harm excluded by the Commissioner of Police in his guidelines; that is, really trivial bodily harm. The guidelines say that the ultimate discretion is to decide whether a charge of this nature may require circumstances regarding bodily harm—remove the circumstances of bodily harm even if a medical certificate is supplied as to the bodily harm.

Mr C.C. Porter: I believe the commissioner has taken that definition from Scatchard and Tamcelik. It is a paraphrasing of what bodily harm actually means, and you know that.

Mr J.R. QUIGLEY: No. This discretion has been taken from the judiciary and placed with the prosecuting authority, with the police. That is a very dangerous path to walk down without the evidence. I invite the Attorney General, as I have said in his absence, to make out the case and show where police officers have been significantly injured—not the minor stuff—and the courts have failed in their duty. With this legislation Parliament is saying to the judiciary that it is doing the wrong thing.

Mr C.C. Porter: Member —

Mr J.R. QUIGLEY: I am not taking interjections at the moment because I have only five minutes left.

I note that when section 318, “Serious assaults”, was included in the Criminal Code, it was the Commissioner of Police himself—I say this because I notice him in the Speaker’s gallery—who did not publicly advocate for mandatory sentencing at that stage. But when the sentence for a serious assault of a public officer or a police officer acting in the course of his duty was made up to 14 years, the police commissioner said, “Let’s see how this develops.” I do not think any unsatisfactory prosecutions have been identified under that legislation since the amendment came through. The legislation has been good legislation; it has not been inadequate.

I have sought to research the cases in which the wrong thing has been done by the judiciary. The most prominent case of the lot involves Sergeant Fleskens. From looking at the transcript, we now know what happened in front of Magistrate Jones. The police prosecutor said that the police were withdrawing that charge because the leg injury happened by accident. Then the front page of *The West Australian* said, “This is what happens. This is how you get bashed by a kickboxer.” The commissioner, probably not being in possession of the transcript, said, “This is exactly the sort of case I am talking about; this is exactly the sort of case that justifies heavier punishments.” What was the magistrate to do when the prosecutor withdrew the charge and said, “It did not happen this way. We withdraw that charge. That injury was an accident”? The same thing happened in the Riley case, another case before His Honour Magistrate Jones. Once again, the police withdrew the charge that attached to the injury to the leg because they said that the injury to the leg did not occur as a result of the assault—the injury to the leg was an accident. This legislation is telling the judges—it is telling Chief Justice Martin and the Court of Appeal—“You guys have got it wrong. You judges are doing the wrong thing by Western Australia.” I accept most of what the police say. I do not accept the police line, as articulated by Mr Dean, that the judiciary is damaging the reputation of the police. I do not believe that the judiciary, which is sentencing for these serious injuries to police, is getting it wrong.

It is most unfortunate that when frustration arises out of what happened last week, everyone has to find something to blame. Today is not the time to debate what happened last week before His Honour Judge Mazza and a jury. I say to the Attorney General that I have taken the time to read the judge’s charge to the jury and I do

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

understand some of the issues that were involved in that case. None of the issues involved in that case is dealt with by the legislation that is before this Parliament, yet the Minister for Police has us over a barrel due to the politics of the situation. He can say, “Look what happened in the Butcher case; we’ve got to support these laws.” As one of the columnists wrote in *The West* this morning—I think it was Mr Paul Murray—there is a disconnect between the arguments surrounding this legislation and the McLeod case. They call it the Butcher case, but poor Constable Butcher was the victim. There is a disconnect between what happened in that case and this legislation. This legislation does not address any of those issues.

Is there anything we can do to support the police? I have only one minute left. I think there should be an expedited list so that when a person assaults a public officer, if it is in a summary court, that person can expect to face a trial within a month. If we say to a child, “If you react like that to your mother again, next October I’ll withdraw your television privileges”, it has no effect on the miscreant child at all. We want to see these people—the person who threw the bottle and the people who assaulted the police—on trial swiftly. There should be an expedited list. When a person is charged with assaulting a public officer, if it is in a court of summary jurisdiction, there is no reason why that trial should not be concluded within four to six weeks maximum on an expedited list. There are expedited lists in civil cases at the Supreme Court.

MR E.S. RIPPER (Belmont — Leader of the Opposition) [4.44 pm]: Let us note at the beginning of my contribution that two broken promises are associated with this legislation that has come before the house. Broken promise number one was to apply this protection to all public officers. Broken promise number two was to do this within 100 days of the election of the government.

Mr C.J. Barnett interjected.

Mr E.S. RIPPER: The Premier vents his anger and carries on when he has been skewered for his own dishonesty to the electorate.

The DEPUTY SPEAKER: Members are shouting above the Leader of the Opposition. Carry on, Leader of the Opposition.

Mr E.S. RIPPER: It has been more than 180 days since the election, and this is a broken promise. The government promised to apply this protection within 100 days. It has not; it has failed dismally. It could have done it; it was not a hard drafting task. It could have allocated the parliamentary time in the weeks before Christmas. It was in receipt of an offer from the opposition to sit extra days or extra weeks to deal with it within 100 days. It spurned those offers. It was casually dismissive about breaking its promise, just as it is casually dismissive, cavalier and arrogant about its breach of promise to public officers.

We are prepared to sit all day and all night and we are prepared to sit extra hours until this legislation is resolved. I make that offer to the government. If the government wants this legislation dealt with this week, we will sit late tonight, we will sit tomorrow night and we will sit Thursday night. I would go so far as to say that we would even sit on Friday. We will do that for a very good reason. Police officers deserve our support. They carry out a very difficult job. They protect us. I agreed with the signs at the rally that said, “Protect police officers or protect yourself”. That is right. There is strong community support for our police officers because our community knows that the frail, the vulnerable and the physically weaker people in our community rely on our police officers in the final analysis. Our police officers go about their task in difficult circumstances in an environment where there is increasing disrespect, a problem with binge drinking and a growing yobbo culture. I am worried about this phenomenon of increased binge drinking and an increasing yobbo culture. That is what our police officers have to deal with day in and day out. There is no question that thugs who bash police officers should go to prison.

This matter has been highlighted by the awful circumstances that have occurred in the case involving Constable Butcher. That young man was left with what seems to be—I hope it is not—a lifetime injury. He will certainly be injured for a long period. There will be devastating effects on his life opportunity and on his family for a very long period. Every member of this house has sympathy for him and his wife as they deal with the circumstances. Every member of this house feels that there has been a gross injustice with the lack of punishment for the people who inflicted those injuries on him. This legislation does not deal with the issues that have arisen in the Constable Butcher case. Without a conviction there cannot be a punishment, let alone a mandatory punishment. Firstly, there must be a conviction. Apart from saying that it is aware of some of the legal issues that gave rise to

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

the result in that trial, the government needs to come to this house with a specific package of reforms to deal with those legal issues.

Mr C.J. Barnett: Weak as water!

Mr E.S. RIPPER: The Premier says, “Weak as water!” He does not want to commit to come into this place to attend to the legal issues that resulted in there being no conviction of the assailant in the Constable Butcher case. Let us look at some of those issues. I am not a lawyer, but I am concerned about the way in which the rules of self-defence apply in a melee. A melee involving opposing players from two football teams and a melee involving drunken people and police officers trying to restore order are completely different circumstances. Consideration should be given to the rules that apply.

I noted the issues that the Attorney General raised about the jury system. Members on this side of the house are strong supporters of the jury system because it is meant to reflect our community. Does it reflect our community? Do we have enough people in the community prepared willingly to undertake jury service or do we have far too many people taking every opportunity they can to get out of their obligation? Unless we attend to these legal issues there could be an argument that we might have a situation in which juries do not properly reflect the true nature and true breadth of community opinion. I urge the government to do more than state that it is aware of these issues. I urge the government to come into the Parliament with measures to deal with the issues that prevented a conviction being delivered in the Butcher case.

I urge the government to think about what can be done to deal with the problem of an increasing lack of respect for authority in our community. What can be done to deal with the binge drinking culture? Is the government looking at its liquor licensing arrangements, for example? This is not a set of circumstances that is amenable to one single, simple political solution. This is a challenge to the government and it must respond in a broader way than it has so far responded.

I referred at the beginning of my remarks to the broken promise. Our nurses do a terrific job and it is disgraceful and unacceptable that in emergency departments nurses trying to care for critically injured people are subject to assault and the threat of assault. That should not be allowed to happen. Of course we must protect police officers, and of course we must protect nurses, which is what the government promised to do. Disgracefully, it has gone back on its solemn word, which was given to the electorate in the election campaign and the Premier’s 100-day plan. The government will leave nurses out of the equation. In consideration in detail we will certainly move amendments to include nurses in the coverage of this legislation.

Mr C.J. Barnett: You are watering it down.

Mr E.S. RIPPER: Watering it down! Let the *Hansard* record that the Premier thinks that protecting nurses is watering down the legislation. Let the *Hansard* record that, because that is the attitude the Premier has taken. I would like to see the Premier go to the emergency department at Royal Perth Hospital or Sir Charles Gairdner Hospital and tell the nurses there that they do not deserve extra protection from the threat of assault.

Mr C.J. Barnett: Here we go again—Labor soft on crime. Nothing has changed.

Several members interjected.

The DEPUTY SPEAKER: Members! The Leader of the Opposition.

Mr E.S. RIPPER: I would like to see the Premier go to a fire station and tell the firefighters there that when they go to a traffic accident, perhaps involving intoxicated people, and they cut people out of the cars, if they are assaulted they do not deserve special protection even though they are serving the community in that way. I would like the Premier to explain that to them. I would like to see the Premier go to a school, where teachers may have to deal with parents who have custody disputes over their children. Teachers are required to honour the Family Court order and perhaps not surrender the child to the custody of the parent who does not have that right under that Family Court order. They consequently face the risk or the reality of assault. Of course those teachers need protection. They are working for us and for our community and they should not be subject to the possibility of assault from irate parents.

Moreover, the members opposite who protest my remarks are the people who promised the electorate that that is what they would do. However, 180 days later they deny their promise. They have no shame. They do not appear to have any sense of guilt that they have broken their promise.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

The government has persisted in describing this legislation as a case of mandatory sentencing. The police guidelines state that —

Officers are to be aware that due to the mandatory imprisonment requirement for persons found guilty of a s 318 offence in prescribed circumstances, there should not be an allegation that bodily harm has occurred to a complainant unless the bodily harm can be fairly and medically assessed as reaching a level of significance which would exclude any reasonable description of the injury as being insignificant or trivial or minor or transient.

Clearly, now we do not have a mandatory sentence for any case of assault involving bodily harm. We have another test whereby there has to be medical assessment that excludes any reasonable description of the injury as being insignificant or trivial.

Mr C.C. Porter: Do you know what the definition of “bodily harm” is?

The DEPUTY SPEAKER: Attorney General, I cannot hear what the Leader of the Opposition is saying because you are drowning him out. Let him continue, please.

Mr E.S. Ripper: Under these guidelines the police have a discretion to charge under the provision that would result in mandatory imprisonment or charge under another section that would not result in mandatory imprisonment. Therefore, we do not have what the Premier says we have—a mandatory sentencing scheme. What we have is a government concession. With this government concession, the publication of these guidelines today, the issue moves not from a case of mandatory sentencing versus non-mandatory sentencing but to different issues. The issues are what exceptions there should be to the otherwise mandatory sentence of imprisonment and who is to make the decision. By publishing the police guidelines, the government has shifted the issue from mandatory versus non-mandatory to what are the exemptions and who makes the decisions about whether the exemptions should apply. If there are to be exceptions in what the government proposes, it is our view that in the final analysis it should be a judge who makes that decision. That is the correct way to proceed—not have a police officer but a judge make the decision.

In consideration in detail there will be debate about how this law can operate to prevent further injustice. That is a proper debate for this Parliament to have. Who would want to pass a law that would cause further injustice? Of course we want to deal with the problem.

Mr C.J. Barnett: Matthew Butcher—that is injustice.

Mr E.S. Ripper: Premier, what happened to Matthew Butcher was indeed injustice! This legislation would not deal with that sort of case. The Premier has it within his power to bring legislation to this place to deal with all the issues raised in the Matthew Butcher case. He should do it! Do it! Bring it to us and we will cooperate. We will sit extra weeks. We will do whatever is required to deal with those legal issues, but he should bring them to the Parliament. The Premier has battalions of legal experts available to him, and that is what he needs to do—not just rabbit on with thought bubbles. The Premier should do his job and use the advice he has, use the expertise that he has available to him, and bring the legislation to this house.

Of course there will be debate about the detail of this legislation; that is our obligation as members of Parliament and we will not shirk that obligation. In whatever form the house decides this legislation should take, we will cooperate in the passage of the legislation. I ask the Premier: will the government say the same? Will it pass this legislation in whatever form this house eventually decides it should take, or will it, somehow or other, not cooperate?

Several members interjected.

The ACTING SPEAKER (Mr P.B. Watson): Members, I want to hear what the Leader of the Opposition is saying. Members may have their opinion, but they will have an opportunity to stand and speak in the house.

Mr E.S. Ripper: I repeat: we will cooperate with the passage of this legislation in this house. I do not believe the government will say the same, because we are saying that in whatever form, in whatever detail, this house decides, we will cooperate in the passage of the legislation.

Several members interjected.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr E.S. RIPPER: I will make two more points. I repeat that this legislation is not enough in itself. The government has to have programs to deal with the binge-drinking culture, the increase in yobbo culture —

Several members interjected.

The ACTING SPEAKER: Premier! Members!

Mr E.S. RIPPER: — and with the decreasing respect for authority, which takes very many forms and affects very many of our public servants who deliver services. The government has to examine the legal issues that arose in the Butcher trial, and it has to do more than talk about it and give the odd interview about it; it has to do the hard work and bring a package of legislation to this house.

Finally, to deal comprehensively with these issues the government must get on and resolve as a matter of urgency an ex gratia compensation payment to Constable Butcher. We dealt with this in question time and I do not want to go into it in any more detail, but the government has it within its power to settle and resolve this, and it should do it and should do it quickly —

Mr C.J. Barnett: What's your position?

Mr E.S. RIPPER: The Premier asks me again what is —

Mr C.J. Barnett: What is your position on this?

Mr E.S. RIPPER: The Premier must be dumb! The Premier must be just dumb! I cannot help it if he cannot listen to a speech —

Mr C.J. Barnett: Do you support the legislation?

The ACTING SPEAKER: Premier!

Mr E.S. RIPPER: I will repeat it: we will cooperate in the passage of this legislation through the house.

MR M.J. COWPER (Murray-Wellington — Parliamentary Secretary) [5.02 pm]: Firstly, I welcome my former colleagues to this place. Hopefully, in the next few minutes or so I will be able to bring some sense to this debate. I apologise for some of the drivel we have had to listen to today. I am ashamed —

The ACTING SPEAKER: I think the member should be talking to the bill and not making personal insults.

Mr M.J. COWPER: I shall be talking to the bill.

Arguably the most dangerous job in our society today is that of a police officer. If anyone can suggest a more dangerous profession than being a police officer in today's society, speak now—right! We rely on our police officers to be out in the community, responding to critical incidents. They deal with arguably the most dangerous being on this planet—the human being.

When police officers are carrying out their duties, be it a simple traffic stop through to a domestic violence incident, or even, for that matter, going down to a local football match or a rock concert, they can find themselves in trouble. As an example, I will recount an incident that happened to me.

A few years ago I attended a Jimmy Barnes concert as a uniformed police officer. There were about 3 000 or 4 000 people at the Karratha Kats football oval to watch the concert. Whilst I am thinking of Karratha, I acknowledge Sergeant Shane Gray, a very brave police officer from Karratha who was in the back of the chamber just a moment ago but just left, probably because he was distressed at what he was hearing. When I was in Karratha at the Jimmy Barnes concert, a chap approached me. I was on duty with Constable Drew Mazzaleskis and we were doing a foot patrol of the immediate area. A chap came up to me and said, "Excuse me, officer, we've got a gentleman over here who is blocking the path to the drinks stand", which was a Coca-Cola caravan with a drawbar—members have probably seen what I am talking about when attending various events. This chap was sitting on the drawbar of the caravan and was in a position that was impeding the ability of the attendants working in the cool drinks stand to go in and out. The man who approached me said that he had asked this person to move but he was simply ignoring him. I said, "No worries." There was a fair bit of loud music in the background, as members can imagine, it being a Jimmy Barnes concert. I went up to this chap. He was a Yugoslav-looking chap, very similar to the member for Carine; a very solid and very handsome chap! This gentleman was sitting on the drawbar; he was focused on the music and moving to the beat a little bit; he had just a little bit of a sway going on. I leant over and whispered in his ear, "Excuse me, chief; the attendants of this

Extract from Hansard

[ASSEMBLY - Tuesday, 17 March 2009]

p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

drinks stand want to get access and you're impeding their ability to get in and out with the drinks, and there are a lot of people here. Would you mind just jumping up out of the way, please?" I stood back up and waited for his response. No response. Drew Mazzaleskis, my offsider, asked me what he said, and I said, "He hasn't said anything yet; hang on." I said to the man, "Listen, chief, you probably didn't hear me the first time. I asked if you wouldn't mind just jumping up out of your seat, because these people here have got a bit of a job to do. Give us a bit of a break. Go over there and enjoy the fantastic concert that you're here to enjoy. I'd appreciate that very much." He indicated to me to lean over a bit further, which I did, and he said, "You know what?" I said, "No, sir; what?" He said, "You can go and get ... lost"—and he did not say "lost". I stood up and looked at Constable Mazzaleskis, who again asked me what the man had said. I told him that he had just told me where to go, in no uncertain terms. I said, "All right, no worries", and placed my hand on his shoulder and said, "Excuse me, chief", and I was about to say a few words to make him get up, when he came out swinging. He landed about three on me—right on the chin, on the chest—my glasses went skew-whiff and my hat went flying. I remember that the guy at the Coke machine managed to get my hat and my glasses. I was forced back about three or four steps and I had my back against a trailer that had empty cans in it. He got in two or three very good blows, and it was about then that I managed to get myself back on stream. Meanwhile, Constable Mazzaleskis—who is a very nice chap but is only a little fella—was on the radio straightaway, looking for some backup. That is an example of what can develop from an initially innocuous situation. I was able to restrain this person, get him down on the ground, handcuff him, get him to his feet and march him out in full view of people at this event. That was a fairly simplistic one to deal with, but when, for example, there is a fight at the front of the Kimberley Hotel or the Crossing Inn, as I experienced in my previous occupation whilst working in the Kimberley —

The ACTING SPEAKER: Members! Member for Mindarie!

Mr M.J. COWPER: — one does not always have the benefit of being able to organise sufficient backup to be able to deal with a situation.

The ACTING SPEAKER: If members want to have a meeting, they should go outside, please. I want to hear what the member has to say.

Mr M.J. COWPER: Police officers can be thrust into situations and have to make split-second decisions about how they are going to deal with them.

What concerns me and the people of Western Australia, as evidenced on the front steps of Parliament today, is that a lot of people have been affected by crime in this state in recent years. I had the wonderful chance to reacquaint myself with Ellen Rowe, the wife of Bill Rowe who was dreadfully assaulted in Geraldton; I saw Shane Gray out there; and I saw a whole host of people who have been victims of crime. Today's rally was the manifestation of the public's frustration, and it showed that the people of Western Australia demand that we look after our police officers. The fact remains that the simple message we are sending is that if we do not protect our police officers, people must protect themselves. That is not a simple thing to do.

Another occasion I can recall occurred at the Kimberley Hotel, where I was enjoying the hospitality of my townfolk at the invitation of the local publican. We were having a barbeque near the swimming pool. It was a fantastic event and everyone had come together for a pleasant evening. However, some Maori dodgem-car operators had come to town, who were as big as the Maoris who play in the front row for a National Rugby League team. They were big, solid Maori or Solomon Islander looking guys. While we were at the swimming pool they came to the closed party, jumped in the pool and splashed everyone. Not too many people in that situation wanted to jump up and support me, with the exception of two justices of the peace, Dom and Joe Baz. Dom, Joe and I, together with some extra troops we called, managed to arrest those people and put them into the back of a paddy wagon. They went to the hotel to create a disturbance at that function. During the course of the arrests, we copped them left, right and centre. Let me tell members, they had arms like legs. Joe and Dom Baz, who are not small people in their own right, were lifted off the ground by the big, hulking Maori people.

Something that I did not have to contend with as much as today's police officers do is the people in our society who are affected by drugs. I do not know what the statistics are but I do not need to state them. The number of people who are affected by drugs that make them uninhibited and who will challenge our police officers because of the results we have been getting in recent times is real. The member for Mindarie said that we are attacking the judiciary. I do not blame the judge in the Matthew Butcher case, Judge Mazza. I think he is a pretty darn fine judge, myself. I am no fan of lawyers, with the exception of one whom I met 18 months ago and with whom I

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

have become very good friends. Lawyers are not on the top of my list of best friends. Most of my friends are police officers, firemen or nurses and the like. Look at how some lawyers approach their job. Their job is to get their client off the charge. That is the way our judiciary is set up. We have a prosecution and a defence. The defence will say and do just about anything to get the client off. Look at the transcripts of the Matthew Butcher case, which was supposed to be a three-week case but which took six weeks. Members should ask themselves why it took six weeks when it was anticipated to take just three. I will tell members why. Mr Lovitt, a defence lawyer who is a very skilled person in the courthouse, chipped away by saying that this one was protecting the other, and he built a case. That is where I believe the judiciary is forced to listen to the debate. If members read what Mr Lovitt said to Judge Mazza, they will see that he was pushing the judge the whole way. It is a wonder to me that the presiding judge, Judge Mazza, did not charge Mr Lovitt for contempt of court and throw him into the doghouse for a couple of days. In retrospect, I wish he had. The problem is that it would have given grounds for a dismissal of the case and for a retrial to be conducted at more cost to the taxpayer, and that could have taken another six weeks. That is just one example. I have seen that happen over many years. The envelope keeps getting pushed and pushed. Certain judges are not prepared to cast these fleas into jail for contempt of court and for the manner in which they conduct themselves in court, specifically because they are there to be mealy-mouthed and to grind away and to undermine the mindset of certain individuals. When one juror got up and wished to openly espouse her views—in retrospect it was probably not a good idea—she got kicked off the jury. I do not blame the judges at all. I think that is the system we have developed over time. That leaves a residual problem for the police, and inadvertently for the rest of society.

Recently the police officer's job has become increasingly hard, such as by the advent of certain laws that were made in this place for occupational health. We do not have single-officer patrols anymore, which I am glad about. The fact is that judges will not convict a person on the evidence of a single officer. There must be a corroborating officer or some other evidence to support the police officer. There must be two officers at any one time. In essence, that is putting half the number of police officers out on the road. What does that say to the community? How many members here have heard people complain that they can never get a policeman when they want one? Do members think they are sitting at the blooming burger bar eating burgers? I can tell members that they do not do that. Every member should go to the police operational centre at Midland on a Thursday or Friday night and spend a couple of hours watching what goes on. The Perth metropolitan area is broken up into districts: the north-east, west, northern, southern and south-east metropolitan districts. The south-east district includes Cannington. I would prefer it if the old district names such as Cannington and Mirrabooka were used rather than north-east and south-east. That is confusing for me. Cannington is the busiest police district in Western Australia, primarily because it has the biggest area with the biggest population. Members should see what happens when a job comes in and how it is processed through the interceptors. It goes onto a computer and is given a priority. The jobs are then dispatched as the vehicles become available. There is a new computer aided dispatch system. The amount of work those guys have to get their head around to get to a job, as determined by the priority in these cases, is very important.

The capacity of our police officers is being eroded every day. This is not just one piece of legislation, as the Leader of the Opposition has been alluding to. There is a suite of things we can do to support our police and to make them safer, and the Attorney General will be working very hard to achieve that end. I have said outside this place to anyone who does not support this legislation that it will be on his head. The electorate will know about every member who gets up in this place and speaks about this bill. The electorate is telling us that this legislation is what they want. Certain members can give a crafted, interesting angle about their interpretation of this legislation. I suppose that is the nature of the beast and of how business is done in this place. However, do not be mistaken: at the end of the day this is a matter of politics and the people of Western Australia have spoken very loudly and concisely today. I do not propose to delay this legislation. I want it to be brought on straightaway after everyone has had an opportunity to speak on it, of course. I want to see a collaborative approach from members on this house. I know that there are very fine members on the other side who have very strong connections to their local police officers. Let us put politics aside and let us put forward legislation that is in the best interests of our police officers and in the best interests of Western Australia. That should be our test in this place.

MR J.M. FRANCIS (Jandakot) [5.18 pm]: I convey my best wishes to Constable Matthew Butcher and his family. I believe he is a true Australian hero who deserves our support. I want all members of Western Australia Police, especially those who have been injured in the line of duty and those who are in the public gallery, to

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

know that they have a friend in this house in the member for Jandakot. Throughout the debate so far I have heard various challenges from the members for Fremantle and Mindarie to come up with a single example of someone who has been convicted of committing a serious assault against a police officer who was not sentenced to jail. I challenge them to read the sentencing comments for the man who was convicted of bashing First Class Constable Michelle Ball in Derby in 2006. He was a large man, twice her size, and he violently and gutturally punched that female police officer in the face. He was tried and found guilty, yet he did not spend a single day in jail. On behalf of the people of Jandakot, I say sorry to First Class Constable Michelle Ball, because I believe the legal system two years ago let her down.

As the representative of the people of Jandakot, I want to represent their concerns. There is no doubt in my mind that the overwhelming majority of the citizens of my electorate want to see people who bash cops sent to jail. As an example, I will read out a couple of sentences from some emails that the government has received in the past few days on this issue. The first is from a Mr Simon Hassett, and it reads —

I used to be a police officer with the WA Police and was looking at returning to the job I love. However after seeing the results of the above court case I am seriously reconsidering my decision. If I was to return to the job I would need to know that I would be protected by law to carry out my duties as a Police Officer.

...

Thank you for taking the time to read this email, I'm sure you have had many.

The second is from Carolyn Ambrose, and it reads —

The outcome of the trial of the McLeods' is disgraceful, deplorable and disgusting! It devalues human life, morals, ethics and respect for anybody in lawful authority. ...

There should be more support from the Government to the WA Police whose men and women are putting their life in carrying out their duties, caring and ensuring safety for the people of WA ... I do not want my son to be another Matt Butcher!

The last email I will read is from Mr Brian Beard, who is not one of my constituents; he lives in Australind. He concludes his email with these exact words —

Get off your sorry bums and do something about this before someone is "shot", and while we still have a police force who are committed to their jobs.

I also want to point out a few issues that have come to my attention in this debate. Like the member for Warnbro, I was a Naval officer before I entered this house. I am not a lawyer, and I hope that gives me a different perspective. However, I do know enough about the law to know what mens rea means. It is the requirement to prove criminal intent. Various members have spoken about accidents that might occur and cause a police officer to be injured in the course of performing his or her duties. We need to bear in mind that under this legislation, the intent to cause harm must be proved.

Moving on, the single biggest issue in the election campaign in Western Australia was, without doubt, law and order. The overwhelming fuel for the mood for a change of government, and the reason the Labor Party lost the election, was the issue of law and order. I said that last week in this house, and I will say it every time I rise to speak in this house. It is a shame the Labor Party has not learnt why it lost the election. Even with the threat of federal intervention in the Labor Party, it still cannot work that out. In fact, the former government was all over the place on this issue like a mad woman's knitting. I have been to the Grand Canyon, and today I can see it dividing this house. For some members of the opposition to argue that mandatory sentencing should be given a wider brush, while other members—the members for Balcatta, Willagee and Fremantle—argue against it, is blatantly contradictory. I struggle to accept being lectured by the Labor Party on the issue of law and order. After eight years of a Labor government, the people of Western Australia are sick and tired of people getting away with crime and of people bashing cops. It is black and white. It is very simple. The people of Western Australia have had enough, and they took that to the ballot box six months ago when they voted in the election. I am sure that for some members opposite it is a huge adjustment to be in opposition. There is no doubt at all about why some members opposite are in deep contemplation about their future and are weighing up other options. I address that remark at the absent member for Armadale. The opposition has failed in not protecting our police

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

officers. As I have said, the former government had eight years to do something other than just oppose the Liberal Party's position.

As a new member, I also want to pay respect to the member for Hillarys, who has long been a champion of the police force in this house. Only last year he presented to this place a private member's bill on the very issue that we are now debating. The Labor Party had yet again the chance to rise above politics and climb the mountain and do what was right —

Ms M.M. Quirk: I think it was the member for Murray-Wellington who presented that bill.

Mr J.M. FRANCIS: I think it was the member for Hillarys—the now Minister for Police—who sponsored that private member's bill.

Several members interjected.

Mr J.M. FRANCIS: Regardless of who sponsored it, members opposite did the wrong thing and failed to support it. Members opposite had the opportunity to rise above party politics, and they did nothing. They voted against it—27 members opposite voted against it. It is very simple. The Labor Party is either for protecting police officers from assaults or it is not. It is black and white. It is not complicated. Members opposite do not need the member for Fremantle to speak out for them. They either get it or they do not. It is time the Labor Party stopped protecting the perpetrators of crime in this state and started protecting the victims and looking after those who look after us.

The member for Mindarie suggested that this legislation is a slap in the face for the judiciary. The member for Balcatta said on 9 April last year in this house —

We are keen for the courts, through the clear urging of Parliament, to award heavier sentences ...

He did not have a problem with it then. However, the Labor Party now seems to have a problem with instructing the courts on what sentences are expected by our society. Clearly the courts interpret the laws that we set in this place. This place provides the courts with the laws that they should enforce. Last year, the Labor government increased from 10 years to 14 years the maximum term of imprisonment for a person who assaults a police officer. I struggle to find one example—I challenge anyone from the opposition to find one example—of a person who has belted a cop and who has been given a penalty of 10 years' imprisonment. I fail to understand the effect of increasing the maximum penalty, when what our society wants, and what our police officers want, is an increase in the minimum penalty. Getting pushed and punched and shoved should not be just a hazard of the job for police officers. That should never be accepted as just something that happens in the course of their duties as police officers. Police officers hold a special place in the minds of all Western Australians. The law should reflect that. The law should distinguish the occupation of policeman or policewoman above all other occupations. Police officers are the people on the front line. They are the people who have to break up fights and arrest people. Their lives are on the line every day and night that they go to work. This legislation is the very least that we in this place can do to protect police officers from the thugs and the low-lives and to make their workplace a little bit safer, and to give them and their loved ones some comfort that they will be protected when they are performing their duties. We need to send a clear message that our society does not tolerate people who bash coppers. Even if the number of people who are convicted increases only a little bit, it will send a clear message —

Mr M.P. Whitely: How would it increase the number of convictions?

Mr J.M. FRANCIS: It would have increased the penalty for the gentleman who bashed Constable Ball and got away with absolutely no penalty. All he got was a suspended sentence. He did not spend a single day in jail. There is no doubt that the amount of crime and assault is on the increase in this part of the world. I know it may be politically incorrect to say this, but I will say it anyway. I believe we can attribute that to a number of causes. There are some kids these days who have no respect for people in authority or for public property. We can see that in the increase in graffiti and in violence and in the number of offences that are being brought to our attention. Do not get me wrong. The majority of kids are great. However, there are some kids who need a good clip over the ear. When I was growing up, I did not have to think about giving up my seat on public transport to a pregnant woman or a woman with children, or to an older person. It was an automatic reaction; it just happened. I am a bit upset about the number of times I have walked onto a train and seen young people forcing older people to remain standing, but the idea of vandalising, rubbishing or bashing cops certainly never entered my mind, nor

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

I hope, those of my friends. The other factor that has caused a rise in the level of antisocial behaviour in the state is the judicial system. I hope that the member for Mindarie is listening. Our judicial system lets people get away with a lot more than society expects.

Most members know that in the past eight years of the Labor government not a single new police cell was built in Western Australia. More people are moving into this state; the population is increasing as a result of the mining boom, but the Labor Party is —

Mr J.R. Quigley: If you are talking about prison cells, the previous government built 212 of them.

Mr J.M. FRANCIS: The previous government refurbished prisons, but it did not build a single new prison cell.

Mr J.R. Quigley: Yes, we did—212 of them.

Mr J.M. FRANCIS: Two hundred and twelve as a percentage of the population increase over eight years—if the previous government did build 212, it is still shameless.

The real issue is that sentences are just far below what the community expects. I personally believe that anything less than 20 years for murder is an insult to the memory of the victim. The penalties we have seen being given out for various offences are, quite frankly, embarrassing. As far as this legislation is concerned, the reality is that being a cop is a bloody hard job. I have spoken to cops who are continually on the front line and continually being assaulted, passing on bad news to relatives and attending horrific crime scenes, all while being totally frustrated with the court system that seems to go so easy on the cases that they bring to prosecution. It is no wonder that a policeman resigns every day in Western Australia.

As I said, the biggest single issue during the election campaign was law and order. The member for Fremantle referred to public disquiet on this issue. I assure the member that public disquiet was a very large reason for the Labor Party losing the election. People know which side of politics in this state is tough on criminals and which side is not. As I have said, it is black and white. The Criminal Code Amendment Bill 2008 reflects a black-and-white election commitment from the Liberal Party, and it is something that I passionately believe in. Over the past six months unjustified doubts have been raised by the Labor Party and the Leader of the Opposition over election commitments, but of all the election commitments, this was the biggest and the most important. Without a doubt—bash a cop, go to jail. If Labor truly wants to see us keep our election commitments and hold us to account, members opposite should vote overwhelmingly in favour of this bill—no ifs, no buts and no amendments; unqualified support. It is time for the Leader of the Opposition and the Labor Party to stand up for the people of Western Australia. Now is not the time to play party politics on this issue, and for the opposition to find little wedges to distinguish itself from the government. We know what the opposition is trying to do; it has done it many times over. The challenge is for the opposition to gather the courage and do what is right; to look the police officers in the public gallery in the eyes and say that they will vote for this legislation. As a proud supporter of police, a patriotic Western Australian and someone who believes that this bill will send a very clear message to people who bash cops, I commend the bill to the house.

MS A.R. MITCHELL (Kingsley) [5.34 pm]: I support this legislation and I am very proud and pleased to support our police force. I do not have a police station in my electorate; we are serviced by police from both Warwick and Joondalup stations. I thank them for that support. Members will recall that these stations have been targeted by some very violent and unacceptable actions in recent months, and there is no doubt that, despite the very best intentions of the police, some of that service may have been diminished over this time. However, the police have made every endeavour to make sure that my electorate is serviced well. Interestingly, I had reason to call the police on Saturday afternoon. I actually finally made it down to my local tennis club for the first time this year, and I thought I would have a quiet afternoon. Unfortunately, there was some very obvious hooning going on—I am talking about 4.30 in the afternoon, not late at night—and my tennis game was interrupted. I called the police and they responded. They came down to the club and spent some time there. We did not get around to getting the hooning bit finished, because I took the opportunity to ask them to investigate some additional behaviour that could have been questionable. The outcome of that was that it was a very productive afternoon for the police and my constituents. There will be more on the hooning at a later date; I will raise that again later. I know that the police who serviced the call I made on Saturday afternoon were at Parliament House this afternoon, and I want them to know that I will support them and other police.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

I, the people of my electorate and the people of Western Australia want to know that we have a strong and effective police force. We want to know that there will be quality people in that police force who will be the best police that we can have. For this to occur, we must ensure that those quality people are supported and protected. I was appalled to learn that an average of four police officers a day are assaulted in some way. In no other profession would that be considered acceptable, but somehow or other it has become part of life. However, it should not be part of life, and we must make sure that it is not. We must also provide support so that families and friends will encourage people to become police officers. At the moment, I cannot imagine any family member or friend encouraging someone to become a police officer. I do not think I could do it, and I cannot expect other people to do it. We must provide support for those families and friends.

It has been mentioned that our society has changed. Members have heard me say this before, but we do not have to accept these changes. The challenge is for us to make sure that we do not. We have that opportunity today and this week with this legislation. I do not like to see the increased violence in our communities towards each other. I do not like to see the lack of respect that appears to exist for other people and for other people's property. This is not acceptable, and we must do something about it. I am more specifically concerned about the lack of respect for police in our society and the increased violence against police. Once again this is something we should not accept as normal, and it is up to us to do something about that.

I am very pleased that many people are speaking up about this matter. I was very pleased to see so many people out this afternoon from all walks of life supporting people they know and people they do not know. I am very pleased that many people in my electorate have spoken to me and contacted me, and it has been reassuring that they also feel the same way. This is not how they want our society to be. This is not the support they want to see for our police. I am very pleased that Liberal members of Parliament have supported the principle of mandatory sentencing for assault on police officers since 2004, and I am very pleased that I now have the opportunity to continue to support mandatory sentencing for assaults on police officers. This is a wonderful opportunity to really make a difference for the people who protect us. I want to know that when I call the police, I will have the very best police. I do not want to be calling them too often, but I want to know that when I call them, the very best police will attend. I want them to know that I will support them with this legislation.

MS M.M. QUIRK (Girrawheen) [5.39 pm]: I do not want to delay the passage of the Criminal Code Amendment Bill 2008 needlessly, but I need to make a few observations. It is trite to observe that a huge toll is taken both physically and emotionally on our police officers and their families. That is something that is said frequently in this house—I could say almost promiscuously—but that does not necessarily make it any less true. Certainly, in my maiden speech I highlighted the contribution to our community that the police make, which is often ignored. In the following years, I have spoken about the police on a number of occasions. It was very gratifying to see the public support for our police at the rally in front of Parliament House this afternoon.

It is, however, the case of the courageous Constable Matt Butcher that has ignited the public's imagination. I, like the Leader of the Opposition, reiterate the opposition's support that we will do everything within our power to ensure that Constable Butcher receives adequate *ex gratia* compensation from the government. His quiet dignity and courage is an inspiration to us all, as is the loving support of his wife, Katrina. Sadly, however, the passage of this bill will do nothing to alter the situation of the Butchers.

This legislation recognises the inherently dangerous nature of policing and other front-line professions. It is gratifying that the government is extending the scope of the bill to include other professionals on the front line. I acknowledge, as we have heard today, that the vast majority of assaults on public officers are on police officers. There is no question that, on a daily basis and most consistently, it is the men and women of the Western Australian police service who are at imminent risk of serious harm. The appropriate scope of this legislation is difficult to get right. I looked at some discussions on this very issue that were held in the Scottish Parliament some years ago. It was suggested that the appropriate measure was to provide such protection for emergency workers in emergency situations. It is my belief that that focus is too narrow because, unfortunately, of the state of affairs in which we find ourselves in Western Australia. Not only are our front-line public officers in danger in emergency situations, but also it is very much a matter of routine.

It is said that there is more than one way to skin a cat. It is very unfortunate that the opposition has been characterised as being obstructive and not supporting our public officers on the front line.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Dr K.D. Hames interjected.

Ms M.M. QUIRK: We want to ensure, member for Dawesville, that the unintended consequences of this legislation are fully canvassed in this place. That is our legitimate role as opposition. Once this bill is passed, I believe the people of Western Australia can be confident that what has passed into law is as robust as possible. One of the unintended consequences is how we can be assured that the laws will be enforced equally wherever people are in this vast state of Western Australia. I have spoken frequently in this place about this matter, and it is not unreasonable to inquire whether an unequal application of the law will exacerbate the already disproportionate level of Indigenous imprisonment. That is a question that I may ask the Attorney General during the consideration in detail stage. For that reason, I will move an amendment that, at the conclusion of two years, there be a review of the act so that we can examine whether this law is the most effective it can be and whether there have been any unintended consequences of the legislation. That sort of amendment does not make the opposition any less supportive of the need to protect our public officers.

I must stress, however, that this legislation is not a panacea or cure-all; nor will it be a deterrent to would-be offenders. I have heard the member for Jandakot say that it will send a message to the thugs. Unless there is an accompanying education and advertising campaign and broad community discussion, I do not see how the thugs will get the message, other than by reading *Hansard*.

Several members interjected.

Ms M.M. QUIRK: This legislation should be part of a suite of measures. It will not, of itself, cure every ill that we have heard about in this place today. As has been pointed out by the Premier, it does, however, signal that the community sentiment is that the courts are out of touch. It is most undesirable that that is the community sentiment and that ordinary people feel marginalised and isolated from the justice system. It is most unfortunate that that is the state of affairs. We must do more to engender in the community a sense of ownership of our justice system. It was for that reason that I made the comments in the context of the McLeod case. I was not criticising the jurors; I said that it is unfortunate that so many Western Australians seek to exempt themselves from jury duty, while at the same time having an expectation that our system will function effectively.

A couple of other issues are worthy of noting in this context. The first is what I call the Director of Public Prosecutions-police prosecution dysfunction. I obtained through a freedom of information request last year a report on the relationship between police and prosecutors at the Office of the Director of Public Prosecutions. It was not edifying reading; in fact, it was disturbing reading. In many cases briefs were received late; in other cases demands were placed on police to provide evidence at the last minute, prosecutors did not look at the brief until the last minute, and prosecutors and police communicated with one another only by way of email. Clearly, something needs to be done. It is necessary to get more runs on the board so that those prosecutions that do go to court are much more robust and much more likely to result in a conviction. I know that the police are already doing some things in this regard. I understand that a senior police officer is stationed at the office of the DPP. However, again, this is part of the whole picture. It is not just a matter of changing this legislation; we must look at a range of issues and make sure that they are all remedied.

Dr K.D. Hames interjected.

The ACTING SPEAKER: Order, Minister for Health!

Ms M.M. QUIRK: That brings me, member for Dawesville, to the broader cultural issues, which I think the Leader of the Opposition has already mentioned—that is, the widespread abuse of alcohol and the lack of respect for police. No law alone can change this situation; however, I do not believe that it is beyond the wit or wisdom of the people in this Parliament and of those in government to introduce a range of public policy measures to assist in creating a climate in Western Australia in which our public officers, particularly police, are given the protection and respect they deserve for protecting our community. In that regard, I was very pleased to hear the Minister for Mental Health give his brief ministerial statement today. I am pleased that he is building on the good work that was done on the Rethink Drink campaign.

On the matter of deterring would-be offenders, there should be a broad public education campaign. We must support the need for such a campaign if we are to adequately deter those who will be covered by this legislation.

I will raise a couple of minor issues before I sit down. I believe that actions speak louder than words. Many of those whose rhetoric has been the loudest over the past few days are the very people presiding over the three per cent cut to police services. It is all very well for members to say that we need to protect the police, but at the

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

same time they are slashing the very budget that would, for example, enable more Tasers or more protective vests to be purchased and would allow adequate security at our police stations. I call on members to be mindful of that the next time they hear a member of the government, in particular the Minister for Police, giving a terrific motherhood statement, but there is a sting in the tail. Similarly, the police enterprise bargaining agreement is shortly to be negotiated. It will be interesting to see whether the very vocal members will be just as vocal in supporting our police officers in a tangible way through their remuneration.

The opposition wholeheartedly agrees with the thrust of this bill. I commend the Attorney General for reconsidering the scope of the bill. We will of course raise a number of issues at the consideration in detail stage.

DR J.M. WOOLLARD (Alfred Cove) [5.49 pm]: The issues of attacks on police and of greater protection to stop those attacks were raised repeatedly during my first and second terms as a member of this Parliament. I was very pleased last year when I heard that this legislation was going to be introduced. I am pleased that the Attorney General is in the house. He could tell members that the first thing I did after the introduction of the Criminal Code Amendment Bill 2008 was go to his office and ask why the legislation covered only police and not other officers.

Mr C.C. Porter interjected.

Dr J.M. WOOLLARD: I know. He explained at that time that the legislation would be introduced initially to cover police because of the ramifications of making the scope too broad. The concerns he made public at the time in *The West Australian* were about the scope of the bill. That is why, when the bill was introduced, he said that he would look at guidelines to introduce a “safety valve”. I think those are the words the Attorney General used. He said that the safety valve was to ensure that, if a minor offence occurred that resulted in a bruise or a scratch—I think the Attorney General’s example was a shopping trolley running into someone—the offender, say, a mother, would not be sent to prison for that minor offence. I think this bill contains motherhood principles, and I fully expect that it will be passed this week. As far as I am concerned, this legislation should be off the table in a few hours because everyone should support our police. Some of my family members are in the police service. I work very closely with them; they do a fantastic job.

Members: Hear, hear!

Dr J.M. WOOLLARD: We all need to know that we can call the police and that they will be there for us. Although the Leader of the House has told members that we might sit late, I very much hope we do not because I hope this legislation will be passed nice and quickly.

Mr R.F. Johnson: If you give us the support we are looking for, we will get it through very quickly.

Dr J.M. WOOLLARD: I will certainly give the bill support. I think the Premier stood today in question time and congratulated the member for Murray-Wellington, who presented a very good case for the police. An amendment might be moved to include nurses among the officers to be protected. The Leader of the House knows that I am a nurse. I was president of the Australian Nursing Federation.

Mr R.F. Johnson: You are a member of Parliament.

Dr J.M. WOOLLARD: I am a nurse. Yes, I am a member of Parliament, but I am still a nurse.

I am pleased that the scope of the bill has been extended to include other public officers, but I would like nurses to be included also. The police will tell members that they are often called to hospital emergency departments to assist nurses who are dealing with patients who may be intoxicated and whose friends want to push them through. Nurses in emergency departments and those in mental health areas need protection. The Minister for Mental Health knows the problems that mental health nurses face.

Dr G.G. Jacobs: I made my case in question time.

Dr J.M. WOOLLARD: That is right. I have worked in mental health and in emergency departments, so I know the difficulties that nurses in both areas face, including the possibility of attacks from the public.

Mr R.F. Johnson: Will you take an interjection?

Dr J.M. WOOLLARD: I will take an interjection if the Acting Speaker does not mind.

Mr R.F. Johnson: We all love nurses, of course, but all the accident and emergency departments have security now. As the member knows, there is already a security presence in every hospital now. If it looks as though any

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

attacks are about to take place, the first people the hospital contacts are the police. If the police get a call from the hospital, they attend quicker than anywhere else to try to sort out things. It is very rare that a nurse would be attacked. I cannot think of a situation in which a nurse would be attacked and an offender would not go to jail.

Dr J.M. WOOLLARD: I am sorry, but the Minister for Police knows that the approach was to use zero-tolerance—I think it was; I cannot remember the terminology used at the time—in emergency departments to protect nurses in those areas. I do not believe that nurses in emergency departments have adequate protection. The Minister for Health knows that if this legislation is passed without providing for nurses, I will, not badger him, but frequently speak very nicely to him and ask what he is doing about security for nurses. Nurses who work in those areas know that I am a nurse and they call me and tell me when something happens. When that happens again, I will remind the Minister for Health that nurses have not been included in this legislation. I do not think we have the numbers in the house tonight to pass an amendment to include nurses in the bill. I will support an amendment or I will move an amendment for nurses to be included in the bill, although I do not think it will be passed.

Today's *The West Australian* contained statistics of problems at Royal Perth Hospital, but I would like to see the statistics for all the general hospitals, the mental health hospitals and mental health nurses who work in the community, who I think are also in very vulnerable positions. This legislation should provide them with protection. The Attorney General referred to a safety valve. The police guidelines now state that, if a police officer is assaulted, the injury must be examined by a doctor or remote area nurse, who will then provide a certificate to verify the type of injury. The certificate will then be referred to either a sergeant or officer at a higher level and will be used as evidence the first time the offender appears in court. I am sure that the police commissioner will ensure that when it is a minor assault, the police guidelines will apply.

Mr R.F. Johnson: Absolutely.

Dr J.M. WOOLLARD: I would have liked to see that in the legislation, as I told the Attorney General.

Most of our other acts are supported by regulations. It is unfortunate that the Criminal Code does not have regulations attached to it. Today when he was talking about the police, the member for Murray-Wellington explained how the police guidelines apply. Regulations are not attached to the Criminal Code as occurs with many other acts. I have spoken to the police about this today. I said that I would like regulations to be written to support the legislation, and I was told that there are no regulations. They said that this is the only way this can be done. But they assured me that a minor offence such as bruising or minor scratches, as I discussed with the Attorney General, will not be taken to court and therefore will not incur a sentence. I think one of the Attorney General's favourite phrases is "You are either pregnant or you are not". In that same vein I ask the Attorney General: are we giving support to public officers? If we are giving support to public officers, I ask that the Attorney General reconsider providing for nurses in the bill.

Sitting suspended from 6.00 to 7.00 pm

MRS L.M. HARVEY (Scarborough) [7.00 pm]: It is with great pleasure that I rise today in support of police officers and in support of this Criminal Code Amendment Bill 2008. There have been many diversions in this debate so far about other officers for potential inclusion in this bill for protection, the function of the Director of Public Prosecutions, and the currency of the judiciary in response to community sentiment in making their judgements when issues concerning police officers go to court. I have two sisters who are nurses, and I understand and sympathise with the people who are championing the cause of nurses for inclusion in this mandatory sentencing legislation. These are all important issues that need addressing. However, we need to start today by addressing the issue of the legislation that is before us, and we must start that by protecting and backing up police officers.

I have a fairly unique perspective on policing. Scarborough has been in the news quite frequently in the past on all sorts of issues regarding brawls, melees and assaults against police officers. Indeed, on information from Scarborough Police Station, in the past 12 months there have been 19 assaults in incidents concerning police officers in my electorate. Many of these assaults involved more than one officer, and up to three officers were injured in one altercation with one person who was unruly and out of control. Some incidents in which police officers have been involved are nothing short of horrific. One incident I heard about from the station recently occurred when a police officer was assaulted by a drunk and obnoxious person spitting at him. Some of the spittle went into the officer's mouth and eyes, all of this happening while the perpetrator taunted the police

Extract from Hansard

[ASSEMBLY - Tuesday, 17 March 2009]

p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

officer that he had hepatitis C and was HIV-AIDS positive. Now the police officer has to wait to determine whether he has contracted one or both of those life-threatening diseases. Mandatory sentencing would not address the problem of that person spitting at the police officer; however, should the police officer—heaven forbid—contract one of those dreadful diseases, mandatory sentencing as an option could be available because the assault would fit the bill of grievous bodily harm against a police officer.

I draw the attention of members to that disgusting incident because it highlights the shocking conditions under which police officers have to work every single day. I have been at Scarborough and seen police officers try to bring to order unruly mobs, only to have other members of the community—also drunken youths—throw bottles at them, wrestle them to the ground, attack their vehicles and generally involve themselves in aggressive assaults against police officers. Often when these incidents arise, the perpetrators of the crime are injured and police officers are then expected to render first-aid assistance to those people who have been assaulting them. I really do not know how they do it every day. The police need our unqualified support and a very strong stand from us, as the people who create the legislation, to protect them. We need to draw a line in the sand and say, “Enough is enough.” It starts by protecting police officers. I do not believe that the police who deal with these issues would make a frivolous or vexatious claim to invoke a mandatory sentencing charge against somebody who was not involved in a vicious assault. Quite frankly, I find quite offensive the assertion that police officers might be tempted to take that course. The police in my community do not have the time or the inclination to go down that kind of road.

In the lead-up to the election the single biggest issue in my electorate was law and order and the breakdown of law and order in the community. The face of law and order in communities is the men and women in blue—police officers. As I said before, it is time to draw a line in the sand and fight the single biggest issue in the community for many years. There has been a loss of respect by youth for authority and I believe that restoring that respect for police officers starts here in this house. We are the ones who need to send a clear message to the community. We are the ones who have the opportunity to send a clear message to the community. The people who thrive on chaos and anarchy need to be told that we have had enough. It starts with us. The members of the judiciary can act in the courts only according to the legislation that we have laid down and given them to enforce. Mandatory sentencing would send a very clear message to the community: if you fight and assault police officers, you will go to jail. In my community it is a clear message that needs to be sent, but it is a message that has not been getting through to the community.

I believe that no realistic criticism has been levelled in this house at the judiciary. I believe that the judiciary’s task is to make judgements according to the laws we make in this house. We are the elected representatives of the people. We have been elected by the people in the community with a mandate to address the issue of law and order. Judges are not elected members. Accusations are frequently made that judges do not reflect the mood of the community. It is not their job to reflect the mood of the community. It is their job to apply the legislation as they interpret it in a court. It is our job to reflect the mood and sentiment of the community and to rise to the expectations of the community that we will stand behind police officers and protect them.

In closing, I will speak a little more about the issues regarding police in Scarborough. Scarborough is in the middle of a fairly big interstate event: the National Australian Surf Life Saving Championships—the “Aussies” as they are affectionately known. I have to say that the reports I have heard back from the local Scarborough police officers, who are stationed in a van at the beachfront, are of overwhelming support from right across the country, which support has come from people viewing the horrendous footage of Constable Butcher. The sentiment right across the country is that we are potentially leaders in sending this message out to the community and that we will be the state that stands by and protects police officers and therefore our community. It has been very heartening to see the level of support and the show of affection and solidarity for our police officers. At this point we need to act in good faith, rise to meet the expectations of the community, draw a line in the sand, make a stand and pass this legislation as quickly as possible. We need to address other issues, such as some of the aggression against other public officers in the community. However, now is not the time to do that; now is the time to act in the interests of our police officers. We can come to those other things at another time.

Thank you, Mr Speaker, for the opportunity to address this issue tonight and to show my support for the police officers, in particular, the police officers at the Scarborough station. I urge all members to support this bill.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

MS R. SAFFIOTI (West Swan) [7.11 pm]: I thank the Parliament for the opportunity to speak on the Criminal Code Amendment Bill 2008. I believe that public officers, particularly police officers, need all the protection possible. Every day public officers and police officers put themselves in harm's way to protect the public. We as parliamentarians need to do what we can to support the police and public officers doing their job. I do believe, however, that we need a far more comprehensive approach than just this bill. The member for Mindarie and the Leader of the Opposition referred to other things that we should be doing to ensure that our public officers and police officers are offered the best protection possible.

I have a personal experience in this issue. In February 1994 my cousin, who was a police officer, was brutally bashed. Many may recall this incident. My cousin, Stephen Lazenby, and his partner attended a domestic dispute in Beechboro. As they were leaving, they were set upon by three men. They were both seriously assaulted, with the attackers beating and kicking the police officers. The attackers used my cousin's baton and took his own firearm during the attack. Stephen suffered serious facial and internal injuries, while his partner suffered skull fractures, a broken nose, smashed teeth and neck and other injuries. My cousin left the police force two and a half years later. I spoke to my cousin last night, who told me that of the three men who attacked him, one was acquitted, one was sentenced to two years' imprisonment and the other was sentenced to five years' imprisonment, with two years for the attack on Stephen and three for the attack on his partner. In speaking to my cousin about his experience—again, it was a brutal attack that had a lot of media coverage at the time—we spoke not just about the attack, but also about what happened afterwards that affected him in the long term, including the lack of support, medical bills and other things that I do not think the police force was equipped to deal with at the time. It is better equipped nowadays, but when someone is hurt doing their job, there are serious issues affecting how the police, the government and the community supports that person after the event. I hope that those issues are dealt with in this Parliament. In itself, I do not think this bill will offer the protection, security and assurance that we need to give to the police officers who go about their daily business.

I also had the opportunity to go through my cousin's files. I looked at a victim's statement or a statement that he prepared for his case and his claim for compensation. One statement struck me so I asked him whether I could read it in Parliament. He said, "Yes, go ahead and do it." This is what Stephen wrote in his statement about the impact that the attack had on his perceptions of how he was treated as a police officer —

When I was a young officer I felt that the blue shirt issued by the stores personnel was magical in that it would stop bullets, punches and anything else that could be thrown at us.

That afternoon I learnt that not only did it stop nothing but it also commanded no respect from the people that we are sworn to protect.

That was quite a telling statement. We have seen a bit of political mileage gained and some abuse thrown about over this issue in Parliament today. It is a very serious issue. Some of the conduct that has occurred regarding this bill was quite disgraceful. Everyone on this side of the house wants to protect our public officers and our police officers. We want to make sure that we do it right and that we create a system that better protects our police officers and not just grab a media headline for one day. When people are hurt in the line of duty, we need to offer them support and give them the opportunity to continue to conduct themselves efficiently while carrying out that service.

MR F. ALBAN (Swan Hills) [7.15 pm]: I would like to thank the member for Murray-Wellington for the speech he gave earlier. It gave us a great insight into what it is like to be a policeman. Who better than a former policeman to give us that insight? My office in Ellenbrook is only a stone's throw from the police station. I have visited the police station and officers from that station have visited me. We have an ongoing relationship and we have arranged to meet on a monthly basis so that I can understand what they are doing and I can support them. We are very proud to have a new police station in Ellenbrook. Swan Hills is a huge electorate. It has the normal residential areas and other small areas such as the Vines but it also extends some 25 kilometres north to Bullsbrook, some 20 kilometres north-east to Gidgegannup and a further 25 or 30 kilometres to Mundaring. The police have a tall job ahead of them. They have to serve this area 24 hours a day. We need to imagine what it is like to go into these areas in the middle of the night such a long way away from support. I would not be a policeman even if I were paid double what I am paid here. Unfortunately, like other police stations in the metropolitan area, the Ellenbrook police station was vandalised recently. Every piece of glass, every door and every window was smashed. This is coupled with statistics that indicate that four police officers are bashed daily.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Those are the liberties that the boofheads and bashers of this state have enjoyed. I often wonder—I try to personalise it—how I would feel if my partner was involved. I am old enough to say I wonder how I would feel if one of my kids was out there every night of the week. How would a child feel if his dad or mum, who was a policeman or woman on the streets, was being bashed?

The community has had enough. We saw that today. We are under no illusion about how members of the police force feel. It is time to show some leadership. I support the Attorney General and the Premier. I am very proud to say that this government does support our police, just as the people of Western Australia support our police. I believe that mandatory sentencing is mandatory sentencing and nothing else. As the member for Swan Hills, on behalf of my community, I would like to say thank you to the police who service that area. I fully support the bill in its entirety with no watered-down amendments.

MR D.A. TEMPLEMAN (Mandurah) [7.19 pm]: I am pleased to make a brief contribution to the debate on the Criminal Code Amendment Bill 2008. This legislation is obviously very important. We have heard various members make a contribution today. I also want to acknowledge the contribution of the member for Murray-Wellington, whom I have come to know over the past few years. I think his contribution as a serving police officer of 20-odd years' service is significant. Certainly, it is important for all members in this place, irrespective of politics, to hear from people such as the member for Murray-Wellington in light of his experiences as a serving officer in the WA Police.

I have not served with the police service; I understand that the member for Murray-Wellington is the only member in this place to have served with the police. Except for the member for Murray-Wellington, none here would know about the sorts of pressures experienced by Western Australian police men and women in the course of their day-to-day work lives. I honestly believe that, whatever community we represent and despite our politics and the views already put forward about mandatory sentencing and the like, there is no doubt that all members in this place hold in highest regard the serving men and women of the Western Australian police force. I find it very sobering when I listen to a member such as the member for Murray-Wellington and hear about his personal experiences as a serving police officer in various parts of Western Australia—he mentioned his time in the Kimberley and, from memory, the Pilbara region—and about the issues faced by serving officers generally. While I am snug in my bed, as are my family members, people who have taken the oath of office are out there in all parts of Western Australia making a tremendous contribution to the safety and welfare of Western Australians. Therefore, we need to seriously debate legislation such as this when it is introduced in this place with all the attendant emotion and debate surrounding the politics of mandatory sentencing. It is necessary to put in place safeguards to ensure we have provisions to deal with events or experiences that may not fit within the intent of the legislation. That debate should hopefully occur without the finger pointing that we have seen from some speakers today. I find it offensive when people, no matter what side of politics they are from, accuse me of not supporting police men and women in this state. I find it offensive because, quite frankly, I absolutely support the people serving in the Peel police district and the men and women who serve in the Mandurah Police Station. The Peel police district has in the past been served by tremendous men and women, as it is now served by both sworn and unsworn officers. The Peel community is absolutely grateful for the work of those men and women. When someone accuses me of not caring about serving police officers, I find it offensive. When we are faced with making decisions and are trying to decide good laws to put in place that will have important consequences for the protection of these men and women about whom we speak today, I am very interested also in what my community has to say about the issue. I will read two emails that put forward two points of view; both of which are valid, in my view. I will read them verbatim into the *Hansard* record because I think it important. I am not going to edit the content. The first is from Mr Archibald of Meadow Springs in Mandurah. It reads —

Dear Mr. Templeman

I am shocked and appalled that a Police Officer can be felled from behind whilst attending a fracas and nobody is found responsible for his horrific injuries.

It is my wish you do not, on my behalf, hold up the proposed legislation for the compulsory jailing of anyone assaulting a Police Officer. Pass this legislation now, and if Labor wishes to widen it to include other public officers at a later date, so be it.

Thankyou

It is signed by Mr Archibald.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

I also have an email from Mr Taylor. I wish to use these two examples because they give two points of view. I spoke to Mr Taylor about his point of view and asked him if I may read this into *Hansard*. Mr Taylor copied this email to the Premier as well as to me, his local member. It reads —

Dear Premier and Mr Templeman,

I am concerned that the push for protection of police by heavier sentencing of people attacking police is missing the message.

Crimes of violence are increasing in our society to everyone. I do not believe police should be better protected than anyone else — nurses, ambulance officers, schoolteachers, women, children, older people, handicapped people, or even me. What is needed is an increase in the minimum and maximum sentences for all violent crime. Acceptance that violence is a means of solving a dispute must be strongly discouraged. All too often it leads to death or permanent injury of the victim.

Currently violence, ranging from road rage to brawling, is tolerated too easily by society. Perhaps it is fueled by alcohol and drugs. But unless there is a strong deterrent then violence will continue to rise. And none of us will be safe.

To be honest, after the jury decision handed down last Thursday evening, I had a range of callers to my office on Friday and yesterday. I must admit that I did not get as many callers as I expected. However, when moving about the electorate on the weekend attending some public events and functions, I admit that a number of people came up to me specifically to raise this issue. I am glad that they did. I think it important for all local members. It is great that people want to talk to their local member about this issue and express what they think about the matter. The key issue raised with me—indeed, many members have already spoken about it and I am sure that the speakers who will follow me tonight will also say this—is the community’s outrage. People are outraged by the jury decision handed down last Thursday for a whole range of reasons. Certainly, the evidence filmed on someone’s mobile phone and shown on television really added to people’s outrage and to the sense of injustice. I think it struck a chord with the community. In the last 72 hours or more since the jury’s decision, I have found it very important as a local member to ensure that I am listening to my community to hear what people have to say and to represent their views in this Parliament. That is why I read those two emails as examples of the points of view put to me by my constituents.

There is no doubt that this bill will pass. The opposition will, obviously, ensure that takes place. I hope that during the consideration in detail debate when amendments are proposed and debated that we have the opportunity to really talk about the amendments, the intention behind them and, indeed, the arguments against them. I hope we do it in a way that is focused on doing what it is that I believe we all want to do; that is, to protect those men and women, some of whom were in the public gallery today, who decide for all the right reasons to put themselves forward to serve the Western Australian community as sworn and unsworn officers of the police service. The last thing we want is for the noble and essential occupation of a police officer to be something that future young Western Australians or other people who we seek to wear that badge—and wear it with pride, as do all our officers—to be something that people choose not to do because they do not feel appropriately protected and because they feel that they are not supported.

I assure the serving police men and women in my community, the Mandurah and Peel police district, and those officers in other parts of the Western Australian community that I support them and that the support from all people in this place is absolute. We want to make good laws; laws that protect our serving police officers because they play such an essential and important role in our community. As the member for Murray-Wellington said, it is one of the most important, and potentially one of the most dangerous, occupations that one could take on as a career.

I just wanted to say that. I know that there will be politics and that there will be debate. However, I heard things such as that members on this side were laughing at policemen and policewomen. That is not true. Police officers are held in great respect by all people in this place. I do not think there is one person who does not respect utterly the men and women who serve under the Western Australia Police badge in this state.

MS A.J.G. MacTIERNAN (Armadale) [7.30 pm]: We in Armadale have been blessed with some absolutely magnificent police officers and sergeants over the years—people whom I have enjoyed working with very closely. I remember Dave Lampard. He was a fantastic guy. We worked very closely with him. Itinerant gangs

Extract from Hansard

[ASSEMBLY - Tuesday, 17 March 2009]

p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

moved into the area, and Dave devised some strategies for how we could respond to that. Kim Ferguson was a magnificent officer. He had great empathy and pragmatism in working with the Indigenous community. Kim also was one of the first people to be able to move beyond the rivalry that was being fuelled by, I think, the Western Australian Police Union between the Public Transport Authority's Transit Guard and the police force and really set up a very constructive and creative relationship. We had Kent Oliver. I am particularly sorry that Kent had a terrible bike accident that left him with permanent injuries. Kent was a fantastic guy. His responsiveness, particularly to the concerns of the elderly, and his preparedness to go that extra mile to give fragile and very worried elderly people reassurance were fantastic. Our current sergeant, Mal Ward, has been an absolute joy to work with. I can remember writing to the member for Balcatta when he was the Minister for Police, saying what a joy this man was, how creative he was and how proactive and preventive he was with his policing, taking a very tough, but very smart, stance in dealing with some of the real problem families in our community. We had Barry Urban, who filled in for Mal for a while. He was fantastic in the work that he did on our urban art project, which involved diverting graffitists into the program that was being run by, of all bodies, the Department of Culture and the Arts and the Anglican Church of Australia. He took a very progressive approach to that issue. We have been blessed. We have had fantastic people like Heidi Mippy. We have had wonderful Aboriginal police aides and police officers who have taken a sensational leadership role in our community. Therefore, I want to make it absolutely clear that the role that these people play in my community is absolutely tremendous, and I really support them.

However, as a number of members who have spoken here tonight have said, that does not mean that the issue before us is black and white. I must say that I think we are abrogating our responsibility to think and to act rationally and sensibly in the way that the debate has been run here today—the way in which ridiculous phrases such as “you're pregnant or you're not” have been used. That is not what life is like; that is not what politics is like; that is not what allocating power in the community is like. It is far more complex than that. These things are not simply black and white. There is not a good side and a bad side. It is about getting the proper balance. I am very concerned that we are losing that balance. I want to put on record my concern about statements that I heard from Mick Dean, whom I have known for a long time and whom I personally like. However, statements were made on the steps of Parliament House today that, “Any member of Parliament who doesn't vote for this legislation, we're going to make your life a nightmare.” I have to say that I find that incredibly troubling, particularly coming from someone who is representing the police force.

Within our society, we give police powers that we do not give anyone else within our society. There is the right to use force, to apply force, to carry guns and to use Tasers. These are all very necessary accoutrements to acting as a police officer, but they bring with them a special responsibility. For a representative of those people who have been endowed uniquely with this power to apply physical force to say, “If you don't go into that house of Parliament and do what we're telling you to do, we're going to make your life a nightmare”, I believe, has stepped over the boundary. I believe that is taking us very, very close to a place where I do not believe Western Australians and Australians generally, if they really think about it, want to be.

Mr T.R. Buswell: That's what Kevin Reynolds said a few years ago.

Ms A.J.G. MacTIERNAN: That is a really interesting aside. Of course, it is —

Mr T.G. Stephens: And she stood up to him.

Ms A.J.G. MacTIERNAN: Can I make that distinction for the minister again—that is, Kevin Reynolds is not endowed by the state with the right to carry arms; he is not endowed by the state with the right to apply physical force. Having people thus endowed creates a very, very different set of responsibilities that we really have to think about.

Mr C.C. Porter: But surely he was talking about it in electoral terms. He was not threatening physical force. Come on. He was talking about making people's lives a nightmare in their electorates.

Ms A.J.G. MacTIERNAN: Quite frankly, I do not think that is very much different. I have had lots of people who wanted to go out and make my life a nightmare. It has happened very often. If people are prepared to stand up and be counted, that is what happens. If people want to just run with the pack, they do not have that problem. They just run with the pack and hide in there. No-one is going after them. They never get up out of their trench and run across no-man's-land; they just stay hiding, hiding. I believe this is a really serious moral issue. There is a debate —

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr M.J. Cowper: It started okay.

Ms A.J.G. MacTIERNAN: Yes, that is right. It starts okay, as long as we present only one side. If we try to introduce the shades of grey that virtually always colour the political realities and the realities of our society, we are said to be on the wrong path. Of course, we are all going to have disagreements and we are all going to have different perspectives. That is why we have a representative democracy, with all different people, so that we can present those different perspectives. Where I think we are straying very dangerously is when we have the ethos that is arising in this debate that says, "If you disagree, if you think that we're actually not drawing the line in the right place, then you don't support our police." That is not a right attitude. The Attorney General is on all accounts, and seems to be, an intelligent and competent person, but in question time today he got up and quoted a section from legislation that already exists in relation to penalties for murder and expressed outrage that someone might want to put into a piece of legislation a clause that said, "Where a decision is clearly unjust, the judge has a right to make a determination." I can understand the Minister for Police adopting that sort of attitude, but when a person like the Attorney General, who understands how things work and has the capacity to understand that these things are not black and white, says it is appalling that anyone should take into account that something might be clearly unjust, I wonder what are we doing in this place.

Mr C.C. Porter interjected.

Ms A.J.G. MacTIERNAN: One might argue, as the Leader of the Opposition did today, that the prosecution guidelines do something of the same thing. I guess the point is that there are always circumstances that one cannot predict. Human affairs are so deeply complex that there are always possibilities that we have not contemplated when drawing up legislation. I thought the member for Mindarie today set out very clearly that it is very hard to find any instances where the judiciary has failed. We have had the terrible case with Matthew Butcher, and of course everyone is horrified and stunned that it did not lead to a prosecution. However, this legislation is not mandatory conviction legislation; it is mandatory sentencing, so as has been said time and again, this legislation will not work for the Butcher case. The result in that case needs to be reviewed.

The member for Mindarie very articulately set out so many of the cases that have been relied on to support this legislation; in fact, when we analyse them, they were not cases of injustice. I give credit to the member for Jandakot, who raised the case of First Constable Michelle Ball. I must say that on those facts it seems quite extraordinary that the culprit was given a suspended sentence. I do not understand why that case was not appealed. I do not know whether anyone is able to enlighten us as to why an appeal was not lodged against that sentence.

Mr C.C. Porter: Because clearly the judge was within his discretion to determine that a non-custodial term was clearly unjust.

Ms A.J.G. MacTIERNAN: How could someone determine that was clearly unjust?

Mr C.C. Porter: Some people have a different view than other people as to what is clearly unjust.

Ms A.J.G. MacTIERNAN: I do not know whether the Attorney General has read the terms of the judgement and sentencing. Has the Attorney General read that?

Mr C.C. Porter: No, I have not, but I can tell the member that the reason it was unappealable was that he was inside his discretion. He thought it was clearly just.

Ms A.J.G. MacTIERNAN: Okay, it was within his discretion, but not because it was clearly unjust. We do not deny that a case like that says something is wrong; therefore, we need a mechanism to deal with that. We need some practical mechanisms. I think that today the member for Mindarie put forward another excellent suggestion: the notion of an expedited list so that these cases can be more readily moved through.

Mr C.C. Porter: Okay, member, you do not like our mechanism, which is strict mandatory sentencing, fair enough. What is the mechanism that you are actually suggesting should be employed instead?

Ms A.J.G. MacTIERNAN: The opposition will bring forward amendments.

I am saying that two things concern me. The first is that the way this debate has been run has been so suppressive of intelligent and rational thought and has been popularised, which is, I think, quite demeaning to the people of Western Australia, who, quite frankly, are far more intelligent than the government gives them credit for. I am concerned by the way in which the government has characterised anyone who does not get 100 per cent behind

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

its legislation without any amendments as not supporting our police. That is an absolutely appalling diminution of standards within our Parliament. It must cause us to question how we get the sort of people we have in Parliament that we have that low level of debate, and that refusal, failure or complete antipathy to any reasonable, reasoned debate. We should be able to have differences of opinion and differing views. The government should be able to say that it thinks this is the right way and we should be able to say that we do not think that is so good. However, to characterise this debate in the way that the government has done, to play this in the most crass, populist way as the Minister for Police and the Premier have, and to present this as being either pro-police or anti-police does a great disservice to the people of Western Australia—the people who we are supposed to represent. We must represent a complexity of views. Of course there is absolute community outrage about Constable Matthew Butcher’s case and the fact that in light of very visual evidence there was no conviction made against the person who assaulted him. However, as I say, it is important for us to be honest and open in this debate and not take the line that if people make any criticisms of or suggest any amendment to the legislation, they do not support our police force.

Mr M.J. Cowper: If your constituency came to you with an overwhelming position on a matter, if they put it to you as their representative and expected you to represent their views in this place, would you overrule their position on it?

Ms A.J.G. MacTIERNAN: I have often tried to explain my experience of this to the member for Alfred Cove. I do not know about other members’ communities; they may have a sort of cookie-cutter person who is replicated endlessly. In my community, people are incredibly varied and have every nuance of opinion. I also find that people are capable of changing their views. I am capable of changing my view. I have changed my views on many things over the years as a result of debate, discussion and learning. The people I represent are not cookie-cutter people; they are not “the community”; they are a rich tapestry of humanity and they are a very varied group of people who see the world in very varied ways. They come from all sorts of backgrounds. People of Indigenous background very often have a particular view about these sorts of issues. I have many people from England and—this is St Patrick’s Day—Ireland in my electorate. I have Sudanese, Zimbabweans, Afghans—a great diversity of people. I have in my electorate people who have very strong right-wing views, people who have very strong left-wing views and people who are very green. Therefore, I do not demean my electorate by saying “the community”, because I know it is a many splendid thing.

Mr M.J. Cowper interjected.

The SPEAKER: Order, member for Murray-Wellington!

Ms A.J.G. MacTIERNAN: As everyone has said about their electorates, and I do not think anyone would mean it more than I do, fantastic work has been done by the police officers in Armadale. We support absolutely the police. However, that does not mean that there is no room for some debate and to consider how we might make this legislation better, to get the balance right, to recognise that society, and circumstances that come before the courts are often very complex and we cannot predetermine what the right answer is in all those circumstances. I say again that I believe it is not Western Australian, it is not Australian, for a representative of the police to stand on the steps of Parliament House and say to members of Parliament who are doing their best to make the right and proper decision for this community, “If members do not vote in favour of this piece of legislation, we will make their lives a nightmare.” I think that is un-Australian and I do not think that is the sort of culture that has created the magnificent society that Australia is. I think it plays to a sentiment of aggression and disrespect that is the heart of the problem that the police face today.

DR M.D. NAHAN (Riverton) [7.49 pm]: It is my pleasure to stand in defence of the police, to represent my community, and to defend and support this bill. The issue we deal with in this bill is a fundamental one to the rule of law. It is a very basic principle: that the people we send out to enforce the law—the police and others—must be protected from physical abuse. That is the bottom line of the issue we are trying to deal with. If we do not, criminals will use abuse to bias the law. Large sections of the community will be quarantined from the rule of law; they will be left out, and there will be no-go zones. We will also lose the capacity to have people enforce the law for us, whether they are policemen, judges, prison guards or others. This was a long-recognised principle for many years, but in recent times we have lost sight of this principle. We have heard stories from all members; unfortunately there are many in the community who, as a result of an excess of relativism, think the police are no better than the criminals. The crux of this issue is that the judiciary has also lost sight of this principle, and when we lose sight of this principle, we lose a very important value and institution in society. The basic issue that we

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

are trying to deal with—the decline of morals in society—cannot be dealt with by this bill alone; there are a range of issues we have to deal with. However, the issue of mandatory sentencing is the issue that we are confronting with this bill, and we should deal with it today and not waffle and procrastinate. Let us deal with it; there are many other issues that we in this house will have to deal with.

The fundamental issue is: should we remove the discretion of the judiciary in terms of sentencing people who have physically abused police? The member for Mindarie raised two issues that are very important. We must approach this with caution; removing the discretion of the judiciary will remove a fundamental precept of our judiciary and the rule of law. We have to be very careful about that. As the member for Mindarie said, and as we all know, reality is often stranger than fiction. We all see evidence of this in our electorates. The member for Mindarie also asked to be shown the data and the evidence. I will very quickly and briefly present four pieces of evidence. Firstly, there are the case studies. The overall evidence shows that, on average, four cops are bashed every day; that is hard data. Secondly, in his second reading speech the Attorney General presented four case studies, which quite clearly revealed that people who bashed cops had received inadequate sentences. The member for Jandakot presented other evidence. In common with other members, I meet with the police in my electorate all the time. They are an essential part of the glue that holds our society together, they are well informed and they are at the front line. In my long history of examining issues, I talk to the people on the front line, because they know. They are on the front line to enforce the rule of law, and they are the ones who are being abused. They are absolutely adamant that this is the bottom line: protect us, so that we can help protect you.

Finally, I listen to my electorate, just like the member for Mandurah. I will not read them out, but I received some emails. In fact, I received more than I thought I would. There were expressions of frustration, expressions of the desire to do something, and expressions of anger at a case that we cannot really directly address with this bill. Nonetheless, the emails were clear-cut: people want us to protect the police by removing the discretion of the judiciary. I urge members opposite to remember the member for Mindarie's warning: do not widen this too far.

The McLeod case is another issue, which I will not deal with at length, but all of us are frustrated about it, as is the community. One of the central principles of the bill before us is to send a signal to people who might find themselves in a confrontation with the police: do not touch them; do not harm them, or the full weight of the law will fall upon you and you will be put in prison. Sometimes people might get off, but this bill will make the signal stronger, so it will help.

I also want to discuss how wide this legislation should be. Again, I think the member for Mindarie made a good point when he said that we should not widen it too far. Concern in the community for the police is overwhelming; logically, it should also apply to other people who enforce the law in difficult positions, such as prison guards, transit police, and perhaps ambulance drivers. I have struggled with the last one, but I have been convinced that ambulance drivers have to be involved in melees in tandem with the police. In common with other members, I speak at schools. As the member for Mandurah said, we all share this issue; it is not a political issue. Teachers have repeatedly told me that teaching is one of the few professions where people are abused at the workplace. However, it is a different situation; most schools are hopefully not like the scenes that police attend—the ones in my community are not—the abuse is usually verbal abuse, and there are remedies for it, other than legislative remedies. We should not widen the legislation. Nurses are often confronted by mad drug people in emergency rooms, but those people are usually accompanied by police, and the police are the guardians, rather than the nurses.

There are wider issues in the community concerning the decline of morals and physical abuse, but the problems we must concentrate on are those that confront the police and the people who are directly required by us to stand on the front line, defend us, and impose the rule of law. I urge members to support this bill.

MR M.W. SUTHERLAND (Mount Lawley — Deputy Speaker) [7.56 pm]: I begin by referring to a flyer for today's police rally, which states —

Since last Thursday, there has been a massive outpouring of community support for Constable Matthew Butcher and the State's police. The community is describing the outcome of the assault on Matthew as “outrageous” and “unbelievable”.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

It is common knowledge that the general public has for a long time been becoming restless about the ever-increasing antisocial behaviour to which they have been subjected. I must say that it is very unhealthy for the general public to perceive the law and justice system as having failed them. As the member for Balcatta pointed out earlier, a malaise has set in within our social infrastructure, and people are beginning to believe that anything goes at any time, and that they can do all types of antisocial activities. The lack of civility and discipline of an ever-increasing number of people must be stamped out wherever it manifests itself. Boundaries must be re-established. We have heard a lot about the various officers who work on the front line. I remind the house of the unfortunate incident involving transit guards in early February. They apprehended two teenagers who were swearing on a railway platform, but when the matter went to court, the magistrate turned on the railway guards and said that using offensive language was not offensive. The railway guards were put on the back foot, and were threatened with a claim for criminal injury compensation. Shortly after this took place, one of the school principals in my area attended at my office and observed what a bad example the magistrate had set in this particular matter. Schools go out of their way to try to instil an element of civility into students, whereas the magistrate said that it was quite in order to use offensive language at a railway station. We all know the problems involved with public transport; people are reluctant to travel at night because of the risk of being mugged. I cannot stress strongly enough the need to come out in full support of these people.

As I was saying, the very unfortunate perception among the general public is that the system has failed them and does not protect them. The general public will not tolerate acts of violence against people on the front line. Recent events have created a head of steam for the introduction of mandatory sentencing. We all know there are pros and cons to mandatory sentencing. However, with the ever-deteriorating standards of social behaviour the general public see a need for mandatory sentencing.

I was disappointed to hear a comment made by the president of the Western Australian Police Union—no doubt out of frustration—on the steps of Parliament House about “really slippery solicitors”. That comment reinforces a perception in the community that solicitors are manipulating the court system. That is very unfortunate because, as I say, it is a sad day for Western Australia when people lose faith in not only the legal system, but also the legal profession.

As an ex-practicing solicitor I was concerned about an inflammatory statement made by one of the solicitors acting for the defendants in this case. He likened the behaviour of police in his clients’ case to the infamous Rodney King bashing that sparked the 1992 Los Angeles race riots. For a barrister to make this gratuitous comment is totally out of step with the community; in fact, it is offensive. All it does is add fuel to the fire and raises the public’s ire against the legal fraternity.

This particular barrister went on to say —

The rally there was because of the way the police conducted themselves, —

Referring to the LA police —

and it was a case here where the police came in with a baton striking Barry McLeod while Constable Butcher had Barry McLeod’s T-shirt over his head ...

Mr Tudori, who also represents McLeod’s brother Scott and father Robert, repeated the threat to sue police over what the McLeods allege was excessive force during a brawl outside the Old Bailey Tavern in Joondalup ...

Mr Tudori argued civil action against the police would be “in the public interest”.

I made it my business to obtain a copy of conduct rule 58 of the Western Australian Bar Association, which states that barristers should not make gratuitous comments when a case has finished. We all know that lawyers should not make gratuitous statements on a case that is before the court, but what happens when the case is finished? Perhaps the barrister can make a statement to clarify a point of law or something like that; however for Mr Tudori to make this inflammatory statement is most unfortunate. His comment has done nothing to assist in this matter. It has shown the legal profession in a very poor light. This issue was addressed in a paper issued by Ken Martin, QC, on 10 May 2006 and reiterates that barristers should not speak to the public unless it is in the public interest to speak. I think that comments by the McLeods’ barrister have been really damaging.

Mr C.C. Porter: He may be a solicitor and not covered by those rules.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr M.W. SUTHERLAND: He might be a solicitor, but I understand he practices as a barrister.

I am an ex legal practitioner. When something like this happens it builds up a head of steam in the community against the legal profession. As I said, the judiciary is the third arm of our system of government. It is a very sad state of affairs when the community loses confidence in the judiciary. Judges have spoken to me and explained the difficulties that they encounter. We do see the odd decision that contains very skewed reasoning that reflects poorly on the judiciary. However, getting back to what I was talking about, these inflammatory comments have not helped the situation at all and have just added fuel to the flames.

There has been constructive debate in this chamber this evening, and I am happy to support this bill and to throw my support behind those people who are in the front line. I hope this will assure the public that this Parliament is concerned about antisocial behaviour and what goes on in the public domain.

MR P.B. WATSON (Albany) [8.06 pm]: I fully support the police in not only my region and electorate, but also the whole of Western Australia. It is disappointing to hear the government say that the Labor Party does not support the police. I have been a member of Parliament for eight years and I have worked closely with a lot of superintendents, including Merv Pegler and John Watson, both of whom are tremendous superintendents. My region now has a younger superintendent, Dean Le Kong. I was speaking with Dean yesterday. He told me there had been 47 serious assaults on police officers in my region. Despite being considered a region where the police are respected, we still had 47 serious assaults. That really surprised me.

I have been on patrol with the police on Saturday nights and I have seen how disrespectful young people can be and the names that they call police. They say, "What are you doing with them?" and they call them all sorts of names. When I see these kids down at basketball or footy I ask them why they were so disrespectful to the police. I suggested to them that the first thing they do when their car is burgled or someone belts them up is to call the police. They said, "Yeah, but you have to be cool with your mates." We have to educate these kids.

I congratulate the Attorney General on the legislation he has introduced into this house, although I feel strongly that we should include nurses, and I think the opposition will move an amendment to that effect in the consideration in detail stage. We have to educate these kids to show respect for the police.

I remember in my younger days going to Pinocchio's nightclub after Claremont footy club had won a game. Since we did not win very often, we celebrated pretty hard. I remember one night, as a cheeky young man outside Pinocchio's, a sergeant grabbed me by the ear and kicked me up the backside. He had size 16 boots and I had a pretty bony backside in those days! However, I can tell members that I learnt from that experience and never did it again. We have to stop being a nanny state by telling police they cannot touch these young guys. All these young kids in our community know the limits placed on a policeman, and they push the police to the limit. Mandatory sentencing is great, but we have to look at other ways to solve the problem. We have to educate these kids. Discipline should come from the home, and if kids are not disciplined at home, they do not accept discipline from outside when they are in the streets. We can do a lot of things to change that.

I spoke about the police on Thursday in the debate on the Premier's Statement. My region has the lowest rate of offending in three out of four of major crimes, which includes such things as car burglaries. The police in my region are doing a tremendous job, as is Terry Eaton, who runs the Albany Police and Citizens Youth Club. These young kids come to the PCYC in Albany, which is right next to a facility with bike and skateboard tracks. Terry lets some of these troubled kids use the track, and later on he talks to them one-on-one. The police are trying to include troubled kids in the activities of the PCYCs in my area so they can help them.

I agree with much of what is contained in the legislation, and tomorrow the opposition will bring forward amendments to improve it.

I want to congratulate a couple of our policeman: Sergeant Mick Scanlan and Des Coffey with 35 years' service; and Senior Constable Peter Malins with 10 years' service. Currently a lot of young policemen are coming through the system and they probably are a bit more sensitive than the coppers I knew over the years. My mates Bob Dixon and Mick Scanlan in Albany have been called everything in their time and it is water off a duck's back to them. However, as we are encouraging younger people to join the police force we have to ensure that they do not have to put up with antisocial behaviour. Society has changed and our young people have to change with it.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

I congratulate our policemen for all the great work they do not only in my region, but also all over Western Australia. I am confident that if there is a burglary at my home or one of my constituents comes to me with an issue, the very good police in my electorate will help at any time.

MR P. MILES (Wanneroo) [8.10 pm]: I support the bill. I also support the 13 or 14 police officers at Wanneroo Police Station who are looking after us in the Wanneroo district. I went to Wanneroo Police Station on Friday morning after I had taken my son to school. The officers had just received news about some of the issues with the Matthew Butcher case. The 13 or 14 officers who were on duty that morning were very dejected, and quite a few of them were talking about resigning straightaway. The first thing they told me was that they needed the support of the government in order to keep going forward. I indicated that the government had started that process with proposed mandatory sentencing, which would be strengthened with other tools in the future. I believe that we as a government need to be sending a message to thugs who are waiting to prey on police officers who attend fights and melees. We must support police in whichever way we can through the strongest form of legislation possible. Anarchy has been ruling in some suburbs late at night. Without the young policemen and policewomen who are fighting for us, we would have nothing; we might as well call out the military. I support the police and we need to get on with this legislation.

MR P. PAPALIA (Warnbro) [8.12 pm]: I have been compelled to speak this evening, having listened to some of the commentary in the earlier debate and particularly some of the comments made to the crowd of people who gathered near the steps of Parliament House this afternoon. I am concerned about the nature of the debate. I echo the cogent and well-put comments made by the member for Armadale. She identified that the moment we denigrate the debate and lower the standard of the consideration that we apply to legislation such as this, we denigrate the whole system and risk joining and encouraging those voices in the community that have had such a negative impact on the reputation of Parliament, the judiciary and the system. We encourage people to engage in completely negative activity and behaviour or to abstain altogether from the political process and the way in which the system is governed. It is not helpful.

I have listened today as some of the newer members opposite have spoken in a way that sounded a lot like election slogans. Some of the commentary has been absolutist in that it suggested that on one side there are good guys and on the other side there are bad guys. Government members have said that on their side is the legislation and that if the members opposite do not support it, they are the bad guys. I have seen that happen with other types of legislation, but that approach with this type of legislation is very worrying. This legislation stands to have a significant impact in all sorts of ways that we cannot necessarily identify at this stage. The Attorney General and Minister for Corrective Services knows exactly what I am talking about. I fear that the Department of Corrective Services' projections of the impact on the prison system of mandatory sentencing are not really very accurate. I can understand why, because the prediction is very difficult. However, I do not think the projections give us anywhere near an indication of the extent of the impact that this legislation would have on the system.

If members opposite are suggesting that we in Western Australia are soft on crime because we are not jailing enough people, let me tell them that right now there are a record number of people in the prison system. There are over 4 000 in jails in Western Australia. As all members know by now, because the Attorney General, the member for Girrawheen, other members and I have been banging on about it for some time, at least 40 per cent of the prison population is Indigenous. It is an incredibly disproportionate percentage of the prison population. The average in all the other states is around 24 per cent, yet in Western Australia it is over 40 per cent minimum. I am guessing, and I reckon that it is an educated guess, that this legislation will impact on the most disproportionately represented part of the population in the prison system. That is of concern to me. If we argue in a simplistic fashion that we should support this legislation, if for no other reason than it shows that we are supporting the police, that is beneath us and the political process and unworthy of people who are elected to represent the people of Western Australia. I am very concerned about the direction that the debate has taken.

Dr K.D. Hames: If I may interject, I have people from the Aboriginal community saying to me that this legislation will severely disaffect them, and that a lot of times they are stimulated into doing these things. They say that the police have stimulated them to respond in the way that they have. My response to them is that there is no excuse, no stimulation and nothing that the police can do to them that gives them the right to then attack a police officer—nothing.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr P. PAPALIA: I accept that interjection and thank the minister for it. I totally endorse his comment. However, the nuance in the impact of the legislation is that there may be scenarios that we have not considered. If all we say by way of argument is that we are right because we are supporting the police and that others are bad because they are not supporting the police, that is a simplistic argument, which is beneath us. We need to consider matters in more detail and some of the ultimate outcomes that could result from this legislation. We need to consider it for the reasons I have outlined.

I have heard members speaking in almost electioneering slogans and 30-second-grab-type language. They have suggested that if we oppose this legislation, we should look Matthew Butcher in the eye and tell him that we oppose it. This afternoon as I was walking out to face the masses of police near the steps of Parliament House, I saw Matthew Butcher in the foyer. I walked over to him and introduced myself to him as a Labor member of Parliament and told him who I was and also that he might know my brother, who is a long-serving police officer. I also talked to his companions. The first question that he asked me was whether I would be supporting mandatory sentencing. I looked him in the eye and said, "Matthew, I have a great many concerns about mandatory sentencing. You know that it would not have helped you at all in your particular case." He said that I was right. I understand the argument about sending a message. I very seldom agree with the member for Hillarys but I agree with him on this occasion about the use of the word "thug". I also said to Matthew that if I thought that that this legislation or similar legislation might have caused that thug to stop and think prior to acting in the fashion that he did when launching himself at the back of Matthew's head, I would be fighting for such legislation. We would have introduced it already had we been able to do it. However, I am not convinced that this type of legislation has a deterrent effect in the manner that has been suggested. People have suggested that this will send a solid message and will stop people behaving in a negative, dangerous fashion. The prisons are filled with 4 000 people who are not deterred by current laws. Being tough on crime is a little more sophisticated than throwing more people into prison.

Mrs L.M. Harvey: I am getting overwhelmed from every single person that I speak to in the community, saying that they want mandatory sentencing. Every single person that I speak to asks, "When is the government going to bring in mandatory sentencing for people who assault police officers?" If that is what the community is telling us, is the member saying that we need to rise above the thinking of the community? If that is what the community is asking for —

Mr P. PAPALIA: I think the member for Armadale was getting to that point, but the fact is that the people who come and see us, the people that email and telephone us as members of Parliament, are not necessarily representative of the entire community. We cannot say that is what everyone in the community wants or desires. Some police officers that I have talked to—not all of them—do not support mandatory sentencing. I understand that the member is saying there is a great desire and sense of urgency within the community right now regarding this issue. It is understandable. It is an emotive issue. It is a terrible thing that happened to Matthew Butcher. It is outrageous that no-one has been brought to task as a result of that assault. I believe that a debate in which one side says, "We are all right, you are all wrong. Support us or you are against the police" is simplistic and wrong. I want that recorded today. I want also to state, in the same way I did when this matter was brought to this place in a private members' bill last year, that I do not have to see assaults taking place on television reports or read newspaper reports about threats to police officers. I have lived in a family with a police officer. I have stood at the bedside of my brother, who was injured in the line of duty. On another occasion I anxiously waited with him whilst he awaited the results of HIV testing after being bitten by a drug addict in the line of duty. It does not mean that police officers all think this is a panacea. Members were standing outside Parliament today when someone with a bullhorn chanted, "What do we want? Mandatory sentencing! When do we want it? Now!" and the whole crowd was completely silent because coppers are not chanters. That suggests to us that they are a little more complicated, a little more complex and a little more intelligent than we give them credit for, by going out there and speaking in a purely political, populist fashion.

Dr K.D. Hames: The unions do that!

Mr P. PAPALIA: The member was suggesting that I have done that in the past, but he knows that is not true because I have only been here for a short while.

In engaging in the debate this evening, I wish to record the fact that I agree with the member for Mandurah and many others here—we all support the police. We all do. Many of us have close personal contacts with the police.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

We all rely on them. They do a fantastic job under very challenging and difficult circumstances. I record my support for Senior Sergeant Trevor Woodall of Rockingham police in the same fashion as members have supported other officers. We all go and see our police; we all support them. To suggest otherwise for purely populist, political purposes is, quite frankly, beneath all of us.

MR J.E. McGRATH (South Perth) [8.22 pm]: I rise to support the Criminal Code Amendment Bill 2008. I listened to what the member for Warnbro said and I have to admit that I have always had a problem with mandatory sentencing. I am not a lawyer, but I do understand that no two cases will ever be the same. No two murder cases will ever be the same; no two assault cases will ever be the same. I believe in the jury system.

All members who have spoken have talked about the shocking case involving Constable Matthew Butcher and the fact that there was no real resolution from that court hearing. We have before us the issue of a government responding to overwhelming public opinion. I have only been a member of this place for just over four years, but I have been on this earth a long time and I think this is one of the most overwhelming cases of shared public opinion that I have ever seen. It is the role of any democratically elected government to respond to public opinion, especially when public opinion is so overwhelming; if it does not, it could be accused of being a dictatorship.

What the people have said to us is, “We expect the police to protect us. If our houses are being broken into or if we are in danger of being assaulted, we expect the police to come along and protect us.” The system is just not protecting the police officers. I have had letters—the same as other members, like the member for Mandurah—from constituents in my electorate of South Perth who have pleaded with me and said, “When are members of Parliament going to protect our police officers?”

The area that I grew up in was pretty rough and ready. There were plenty of fights.

Mr D.A. Templeman: Where was that?

Mr J.E. McGRATH: Hamilton Hill. One of the rules was that we did not ever pick on a copper—they were the police; they were the protectors of the law and they had to be respected. What has happened with society is that there has been an erosion of that respect for police officers. Over the years the community has accepted it and we probably did not even notice it happening. Now, with recent events, we see young people standing up to police officers, taking them on and taunting them. When police officers go to parties that are attended by youths, some of those young people stand up to the police officers and take them on. They want to throw missiles at them; to assault them. That is something that society would never have condoned some years ago. We do not condone it now, but unfortunately it is happening now. What the people of Western Australia have said to us as members of Parliament is that they probably do not believe that mandatory sentencing will fix all these problems. There will be people who will go to court charged with assaulting a police officer and they might be found not guilty; therefore, there will be no mandatory sentence. As other members have said, mandatory sentencing would not have had any effect in the case involving Matthew Butcher. However, people have said, “We want you to do something. You must do something for us.” If we cannot protect our police officers, the people whom our government employs to maintain law and order, we have a serious problem in our society.

I can also understand—I believe that amendments will be proposed to cater for this—that people such as nurses feel very upset about not being included in this legislation. Constituents have said to me that it is not right that nurses are not included. I can see what the Attorney General is trying to do here. He wants this law to relate to public officers who are out there enforcing the law. I think that is the differentiation. The people that have been categorised in this legislation, such as police and transit guards, are out there enforcing the law. Whilst we all want nurses to be protected, that is the reason they have not been included. I do not think they should be included in the law at this stage. This is an urgent piece of legislation. The public is saying, “For God’s sake, fix this up to protect our police officers! Let’s look at other things along the way.” We are in a position where we have to do it. We have to listen to the voice of the public.

I will make a couple of observations about what has happened to police officers over the years. I knew a lot of police officers in my time as a journalist—mixing and knocking around with them in the city of Perth. What has made things more difficult for modern-day police officers is that they must undergo microscopic public scrutiny. The days when a police officer could give offenders a foot up the backside or a clip on the ear and send them home if they had done something wrong, but not something serious, just cannot happen anymore. I do not condone police brutality, but I will mention a couple of incidents that as a law-abiding citizen I found

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

disappointing. One incident occurred on the South Perth foreshore, I think in 2006. The police were detaining a person who had been involved in a scuffle. A woman spat at and abused the police. When an officer attempted to walk towards her, the woman's brother tried to physically prevent the officer from reaching the woman. Three officers intervened and when they were taking him to the ground, one officer gave him a short right jab—as it is described in the boxing ring—or he might have given him a couple of right jabs, but he did not kill him. Someone took a photo with a mobile phone of the incident and the officer was charged with unlawful assault and found guilty at trial. The magistrate hearing the case ruled that the officer had used more force than was necessary. He had just punched the man with a couple of short jabs during the course of the arrest and was fined \$1 500. After a period of non-operational duties, that police officer was reinstated to his job. There have been cases of members of the public assaulting uniformed police officers—who represent law and order and who are supposed to be untouchable—and being given very lenient penalties.

Another case I recall involved a decorated police officer. I do not recall his name but I was really moved by the case. A young guy had been brought into Fremantle Police Station. The police had him in the holding cells and were interrogating or questioning him. I think there was a bit said; from the reports of the incident the young fellow might have given the police a bit of lip. Anyway, the police officer lost his cool, assaulted the boy and broke his jaw. I am not condoning that, but I am saying that the police officer was under much stress. No-one knows what some young people are like when the police are trying to lay a charge. This officer snapped. He was identified on a video, was fined \$5 000 and lost his job. I was told later by another police officer that this decorated police officer in a case at Mt Barker, or somewhere, had actually gone into a house and disarmed a person with a rifle. What a brave person! However, in the stress of doing the job, he lost his cool for one minute, gave someone a whack and lost his job. That is the pressure that police officers are under. I think the balance is all wrong. The public are getting a better deal than police officers are getting.

I know what members on the other side are saying. As a member of Parliament I find it difficult to support mandatory sentencing because on principle it is against our judicial system. However, we must do something today to protect police officers and to send a message to the community that anyone found guilty of seriously assaulting a police officer will go to jail. I disagree with the member for Wambro; I think the message will get through if there is tough enforcement of this law. I am sure that the Attorney General will consider closing any loophole. I do not want the jury system changed too much; I think the jury system works. I understand that people try to get out of jury duty because they have jobs, but the jury system has existed for a long time. A jury is supposed to be representative of the community. It does not matter whether a person does or does not have a job; he is a person in the community and if he is selected for jury duty, he is part of a jury. I heard someone suggest the other day that we should have a panel of lawyers. The first time the lawyers made a decision we did not like, people would say we should go back and have a jury because the system was not working. We cannot keep moving the goalposts. However, in this case we must be very strong and we must support this legislation. The public want it. We have to do it as quickly as possible. Bring it in and let us give police the protection they need and deserve.

MR B.S. WYATT (Victoria Park) [8.35 pm]: I appreciate the call, Mr Deputy Speaker. I too rise tonight to speak to the Criminal Code Amendment Bill 2008. I must admit that the tone of the debate in the past couple of hours has certainly been much better and much more sophisticated than perhaps it was earlier in the day. As has already been indicated by members on both sides of the house, the fundamental principle of the separation of powers in our constitutional system is the background to where we are today and what we are talking about. In fact, you, Mr Deputy Speaker, may have hit on this yourself. No-one would deny the horror and disgust that all members felt in respect of Constable Butcher when we saw the footage that was released after the trial and acquittal by the jury. Certainly it seems to me on looking at those 12 seconds, or however long it was, that the other five weeks of the trial must have comprised some pretty compelling evidence for the jury not to have convicted on that evidence alone. I have not read the charge. Some members of this place have read the charge given by the judge. However, it certainly seems, and every member has accepted the fact, that the amendment to the legislation in this bill that we are debating tonight would not have impacted on the trial in respect of the McLeods and Constable Butcher. However, certainly my initial gut reaction when I saw that footage, like every member of this place, was disgust and, quite frankly, I was quite stunned that a conviction did not arise out of that evidence and that evidence alone. There has been an emotional debate on this bill, there has been emotion in front of this house today and there has been some emotion shown by members of this place today. However, it is our role as elected members, including me in my role as the elected member for Victoria Park, to keep our heads

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

in this situation, to at least have a rational debate and to acknowledge that mandatory sentencing is a controversial topic. Members have different views. The member for South Perth indicated that his gut instinct was not to support mandatory sentencing. However, he has changed his position on that. That is the right of members of Parliament, and I certainly do not appreciate any form of bullying tactics that seem to have taken place by senior people within the government.

I do not propose to speak for long, the Leader of the House should be happy to note. However, I have a question for the Attorney General: will we also need to make amendments to the Sentencing Act or will this amendment deal with it?

Mr C.C. Porter: Which part of the Sentencing Act?

Mr B.S. WYATT: In respect of the spent convictions issue. I know that the bill deals with it but does that raise any conflict?

Mr C.C. Porter: I think this has precedence.

Mr B.S. WYATT: Do we not need to worry about the Sentencing Act in respect of spent convictions?

Mr C.C. Porter: As indeed it does in respect of juveniles.

Mr B.S. WYATT: I do not think the Attorney General will hear any member argue the issue of spent convictions. I may have been the first member in the chamber to raise the spent conviction issue tonight. However, I asked that question so that two pieces of legislation do not say two different things.

The approach of “you are either with us or against us on this” is absurd. All members recognise that. I guess state governments these days jostle for relevancy so that when elections come around, they are usually fought on which party is tougher on crime. So be it; that is the nature of state politics. The federal government seems to be taking away all the interesting issues that the state government used to deal with, leaving us with fewer and fewer things to deal with so that the debate comes down to who is tougher on crime. I do not accept for a moment that this legislation is about being with the coppers or being against them; that is absurd and I think most members recognise that absurdity. Today, I spoke with a range of police officers, from Mike Dean to Chris Cassidy. Chris was the sergeant in charge of the Cannington Police Station when I was first elected. He was very good to me. He is now working in Kalgoorlie; in fact he works a bit with my dad. He is a sophisticated police officer. His debate on this issue is much more sophisticated than saying, “You are either with us or against us.” I do not accept for a minute that it is correct to say that because the opposition questions mandatory sentencing it is either soft on crime or against our coppers. Most people here know that is not the case and that a debate in that context simply demeans us all.

I am not satisfied, and I do not think it is true, that increased penalties or the threat of jail will result in crime levels going down. My brief experience at the Director of Public Prosecutions office—it was brief, as I was there for just over a year—was not in crime but in the civil section working with the Criminal Property Confiscation Act 2000. Accused defendants would quite happily go inside provided they could keep their hands on the property we were looking to confiscate. Confiscation was, without a question, a more effective way of dealing with the proceeds of crime and the activity that led to that wealth, than was jail. It was a simple case. I saw it every day. A number of members on the government side of the house have identified that mandatory sentencing is not going to result in a reduction in these sorts of crimes. It certainly would not have prevented the case of the terrible assault on Constable Butcher. However, I would be interested to hear the police minister discuss the issue—perhaps not tonight but in the future—of the rights and responsibilities of police in a melee. The member for Girrawheen raised this issue and spoke about what happened in Scotland and Scottish law. However, the issue here is what a police officer can or cannot do in a melee. Perhaps we need to bring more protection to bear so that the acquittals we saw in Constable Butcher’s case do not happen again. This piece of legislation will not at all deal with that. Perhaps we need to focus on that area rather than on mandatory sentencing.

I am a lawyer and I appreciated some of the comments made today. The Attorney General made the point that slimy, slippery lawyers are to blame. To be frank, I think we are in dangerous territory if we start down the line that thugs do not deserve or should not have legal representation. It is not the lawyers’ fault; at the end of the day it is the laws in place and they are our responsibility. In my view, a Perth senior counsel is as good as a Melbourne senior counsel any day of the week; albeit the Attorney General may have some different views on

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

that. I am certainly of the view that blaming lawyers is the easy way out in this matter and that it abrogates responsibilities that we perhaps should consider to be ours.

I made a commitment to the Leader of the House and to my Whip that I would not speak at great length on this piece of legislation. The legislation will be passed. The opposition will seek to make some amendments. However, apart from amendments to the categories of public officer, by and large there is not a huge difference in the positions occupied by government and opposition members. I am aware of what the shadow Attorney General will propose. I am aware of the Attorney General's position and what is intended in the police discretionary guidelines. Our positions are not that different. I am aware of the political context in which this debate will take place; namely, who is tougher on crime and who is softer on crime. So be it; that is the way state politics works. However, I ask members to bring rational minds to this debate and to try to free themselves from emotion. If they do, I think they will see that the positions we are operating from over this issue of mandatory sentencing are not that hugely different. Some people on this side, and as the member for South Perth has said, on the government side, have inherent problems with mandatory sentencing for criminal acts. I would like to hear from National Party members at some point. This legislation will have a larger impact in regional areas than most legislation; a point hit on by a number of people here, including the Attorney General. I would like to hear what National Party members have to say about that, if anything. I would be curious to know, being regional representatives, if they have given the matter any thought.

Mr B.J. Grylls interjected.

Mr B.S. WYATT: I am interested in anything the National Party might have to say about its thoughts on the impact on the numbers of police officers. Obviously, this will have a greater impact on remote Aboriginal communities. I would just be curious to see whether there is any —

Mr B.J. Grylls: One of the thoughts I did have was that in two-officer towns, backup is an hour away. So the call for backup is—most of these melees are over pretty quickly.

Mr B.S. WYATT: I may be repeating some things that regional members have already said. The Leader of the National Party is right. Melees often take place in situations of tense long-term relationships as opposed to random blues outside pubs.

In conclusion, the opposition said that it will cooperate on this legislation; however, like many people, I resent the “you are either with us or against us” approach being taken. It is simply inaccurate, demeaning and it is not reflective of the atmosphere of the debate that should be taking place in this house. Elected members of the Western Australian Parliament should debate clearly and rationally in an environment in which members are not accused of either being soft on crime or against our coppers. Everybody here has had regular contact with the police in their electorates and there would not be a person in this house who is not 100 per cent behind the police officers who serve our community.

MR J.J.M. BOWLER (Kalgoorlie) [8.46 pm]: First, I wish to congratulate the Premier and the Attorney General for listening to me and to people on the opposition benches and hearing our request to expand this legislation to take in St John Ambulance officers, prison officers, transit guards and security guards in our prisons and courthouses. Initially, I wanted to include nurses, but I have listened to the argument on why they should not be included and I believe that this is a good compromise and one that I can now support.

Like the member for South Perth, I have spoken of my philosophical concerns about mandatory sentencing and the possible impact it will have in my electorate where many of my Indigenous electors end up in jail because of their financial and social circumstances. As the member for Pilbara well knows, Indigenous people are terribly overrepresented in our prisons. In this last week and a bit in Kalgoorlie we have had the tragic and moving hearings into the death of Ian Ward; something we hope never to see repeated in Western Australia.

I was particularly concerned, as were the police officers to whom I spoke, about what this legislation will encapsulate. I will use the analogy of the granny with the umbrella at the footy game who pokes her broolly out and inadvertently injures a police officer, only to end up going to jail for a year or so. We do not want that; nor do we want other minor cases in which the police officer incurs a slight injury, takes personal offence and lays charges that result in a person going to jail for an offence that most clear-thinking Western Australians would not support. After speaking to the Attorney General about the measures that he has put in place in the police manual,

Extract from Hansard

[ASSEMBLY - Tuesday, 17 March 2009]

p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

I am reassured that that will not happen. We cannot foresee every circumstance and, sadly, somewhere down the track, someone I believe should not go to prison may do so. I hope that is not the case. However, I take some reassurance from the Attorney General about the processes that have to take place; namely, that each case has to go to a sergeant and from there to the prosecutor and maybe even further up the chain of command before the person is charged and taken to court.

I am also concerned that mandatory sentencing will see more not guilty pleas in court, taking up further court time in a process that is already clogged up. Although that is a concern, I believe that it and all the other concerns I have raised are far outweighed by the message that this legislation will send to the people of Western Australia; that is, if a person is in a melee or a fight and suddenly sees a police officer in front of him or a prison officer or a St John Ambulance officer, anyone who wears these uniforms, and strikes out, that person will know what to expect. I believe that far outweighs those other concerns that I and other people on both sides of the house have raised tonight.

I do not want to speak for too long. However, one of the alarming facts that have arisen over the past week or so is that many people in the community believe that this legislation would have helped Constable Matthew Butcher. It would not have helped him, as members in this chamber know. However, that does not mean that we, as legislators, should not look at other ways of ensuring that justice is done in the future in such cases. It will not be encapsulated in this legislation, but that does not mean to say that we should not work to ensure that in the future we can make changes to legislation or introduce totally new legislation that will ensure that justice in those cases is done.

The member for Victoria Park mentioned Chris Cassidy. He is a part of a senior team in the goldfields. I have been a member of Parliament for eight years, and before that I was a journalist for 29 years, so I have had a lot to do with police. I can tell members that under Superintendent Kevin Looby, and with the likes of Chris Cassidy and the other senior police there, we now have the best team that I have ever known in the goldfields. There is a great camaraderie. To a person, they have sought my support for this legislation. They will feel reassured, and I think the public of Western Australia will feel reassured. I believe this legislation sends the right message that people cannot attack police; and, if they do, they will suffer the consequences.

MR A.P. JACOB (Ocean Reef) [8.51 pm]: I am quite new to this house—I have only just come in—but I have been an elected representative for my area for the past three years. I have to say that in that time I have never had an issue in which such a cross-section of the community has personally contacted me. My phone has run hot since last Thursday evening, and also since the last election. My office has also received letters, faxes and emails. The member for Jandakot said it earlier this evening: this was the number one issue in his electorate. It was definitely the number one issue in my electorate. Even on those occasions on which many people have contacted my office on an issue that has been really close to the heart of the community, there have often been people on one side of the argument or the other. The feeling may have been stronger one way or the other, but there has been a clear dialogue in the community. However, in this case, I have to say that I have only had people coming out in strong support of these laws. In line with that, this debate today is a fantastic opportunity for me to stand and, I suppose, summarise what my electorate has been saying to me on this issue, which is that it is calling for us to do more to protect our police and to make sure that we support this legislation that does that.

Opponents of mandatory sentencing often label it as a response by the government to community impetus. I would have to agree with that. I also have to ask the question: is that a bad thing? I do not think so. I think that is exactly what we are in this place for. It is our role as parliamentarians. Quite clearly, from the contact with my office and from the rally today, the WA community expects this level of penalty as a minimum to be attached to convictions for serious assaults on police officers. Elected representatives, especially if they want to remain elected representatives, are sensitive to community concerns—that is our role—whereas appointed judges perhaps are not.

I will illustrate tonight two examples that I believe help highlight why there is such a deep-seated concern in the broader community with the current sentencing provisions, particularly in the area of serious assaults against police officers. I have come across one example in which someone was charged with assaulting a police officer. It was that person's second charge; the person had a previous charge of assaulting a police officer. The person had punched the officer in the head, spat on him and kicked him. This person received a nine-month suspended sentence—not a single day in jail. I have been dealing with another case through my electorate office in which a person has been serving 11 months in prison—that is 11 months in prison, not the actual sentence that was

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

handed down, which was far in excess of that—for not declaring his income while on benefits. That is wrong in the scheme of things—absolutely. I am not defending what the person who is doing the longer term did. However, in the eyes of the community, do members think that people can justify somebody with a Centrelink violation, which was in the ballpark of \$30 000, serving 11 months in prison while a repeat offender who assaulted yet another police officer received a nine-month suspended sentence? The difference between those two is like night and day. One got a nine-month suspended sentence—not one day in jail—and the other person, who is a family man, is serving 11 months in jail for a Centrelink violation. I do not know what everybody else thinks. The issue of whether this legislation will be a deterrent has also been raised. I think it is pretty safe to say that in the case of the Centrelink violation, that person absolutely will not reoffend. I think anybody who has been connected with that case in any way will be very cautious about what they do in the future. However, I am not so sure about the other person. I do not know that person. Nevertheless, it seems to be quite a light sentence, in view of community expectations in these matters.

I believe it is fair to say that recent cases have shown us that it is indeed very necessary to send magistrates a clear message about what community expectations are of their sentences in these cases. As democratically elected representatives, it is a big part of Parliament's role to legislate in line with community expectations. I commend this bill to the house.

MR A.J. WADDELL (Forrestfield) [8.56 pm]: Last week I turned on the television and I saw the result of the McLeod trial. I suppose like every other person in this chamber, I was appalled. I ranted and shouted at the TV. I ranted to my wife and I ranted to my cat. The next day I ranted to my electorate officer. My overwhelming feeling was that we should do something. This is a sentiment that I have heard over and over tonight. We had a situation in which a police officer, in the line of duty, was injured by an act of somebody in a way that I think most members of the public would find completely unreasonable, completely unnecessary and against all our common standards. What should we do about that? We had a situation in which the prosecution failed to get a conviction, so what do we do? Do we fix that problem? No. What we do is change what would have occurred if a conviction had happened. In other words, nothing that we do here tonight will make one iota of difference. This afternoon I saw a great deal of anger outside Parliament House.

Mr C.C. Porter: This legislation predates that event.

Mr A.J. WADDELL: Yes, but it is the pretext. I saw a lot of anger out there today, and that anger was directed at members in this chamber, because the community wants us to do something. I wonder how the community feels about the fact that when a problem occurs, our solution is to fix an entirely different problem, because that is essentially what we are trying to do tonight—fix an entirely different problem. I do not care how long these people are thrown in prison for. If they go out and attack police officers in the line of their duty, we should throw away the key. Frankly, I have no sympathy for them, but I have some respect for our judicial system and I believe in discretion. The reason I believe in discretion is the very thing we have been hearing about tonight: that the problem in our society is that we have taken away from our police officers the ability to give youths a bit of a kick up the bum from time to time. We have taken away the ability of our teachers to discipline their students. We have done those things. How have we done that? By being too prescriptive and by telling everyone, “You must follow this manual, this step, this step. You can draw your Taser only in this circumstance or that circumstance.” We did that. The problem is us and the way that we try to over-regulate everything. Mandatory sentencing is exactly the same problem. It is over-regulating. It is saying that everything is black and white; there is no scale to it. Inevitably, nobody in this place supports what has happened. We are arguing about cases at the fringes. I am hearing from members opposite arguments about ridiculous cases that have gone forward and the proper punishments have not been dished out. I do not think anybody in this place would disagree. On this side of the chamber, we are concerned about the other scenario, in which ridiculous cases will happen and prosecutions may occur or circumstances may arise in which it is not just to simply go forward with a mandatory sentence. We need to have discretion in the system. I ask my fellow parliamentarians to bring a bit of rationality to this debate because we can talk about sending messages all we like, but people who go around bashing police are not rational people. They do not sit there and go, “Ooh, gee, this one might be a mandatory sentence of 12 months; I won't hit that person. I'll hit that person over there.” They act in the heat of passion and they act irrationally—no message that we send will change the way these people behave. We must fix the underlying problem that allows these people to exist and we need to do that by empowering the people in our community —

Mr C.C. Porter: What exactly is the underlying problem?

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr A.J. WADDELL: The underlying problem is a lack of respect in our society.

Mr C.C. Porter: How do we fix that?

Mr A.J. WADDELL: How do we fix that? We have to allow police officers to earn the respect again, to actually go out and police and not be tied up with regulations, rules and everything else. We have to not be so prescriptive. That is the solution as I see it. The same thing is happening in the education system. We have teachers who are at the point now that they are afraid their students will report them for saying something or for doing something and that they cannot discipline them. Their classes get completely out of control. Again, we have been too prescriptive.

I do not wish to rant for too long, but I suppose that is why I was elected. I have received many, many calls from people in my electorate. People are definitely saying to me overwhelmingly, “Do something: protect the police; protect the nurses.” Tonight I will support this legislation, but I do not think this is the solution that people are looking for. To be honest, I will be embarrassed to go out tomorrow and say that a terrible thing happened last week and our solution was to do something that has absolutely nothing to do with it. It is simply an embarrassment and I think that we should be ashamed of ourselves in some respects.

MR I.M. BRITZA (Morley) [9.01 pm]: I support the legislation. Along with my other colleagues, I thank the member for Murray-Wellington for giving us the insight he gave; it was very important for us.

The attack on Constable Butcher, and the decision in his case, right or wrong, has certainly given the public an opportunity to vent its anger, frustration and concern. I went out the front of Parliament today, ever so briefly, and seeing the people represented, I felt it was an honour to be there. I decided to go to the rear of the demonstration to see who was at the back. I let myself out of the front thinking, “I hope I can get back in.” I spoke to several people. The people at the back of the demonstration were the wives, some who had their babies in prams. I spoke to one mother whose husband serves in the Cockburn area and she said she came to support her husband and had brought her babies to do just that because he loves his job and she wanted to know that he would be protected. I was honoured to hear that. Although the view of the public is not always heard or received, the view of the public in this matter must be heard and acted upon now. It has been deliberated for quite a few years and we can still see no action on it of any kind.

Why has the respect and honour afforded the police deteriorated? I agree with the former member that respect for the police has deteriorated to such an extent that we need to ask why. We have taken authority away from parents. Parents are afraid to discipline their children in the very early years—if someone scowls at or even looks at a little child there is recrimination. Therefore, we are stopped from correcting our children properly—and there is a right way to do that. We have taken authority away from teachers in the classroom; teachers do not know what to do. They have been given no authority or protection in the correction of children in the schoolroom. These two places, the home and school, are where community values and principles are primarily valued and promoted. I think we must go back to the very basics, even if we start with one like that movie of old, *The Power of One*. We must do it with one thing—respect. Respect for the police, parents, teachers and anyone in public authority has to be taught from the basics of home. Respect has been deteriorating. The member for Jandakot earlier said that it is disappointing when travelling on public transport to see disrespect right in front of us. However, we have come to a point at which we now must apply a mandatory sentence to bring about not only order in the community, but also protection of police while on duty protecting those whom they have sworn to protect. We have been forced into that position. It should have come naturally but we have been forced into it. I think this is a very heartbreaking commentary on where our society lies. This wonderful hidden jewel, the city of Perth, which is still hidden from people around the world, has a community that to a certain extent is living in fear. People do not walk at night anymore. They do not walk in the morning and now they are afraid to walk in the middle of the day! They want and need police protection. However, it now must come at a price and a heavy one at that.

As we have been told today, an average of four police officers a day are being assaulted. I am saddened that a significant part of our community has no respect for authority. Several people in my electorate of Morley have come to me and expressed very strongly their opinion about the Constable Butcher incident and have supported the government’s desire to pass this legislation. I want to place on record that I support not only the police who serve my electorate of Morley and put their lives on the line to maintain peace in the community, but also the police and members of other protective forces in our state who by and large go completely unnoticed until they

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

are needed. One member talked about country police. I thought about how our community gets upset when the police do not come within half an hour, whereas country residents cannot get a police officer that quickly.

Although I am not sufficiently skilled to draft legislation on this matter, I really feel that I am qualified to comment on the moral foundations that have led to these terrible incidents that have forced us to make changes to protect our police and protective services personnel. I am honoured to be part of the government that is committed to bringing protection to our police and protective services personnel. I am honoured to be part of a government that is not afraid to accept very difficult responsibilities in this area. We will simply do the right thing—that is all. I trust that the police and protective services personnel will go on duty knowing that very soon they will finally be supported and protected in a manner that should have been available to them long ago.

MS L.L. BAKER (Maylands) [9.07 pm]: I want to add my brief comments to this debate because it is an extremely important and emotional issue for me. My brother and his wife are both serving police officers and they have a 12-month-old little fella, and I care for him greatly. It disturbs me deeply when I know that both of them are on duty. I know the kind of treatment that police officers face when they go out the door. Many members have said tonight that they also have relatives who are in the police service. I am completely supportive of making sure that our police force is looked after and its officers are given the right kind of protection on the job. If I could go home tonight thinking that we had successfully passed this bill and that it would make a difference to the lives of both my brother and his wife, and to the life of my little nephew, I would be so proud and pleased. I do not know that that will be the case, basically for the same arguments that the member for Forrestfield raised; that is, I am not sure that this legislation is the solution to the problem. It may be one tiny chink that we can move forward on for the sake of my brother, his wife and their little fella. It may affect someone in two or three years down the line in that that person may hesitate before deciding whether to smash a bottle and then go to cut a police officer or whether to punch or otherwise injure a police officer. I do not think it will make much difference in the short term. I am very sad that we cannot come up with a piece of legislation that will immediately change their lives. If this is the best we can do, I just hope that it can make some impact while they are still serving police officers. The question was asked earlier: how do you make a difference? The way that one makes a real difference to the respect that citizens have for police is to make sure that the police are visible. I know the people in my electorate feel much more secure when they know that there is a police station just down the road in Inglewood, or when they know that there is a police station operating nearby. They are very happy with that, because they see the presence of our police force and they feel protected. Even if they are not so well protected, they think they will be.

Mr D.T. Redman: The previous government shut down six police stations.

Ms L.L. BAKER: I hope this government will not shut down any police stations, particularly not in my electorate! The electorate of Maylands is very concerned about making sure that we have a visible police presence on the street.

Mr B.J. Grylls: Do you think that the two wives of the policemen who spoke on the steps of Parliament today actually feel that they are now contributing to the political process? They had a huge crowd there, giving their families support. They lobbied for changes to the legislation, and we are here in Parliament putting those changes through. We all agree and concede that it does not make any difference to the McLeod case —

The ACTING SPEAKER (Mr P.B. Watson): Member, is this a speech or an interjection?

Ms L.L. BAKER: What was the question?

Mr B.J. Grylls: Do you agree that it is a good outcome for those families?

Ms L.L. BAKER: I absolutely think that they think it will be a good outcome.

Mr B.J. Grylls: I think that's an answer to the question you were posing.

Ms L.L. BAKER: I was responding to a question from the government about how to make a difference for police and to increase the respect they get from the community. I think that is achieved by having a visible police presence on the street and by making sure that there is a law enforcement system that is very visible and present for people. This may be one little way in which we can make a long-term impact on the way that the community feels about police officers, and I hope it is, for the sake of my family. That is all I want to say, but I will certainly

Extract from Hansard

[ASSEMBLY - Tuesday, 17 March 2009]

p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

support the bill. It is a shame that we cannot also offer the same protections to our fire and emergency services officers, our nurses and our teachers.

MR A. KRSTICEVIC (Carine) [9.12 pm]: I support the mandatory sentencing legislation. Seeing the 5 000-plus police officers and supporters gathered on the steps of Parliament House today gave us a very clear message that the police have been frustrated over the past eight years at the lack of support they have received. They are frustrated at the fact that they were not listened to when they asked Parliament for help to deal with the problems in their everyday working lives. I will quote from an article that appeared in the *Stirling Times* on 29 August 2006 under the heading "Vote on Kobelke". It states —

SENIOR police moved a no confidence motion in Police Minister John Kobelke last week.

Commissioned officers, which include assistant commissioners, superintendents and inspectors, moved the motion at a branch meeting last Thursday. In reply, the Balcatta MLA said on Friday that he would continue his good working relationship with WA police.

That was a situation in which the police moved a no-confidence motion, but the then minister still believed he had a good working relationship with the police. That was one indication, no doubt amongst many, that police voices were not being heard.

I will also quote from an article that appeared in *The West Australian* on 28 July 2008. It states —

Alan Carpenter has scotched moves to introduce mandatory prison terms for thugs convicted of deliberate and serious assaults on public officers

...

the Premier said yesterday he believed it was ineffective to impose mandatory jail terms on criminals who deliberately attacked public officers.

There we have a statement from the former Premier in which he expressed the view that a convicted criminal who deliberately seriously assaults a public officer should not be subject to a mandatory prison term. I really do not understand that. I think every person who attended the rally today, and every person in Western Australia, would agree that a convicted criminal who deliberately and seriously injures a police officer while the officer is on duty should be locked up and the key thrown away. Although I heard some members of the opposition indicating some level of support for mandatory jail terms, it was interesting to note the member for Forrestfield talking about changes in underlying values and support for our teachers. However, over the past eight years, we have done nothing to help underlying values and we have done nothing to support our teachers. Until recently, when the new government came to power, teachers were not happy with the previous government. The previous government did not listen to teachers' concerns and issues raised about the curriculum, and about what needed to be happening in classrooms. How could the previous government have been listening to people on the subject of values and behaviours if they could not even listen to matters concerning core functions of our school system?

I quote from another article that appeared in *The West Australian* on 13 June 2008. It states —

The WA Police Union has threatened to highlight every case of the four daily attacks on police officers until the State Government introduces tough, new minimum mandatory sentences.

Four officers were being attacked every day, and nothing was being done in this Parliament to help them. This was made known publicly via newspapers and television. The article continues —

Shadow police minister Rob Johnson's move to introduce the minimum sentences was voted out of Parliament after a surprisingly quiet second reading when the Government did not contribute.

The previous government did not contribute to the debate on mandatory sentencing, and on what changes needed to be made to our laws to help police officers. The previous government did nothing. The present Minister for Police knew that this was a problem as early as 2006, and even earlier. He brought it to the attention of Parliament and it was totally ignored. The article continues —

Police Minister John Kobelke has stressed the Government's opposition to mandatory sentencing, saying it would be a "knee-jerk and emotive reaction".

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

That was a knee-jerk and emotive reaction, but in the meantime, nothing was being put in place to help police officers.

Mr J.C. Kobelke: That is not true.

Mr A. KRSTICEVIC: I can only read the quote.

Mr J.C. Kobelke: A lot of things were done. We brought in occupational health and safety cover, which is something that the previous Liberal government never did. We supplied the police with Tasers and better resources. We did a lot of things to protect our police.

Mr A. KRSTICEVIC: No doubt some things were done; I am not saying that nothing was done, but it is obvious from the emotion displayed today and over the past few years that we have not been paying attention to the police as well as we could have been. We have not introduced the changes that we should have.

I will quote from another article that appeared in *The West Australian* on 22 August 2008.

Several members interjected.

Mr A. KRSTICEVIC: I think that this is important, members; it is probably the most important part of the article. It states —

For more than two years, the Labor Government has been under growing pressure to introduce tougher laws to protect police from thugs who use them as punch bags.

...

The laws were announced in May 2006 but languished in Parliament until earlier this year because the Government did not push the legislation up its list of priorities in the Upper House.

Obviously we had important things to deal with, such as prostitution laws and other high-level issues that were so important that our police were not important enough to be moved up the agenda. Some members will argue that mandatory sentencing is not the solution, but I think we have heard some very good arguments in favour of it. If someone is convicted of a serious assault against a police officer, he should go to jail. Obviously we have extended that even further to other public officers, and I think that is a very solid step in the right direction. The community was out there today, demanding that we do something about this and make a serious statement. It is not just a serious statement, but a serious legislative change by which these people will be going to jail; there is no get-out-of-jail card in this situation.

Like I said, this is just the first step. I commend the Premier and the Attorney General for this legislation, for listening to the community, for understanding what the community and police officers want, and for heading in the right direction. I will support this legislation, and I will support even tougher measures, if that is what is required, to support our public officers.

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [9.20 pm]: I rise to make some brief comments tonight. I do not want to hold up debate any more than is necessary, but it is important to put some comments on the record. First of all, I commend many of the speeches made tonight. Some of the comments, particularly from new members of Parliament, have been very useful and in the circumstances of a very emotional debate have been well-constructed speeches expressing well-considered views. The police in my electorate of Kwinana do an excellent job in the face of very trying social conditions. I take the opportunity to commend the work that they do, given the difficulties under which they operate.

The member for Fremantle commented earlier this evening that, essentially, we have two aspects to this debate: one is the issue of mandatory sentencing, which I do not intend to go into tonight, and the other is the scope of the legislation and the nature of who is covered by this legislation. I will make a few comments on that. It is true to say that the Liberal Party, now the Liberal government, raised the expectations of members of the community that they would be protected under this legislation. As the shadow Minister for Health, I have a particular concern for the many health sector workers who thought that they too would be protected by this legislation. It may be a moot point in view of the comments made by the Minister for Mental Health today that we have plenty of provisions in place to protect people in the health sector who are at risk of being assaulted in the workplace, but one of the unfortunate and, perhaps, unintentional consequences of this debate is that some members in the community now feel that their contributions, particularly in the area of health care, are not valued.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Prior to the 2008 election, the Liberal Party promised that a WA Liberal government would protect police and other public officers by providing minimum mandatory jail sentences to people who seriously injured them, and this included employees of public hospitals. There was an expectation within the community that a range of public officers would be covered under this legislation. There was certainly an expectation among the nursing community that they too would be covered under this legislation. I was interested in the comments made by the minister earlier today that he could not comment on the issue of exactly what was done inside the government ranks that made it decide to move away from its initial commitment and promise to the people of Western Australia. He mentioned that he was particularly concerned about the situation and he used the word “concern” at least seven times in his lengthy but rather incomprehensive answer.

One of the important comments that the minister made in his speech was that the assaults on nurses were not of a high enough volume to warrant nurses being protected under this legislation. That is a particularly disappointing attitude. When people go to work to provide care to their patients—to express compassion and care—the last thing they expect in a workplace is to be the subject of an assault. I know that it might come down to a question of quantity, but I am not sure that any quantity, however low, would justify excluding assaults on nurses from this legislation. Nurses will feel worse now that the government has said that because of the low number of assaults against them, they will no longer qualify for this important legislation. This is legislation which the government has talked up and which it says is vital for public officers who are undertaking vital work.

It is true to say that nurses undertake vital work. Let us consider the number of assaults on nurses and the incidence of violence or aggression committed against nurses. At Royal Perth Hospital, there were 94 incidents in 2005, 99 in 2006, 82 in 2007 —

Mr C.C. Porter: Where are those figures from?

Mr R.H. COOK: These have been provided to me by the Australian Nursing Federation.

Mr C.C. Porter: Were any of those charges under section 318, which we are dealing with?

Mr R.H. COOK: I am not sure, Attorney General. However, in 2009 there were 145 reported cases, four of which resulted in lost time or workers’ compensation claims. The important point to remember is that people in these sorts of workplaces find these incidents as traumatic as would anyone else, except of course that nurses do not go to work with the expectation that they will find themselves in aggressive circumstances when perhaps others might. From that perspective, it is particularly disappointing.

I want to talk about the experiences of hospital service assistants in what are called code-black incidents. During these incidents in hospitals, staff are required to report immediately if a member of staff is experiencing a situation of violence. I will read from an excerpt of a case that was presented to the Full Bench of the Western Australian Industrial Relations Commission last year. It states —

A serious examples of a Code Black incident was an incident 2-3 years ago when a woman was a patient on one of the wards and had her two children staying with her. The woman’s ex-husband came with the intent of abducting the children. He was a tall man, armed with a knife, and was visibly under the effects of methylamphetamine. A Code Black was called and both HSAs and security guards attended on the ward. The HSAs received the order to restrain the man. Though this was achieved it in fact took eight participants rather than the 5 members of a SIRT team to restrain the individual, and he was restrained on the floor for a full half hour whilst waiting for police assistance.

The testimony of this HSA goes on to state —

From my personal experience, and on the experience of the vast majority of HSAs I have spoken to over my employment as a HSA, in approximately 9 out of 10 cases where a Code Black incident takes place or when a Code Black response is activated, it is a single HSA who is first on the scene of the incident.

Hospital service assistants are primarily orderlies with experience, and in these situations they have to throw themselves into a particularly stressful and potentially violent situation. It continues —

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Speaking personally, over the course of my employment with SCGH I have been kicked in the stomach, dealt with drug-affected individuals, dealt with threats against my life and health, and had to restrain a vast number of individuals — quite apart from participating in a Code Black ...

The testimony of another HSA states —

In the course of my employment as a HSA I have personally been bitten, punched, had urine thrown at me, and suffered assaults from various thrown items.

Again, this just goes to show that people in uniform who are working on the front line have a reasonable expectation that they will be protected by this legislation. The Liberal Party said during the election campaign that it would seek to protect these people with legislation, but they are not being protected.

Several members interjected.

The ACTING SPEAKER: Members have had the opportunity to speak. Let the member on his feet speak.

Mr R.H. COOK: I understand that, on hearing that the Liberal government's legislation would not cover nurses, the ANF sought a meeting with the Attorney General and that request was denied.

It is rather disappointing that although the government had raised the expectations of people in this sector, it was not prepared to sit down with the Australian Nursing Federation and explain face-to-face why nurses were not worthy of coverage under this important legislation when they had been given every expectation that they would be covered by it. On 4 December the Attorney General was reported as saying on radio that essentially nurses, after police, were the next cab off the rank or the next layer of public officers whom people would expect to get protection under this legislation. However, for some reason they have since been forgotten.

I return to the question that earlier today I asked the government: to what extent did the Minister for Health and the Minister for Mental Health go in to bat for these people when the government was deciding to wind back the provisions of this legislation? We have here a serious breach of faith. The Attorney General said on radio, according to my notes —

What we tried to do, drawing the line...is look at a common theme amongst the people to whom mandatory penalties for assault thereon will apply.

Notably, people whom we, as members of the public, all rely on, on a daily basis, for our physical safety, people who have a positive duty by virtue of their employment to intervene when they see violence.

Essentially, nurses are required on a daily basis to provide assistance, care and a safe environment when they are often confronting violence. I do not want to go on longer than necessary. Whether this bill settles on the nub of mandatory sentencing is not the point I want to make tonight. The point I want to make is that by virtue of not meeting with nurses to explain the logic of its position and shifting the goalposts on this issue, the government has essentially undertaken a ballot to express who it thinks among the state public sector is worthy of support and whom it values. The unfortunate message that the government has put out to nurses through this legislation is that the government does not value the work of nurses. I do not know whether it is an intentional aspect of this debate but it is a very disappointing one. I share the disappointment of the nurses that they will necessarily be disadvantaged in the workplace and that the nature of the debate will send a message to them that despite the care and compassion they bring to patients, and despite the fact that they will often confront situations of violence, this government has not seen fit to consider them part of the chosen few of the public officers left to be covered by this legislation.

MR I.C. BLAYNEY (Geraldton) [9.34 pm]: I support the legislation. During the election campaign I knocked on about 6 000 doors. I had five points on the card that I handed out. In most cases people asked me which of the points were the most important. I said that two were the most important: one was that people who assaulted police had to go prison and the second was that I wanted teachers back in schools and teaching. The mid-west and Geraldton probably have as big a problem in this area as most other parts of the state. Therefore, I say that we have a mandate to introduce this legislation. I consider that mandatory sentencing must apply for assaults on police because they are expected to step into the breach. Widening the provisions of the bill to include more

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

people will weaken it. I fully accept that mandatory sentencing should apply for assaults on ambulance officers and uniformed officers on trains. I am amazed that every day four police officers are assaulted in Western Australia. I do not believe that there can be extenuating circumstances. I am amazed that we seem to give more protection to Australian Football League umpires than to police officers. I find utterly obscene the prospect of the assailants of Matthew Butcher trying to get damages.

I believe that our police service stands between people who obey the law and those who do not. Over the years I have spent a reasonable amount of time in the African countries of Zimbabwe and Zambia. Due to political interference, corruption and neglect, there is little or none of their police forces left. The people who live in those countries spend their lives behind bars in their houses. They cannot leave their houses at night. People like us, who go to those countries and who are used to being serviced by a good police service, greatly fear living without police in those countries. I know people who have been assaulted and robbed and, in one case, murdered.

In conclusion, we must stand by those who stand by us. The most telling line I saw today during the rally was on a placard, which said "Protect Your Police or Protect Yourself". As someone else in another place at another time said, and I will say it because I think it applies in this case, there is no alternative.

MR T.G. STEPHENS (Pilbara) [9.36 pm]: The opportunity to support the police is universally embraced by every member on both sides of Parliament. The question is: how is that done well and best? Western Australia is a pretty big state; we all operate in different environments. If Parliament has any real value, it is to provide the opportunity for the stories of all the people of Western Australia to be shared in this environment so that laws are created that reflect as far as possible who looks after the interests of that entire community. I am very lucky to have had long years of service in this Parliament and to have seen a range of things happen over my parliamentary lifetime. One of the good things I have seen in recent years has been the arrival of the last three police commissioners, who have led the police service increasingly with great skill in the way they have delivered policing across regional Western Australia in particular, with which I am more familiar, and have set a fine standard through the way they have operated.

I became a member of this place when the police service was not so well served or so well led. I have watched things develop, such as the development of the police officers' standard operating procedures. The precedents that guided police in the way they operated around Western Australia were not always an enlightened set of procedures. That is clearly as a result of the information we saw tabled in the house today. The way the police commissioner proposes that this amended legislation will be enforced will follow well-educated, well-balanced procedures. That may not always be the situation with which Western Australia is faced. Police commissioners come and go, and they can sometimes reflect the mode of operation of a police minister or the tone of a government. The police service may not be as well led as it is currently. It concerns me then—I know it would have concerned members of the government when they were not on the government benches—that we will be leaving the application of this law to the discretion of a set of guidelines that are not subject to parliamentary approval. They will not be subject to parliamentary review and scrutiny or even disallowance.

They are certainly guidelines that have not been given the strength or weight that they could best be given by being enshrined in the law itself, so the wisdom of the police commissioner was taken up and put into the statute itself. In that way the statute would provide the balance that the police commissioner is asking of his officers. That is what would happen, as I understand, if the amendments that are proposed for consideration in detail were adopted by the house.

I operate in a part of Western Australia from which too many people emerge into the justice system and the prison system that are completely disproportionate to their percentage in the region that I represent. Because of the application of the statutes that we put through this Parliament and deliver for uniform application across a state like ours, I have attempted in the past to address some of the problems. The way legislation works around Western Australia, we aim to try to create something that might apply to a particular lay of the land, yet Western Australia has an enormous variety of different social experiences. I happen to represent a part of Western Australia that is so different from the way Perth operates. The communities and the towns and the social circumstances are very different. Yes, they have some shared experiences, but the differences are glaring. We live in a world where the need for discretion needs to be available in the application of the law and utilised by police officers. It is by and large utilised by police officers very well.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

This is against the backdrop of knowing that since I have arrived in this place I have increasingly acquired the strongest sense of support for police and the role they play within our community. While I was a minister, I came to the point where I asked the police service to continue to roll out their service into the remote areas of the state where Aboriginal people were asking for their presence to try to enforce the laws throughout the lawless areas. The police presence is valued. Their mode of operation is wonderful to see—that is, the way it is rolled out. The discretion that the police officers use in their use of prosecuting powers is by and large utilised very well. In the process of getting the balance right and providing that sense, reality and support for the police, and to ensure that the community can always value law enforcement officers, other checks and balances are needed in the system as well. For me, this bill, as it currently stands, does not provide for all those checks and balances that are in the best interests of the police and the community. It is that opportunity for review and opportunity to exercise discretion that is available to police that should also, in my view, be retained in most, if not all, circumstances for the judiciary as well. This view that I hold dear is one that is shaped by years of service in this place to the community of the regional areas of Western Australia.

In other areas of law, when the member for Churchlands was activating her thinking power in a different way in this house, she was never comfortable leaving guidelines that were not subject to parliamentary scrutiny, that were not embedded in legislation and that were not subject to disallowance. When she sat on this side of the house, she would have argued strongly against prosecuting guidelines being left so that the bill itself and the Parliament itself did not have the decision-making role in the application of law. It is a pity that that standard that the member for Churchlands argued for from this side of the house—when not in government—suddenly disappeared when she moved to the other side of the house, sitting as an Independent member in cabinet. It is an inconsistent position.

Supporting the police needs to take many shapes and forms. Resourcing the police and protecting police budgets is fundamental to ensuring that they can protect the way they operate in communities. We need to secure the best education for the police and ensure that the police service is equipped with the skills to handle the very many difficult circumstances in which they are placed. To have a government come forward with legislation such as this while simultaneously putting the police service under enormous budgetary pressure and the threat of losing funds for its operations puts its safety at greater risk from those budgetary pressures than it will ever be from the failure to pass this bill in its current form.

Within the Attorney General's second reading speech that he delivered when he introduced the bill is a most offensive way of responding to the people of Western Australia. In the end, the people of Western Australia have democracy as their flower. It is their thing; they own democracy. We just happen to be lucky enough to have been entrusted by that community from time to time to come into this place as members of Parliament. I want to read an offensive part of the Attorney's speech. He stated —

In this sense it was ultimately considered that extension of mandatory sentencing to the definition of “public officer” contained in section 1 of the Criminal Code could result in mandatory minimum sentences being imposed even for an assault on a member of Parliament ... which was undesirable.

Members can get the tone of what the Attorney was saying there. I do not know whether he was just reading this out or whether he was reflecting his own views. It is an enormous attack upon the people of Western Australia whose votes are carried into this place by whoever happens to represent them—whether they are acting on behalf of the people of the Pilbara or on behalf of the people of the Kimberley—and that “even an assault on a member of Parliament” might be caught up by that definition of public officer. We do not champion the privileges or the protections of members of Parliament for ourselves. Stuff that! I am not the slightest bit interested in that. I am sick of the casts looking after themselves for their own sake. I have been engaged with professions that have tried to do a bit of that and it sickened me. We are here to champion democratic processes—the rights of people. That contemptuous way of referring to the people of Western Australia and their representatives in that paragraph does this place a disservice and it does the authors of it a disservice. These things are generally written by others and some silly mug is stupid enough to say it in this place. The people who write that sort of stuff attack not us but the people of Western Australia. I happen to have been assaulted in this place —

Mr J.E. McGrath: I don't think that's what he was referring to.

Mr T.G. STEPHENS: That is the way it reads.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Dr K.D. Hames: I think the reality is if I was out there and, in the course of knocking on doors, someone had a whack at me and busted my nose, I wouldn't like to see that bloke have to go to jail for a year under mandatory sentencing.

Mr T.G. STEPHENS: Take the example of Clive Griffiths.

Dr K.D. Hames: Yes.

Mr T.G. STEPHENS: These things have a history. They are rooted in our history. They must be understood in the context of the whole sweep of the Westminster system, where they emerged out of, where we as a democracy can go in the future and how these things can collapse before our very eyes. This is not about being precious as individuals. It has nothing to do with us as individuals. It is about the people that we are here to represent.

Dr K.D. Hames: I think that as members of Parliament we have to wear a bit of the Irish attitude towards politicians, because I think all of us have a little bit of it.

Mr T.G. STEPHENS: I understand that but all I am saying to the member for Dawesville is that it is not the way it reads in the second reading speech on this bill.

Dr K.D. Hames: I think that might have been the intent, if that is not the way you have read it.

Mr T.G. STEPHENS: I will not dwell on it much more.

Championing the rights of the people of Western Australia in the Parliament and having the Parliament protected in that process of looking after the community's rights are fundamentally important. It is the fundamental right of members to come into this place and share a story from a regional area of Western Australia without being intimidated, menaced or threatened on the front steps of Parliament that they must vote a certain way or else. The community in my electorate values the police service very much and wants it within their midst. It also wants a system of checks and balances in which police and other public officers are subject to review and scrutiny through normal processes, including the judicial process. My greatest fear about this legislation is that it faces the risk of being put to the disservice of the entire community that I represent and that it will in the end do more damage to the police and their relationship with members of the community than might ever have been envisaged by those champions of it.

I also make the point that this legislation quite clearly does not tackle the issues that are out in the media this week. The legislation does not tackle the issues that are the subject of the understandable fury of the community about the way some police officers have been dealt with. We are now faced with a bill before us that does something entirely different from that which would be necessary to respond to that set of circumstances.

[Member's time extended.]

Mr T.G. STEPHENS: Some members of this place would appreciate that from time to time governments, lobby groups and pressure groups take the opportunity to ram in legislation in the face of incidents in the wider community. They have rammed together the legislation and shoved it into this place and expected it to pass through and out the other end as rapidly as possible in the mass hysteria that the community has been faced with over a particular incident. I have been a member of this place long enough to have seen it happen before. I do not know whether other members recall legislation having been brought into the Parliament in response to an urgency with which we were faced and it providing no such response.

Mr J.E. McGrath: Seatbelts in school buses was one.

Mr T.G. STEPHENS: I am not across that detail as much as the member for South Perth is, but if he is proving my point, I thank him for helping me in support of this argument.

I just say to members who represent electorates such as mine that one needs to be fearful of the way in which this legislation leaves too much to the discretion of instruments such as the police operating procedures.

It is not subject to scrutiny, review or disallowance and is not embedded in the bill. However, because the current police commissioner is a wonderful man and is leading the police service very well, the government thinks that we can always rely on him. These people come and they go. We could suddenly find this state in a totally different situation.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

A necessary requirement for citizens of Western Australia is to support the police service. Members of Parliament reflect the legitimate ambitions of the Western Australian community to support the police. That support should come by way of delivering intelligent support and resources for that support. It is poppycock for members opposite to attack members on this side of the house in this debate, while, at the same time, putting the police service under pressure by taking from it the budgetary support necessary to protect its officers in the delivery of front-line services. It is hypocritical of members opposite to, in their contribution to this debate, paint members on one side of the house as anti-police because they are trying to share the stories and experiences of Western Australians and bring those experiences into the debate to ensure that the best legislation of its type emerges from this place.

Members have seen what goes on in the American political debates. During election campaigns people are attacked for being un-American for daring to question the shape of one or other side of politics as they engage in political discussions. I refuse to be categorised as not supporting the police simply because I question this bill. I want a robust police force that operates under clear guidelines and statutes that are subject to parliamentary scrutiny and approval. If the operating procedures for this amending legislation are not outlined in this bill, they should at least be subjected to consideration and, if necessary, disallowance by this house.

Let us express some confidence in the people of Western Australia's representatives in this house by ensuring that an appropriate review process is included in the bill. Another amendment that might appeal to members from the bush would be to include in the legislation a requirement that it be formally reviewed within a set time.

Mr R.F. Johnson: We are doing that. We will support that, providing you do not mess around with the legislation by moving a lot of other amendments that are not acceptable to us.

Mr T.G. STEPHENS: I did not realise that the government will do that. I am pleased to hear that that is the case and commend the government for doing it.

I do not know whether it would be entirely accurate, but I would like to think that members in this house would draw upon analogous experiences. We have seen how other agencies operate. One that I will pluck out of the air is the Corruption and Crime Commission. As members reflect on the experience of the CCC legislation and the way in which Parliament has withdrawn from parliamentary review and scrutiny of the way in which that law enforcement agency has operated, I hope that they would consider what it has done to individuals' lives and careers. Members should think about that analogy and liken it to the area of law enforcement covered by this bill. They must then ask whether they can work on the basis that the experience they have acquired in their life might not be wisely subject to good parliamentary security, review or good judicial review or checks and balances, but it is a way of expressing their strong support for the best features of police services operating in Western Australia.

All members come to this place with experiences that help shape their judgement—our own experiences and the experiences of our communities and our friends; the way they have been treated by parallel areas of law. We have to think whether, from those experiences, we can draw upon anything that might guide us as to how we might like the police service to best operate in Western Australia. I hope those words might resonate with people that have still got the opportunity to make a difference with this bill.

MR P. ABETZ (Southern River) [9.59 pm]: I rise this evening to speak in support of the bill, fully conscious that this bill only goes a small way to providing the kind of protection and support that the police service requires. Some weeks ago, before the Matthew Butcher court case hit the media, I visited my local police station and spoke with the police officers. Their frustration was that they felt that the legal system was letting them down badly. Often, after apprehending somebody, they would go through all the processes and then go to court, and the offenders would get little more than a slap on the wrist. Their sense of frustration was palpable.

We need to recognise that mandatory sentencing of people who attack a police officer and cause significant injury is an absolute minimum length of sentence that needs to be in place. To those who say this bill lacks flexibility—that is nonsense! The court has to impose a nine-month sentence as a minimum; there is still plenty of flexibility. The court can still impose a sentence of 10 years or 12 years—whatever the maximum sentence is—but the bill states very clearly that nine months is the minimum that we expect a person to be sentenced to if he attacks a police officer and causes injury.

Extract from Hansard

[ASSEMBLY - Tuesday, 17 March 2009]

p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

I was interested to listen to the member for Murray-Wellington's account of his experience as a police officer. My view is that even though he was not seriously hurt, for a person to attack a police officer, punch him in the face and the chest or whatever, is totally unacceptable conduct. That kind of behaviour should come under mandatory sentencing. I do not believe that our community accepts that a person can simply tell a police officer to go and get f-ed, and then go and punch him—it is just not acceptable! Until we really draw the line and have zero tolerance to aggressive behaviour towards police officers, we are not supporting them sufficiently. My hope is that our good Attorney General will bring in some more legislation that will actually provide further support to our police officers.

For those who perhaps are concerned about nurses not being protected, I suggest that the way forward would be to take quite a different approach. Most of the violence that occurs in the emergency departments of our hospitals is caused by alcohol and drugs. Perth needs a dedicated facility where ambulances bring people who are alcohol affected and drug affected, staffed by people who specialise in dealing with those problems. That will take the pressure off the emergency departments in the ordinary hospitals, which will leave them to deal with the things they need to deal with. The need for security in ordinary hospitals will be so much lessened, and this specialised facility could deal with these people because it would have the extra security staff and so on to deal with them. Some might say that is not fair because they will not have the specialist services at hand; quite frankly, that is just too bad! I do not believe that people who choose to intoxicate themselves with alcohol or get off their faces on drugs should have the right to upset the whole hospital system and put other people in danger. Therefore, I would certainly like to see a move in that direction.

Another thing that I will briefly mention, which the member for Morley has already spoken about, is that the real issue of respect for police goes right back to the home. When I was doorknocking during my election campaign, law and order was the number one issue for everybody. People said that we need more police and that they want stronger sentences imposed by the courts. I always said to those people that stronger sentences are only part of the solution. The other part of the solution is that we need to teach values and respect in the home and in schools. In that way we will see a change in society so that people again respect those in authority. Unless we also put in place systems to facilitate and encourage parents to teach values to their kids, and have that happening in the schools also, particularly for the younger years, we will continue to have to think of other ways of dealing with the symptoms of a problem, rather than dealing with the root cause.

MR M.P. MURRAY (Collie-Preston) [10.05 pm]: I rise to support the police in the strongest possible way. I warn people in this house to be wary of getting wrapped up in the emotion of making law. I think it is very important that we leave the emotion out of this debate and ensure that this bill becomes a law that will work into the future. I expect that after a couple of years there will be a review of the legislation.

It is pleasing to me that I meet my local police sergeant in Collie on a monthly basis. We always talk about the safety of his officers. The number of officers in the station goes up and down because officers have been injured on the job, whether it is from assaults or for other reasons. However, in the main I suppose it is assaults, some of which are minor and some major. My police sergeant has asked that protection be given to police officers. Senior Sergeant Simon Dent is a very good, young, up and coming police officer who looks after his men to the maximum and also works very hard to try to connect with the community.

I suppose that another distant background connection I have with the Collie Police Station is that my wife worked on the front desk as a civil servant for some 15 years. I have heard many and varied stories—some stretched, some probably far from the truth by the time they have done the rounds, and some that are concerning—about the actions of a very small minority of police officers. That is why I say that we must make such laws as these on the ground of truth and the cold hard facts of day. It is very, very important to do that.

We must also have been reminded, when we saw Constable Butcher sitting there today, of the very sad occurrences that are happening in our society. I was absolutely flabbergasted when I saw those video clips on the TV. However, in saying all that, those people were found not guilty, and therein lie some of the problems with the emotional side of what has happened. It is a very sad occurrence, but a court of law has found those charged not guilty and we must respect that unless there is an appeal.

Having said that, I certainly support the notion of mandatory sentencing for severe cases of assault against police officers, but we must be very clear about what severe cases entail. It is not about the cases that the member for

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Alfred Cove talked about involving running over someone's foot with a shopping trolley. We must be careful to distinguish between the different levels of severity.

At first I had some concerns about mandatory sentencing overall, but as the day has worn on and I have listened to some of the speakers in this place, I am starting to have a lot more comfort in what is being proposed. However, again we must take care.

The unfortunate side of policing is that the changing attitudes within our society mean that the respect for police officers is not quite the same as it used to be. Certainly, as one of the older people in the chamber now, I suppose—I am just looking around; Tom might be a bit older than I—I remember the days when we got a boot up the backside and were sent home. If that happened now, people would go to court and say that their son had been assaulted. Factually, I know of cases in which sons or daughters have been taken to their front door, drunk and unable to defend themselves, let alone anyone else, and the parents have attacked the police officer for bringing those children home. That sort of thing really worries me. Again, it is an emotional issue, but the fact is that society is not accepting the help being given by those police officers. That is very relevant in today's society. We must also look at that.

Mention was made of where it starts. It starts in the home and it starts in the schools. If we do not look at this issue from a holus-bolus point of view, we will fail, because we are trying to fix only the top end, and we cannot do that by itself. We must look at it as a whole and start the work with education in our schools. Children should not be afraid of police officers. Sometimes it is a household issue, because the children are told, "Watch out for that policeman. He's going to put you in jail." Instead of being seen as a lawmaker, the police officer is put forward by these people as a person who is not a friend but someone who might, because of previous experiences, put the children away.

Just before Christmas, there was a tragic situation in the Collie police station. I suppose no-one will ever know for sure what caused the issue there. A young officer committed suicide in the armoury. Those sorts of things tell us about the pressures that are on police officers. We do not know what pressures were on that officer at that time, but I do know that in the weeks leading up to that incident, there was a death on the road and also a drowning in the town. One can only surmise that some of that might have contributed to his problems. Even though, as I said, we have a very good sergeant in Collie, sometimes the support in country stations is not as great as it would be in a large, major city station, where a chaplain would be available. Along the way, we must get it right. If we do not, it could come back to bite us. Therefore, we must be very, very careful.

There must be support for our police officers. They must be able to get into their cars, go to work, work on the job and come home safely, the same as I would expect in any other job, whether it be in heavy industry or at the local supermarket. Police officers must have the same rights in their work areas. It is a duty of care of all Western Australians—not just people on the parliamentary side, but all Western Australians—to make sure that that happens. How many times in today's society have we heard about a policeman who was getting a belting and no-one stopped to help? Just before Christmas, there was a case in Sydney or Melbourne in which a young girl was getting beaten up, and only two people came out of the crowd to assist. Another person then shot both of those people. Again, it is an issue for society. We must get on the front foot and get back some of those values. I am certainly not one to preach about what values are, but respect is probably the biggest one of all. We must have respect for our police officers and respect for all others.

This leads me to the question: where do we draw the line on this legislation? I would certainly like to see nurses included. As has been mentioned, there have been some horrific cases in which people who have been drug affected or alcohol affected have really caused damage to nurses on the front line in emergency departments. That is why I ask why they have not been included. They are front-line people. Sometimes they have to put up with people whom the police drop off at the nurses' station, after having them in the van. The police say to these people, "I think you need to be taken to hospital." They take them to the emergency department, and these people then take their fury out on the nurses and the other people in that area.

All in all, I support the legislation. However, I again urge that we take caution and do not put emotion in front of the making of good law. We have heard many great speeches in this place tonight. However, the thought in the back of my mind is that we need to be very careful to make sure that we get this right, so that we in this house are respected as the police should be respected.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

MR A.J. SIMPSON (Darling Range — Parliamentary Secretary) [10.15 pm]: I wish to add my support for our police. My electorate of Darling Range covers some 2 000 square kilometres at the back of the Darling scarp, so it covers a lot of police jurisdiction. I have tried to establish a good working relationship with the police officers in my area. Sergeant Ross Eastman in Mundaring does a fantastic job in covering the wider area out towards Mt Helena and Chidlow and all the way to Midland. It is the same for Sergeant Ray Briggs at Forrestfield. He is also the police sergeant at Kalamunda, which takes in Pickering Brook. Glenn Dewhurst is the police sergeant at Mundijong, which is another large part of my electorate. They all have similar issues to deal with in their area. They do a fantastic job. Like a lot of members who have spoken today, I am sickened by what has happened to young Matthew Butcher. We can only wonder at what has happened to our justice process and how it has let us down and led to where we are today. I have just been speaking to the Attorney General. He has told me that in the court cases that go before a jury, 56 per cent of defendants are found guilty and 44 per cent of defendants are found not guilty. I guess all members would have been in a situation in which they have signed a letter to allow a person to get out of jury duty. As a society we probably need to take a bit more control of the jury process. The problem is—the Attorney General has alluded to this—that a jury is supposed to comprise a cross-section of the people of Western Australia. However, many of our fine citizens have a job or are self-employed and are able to get out of jury service, so we are left with people who have time on their hands and can take on that job. This matter really needs to be looked at, because I believe the reason we have ended up where we are today is that the justice system has let us down. It has not served us well—not just in the case of Matthew Butcher, but in a lot of cases. We hear every day in the news about how a person has appeared before court on a charge and has been given a very lenient sentence or has somehow managed to get off. We do not know the ins and outs of the whole process. I must admit that mandatory sentencing does not sit very well with me and many other people. However, I not know what else we can do. We need to make laws that will protect the people who protect us. We need to give them all the support we can. However, we also need to step back and look at the bigger picture of our justice system itself. I do not want to take up any more time. It has been a long day, and a lot has been said. I just want to commend my local police officers for the hard work they do and give them my full support.

MR M.P. WHITELY (Bassendean) [10.19 pm]: I will be brief, because I am conscious of the hour. However, I need to say how offensive I found some of the comments of the Premier and the Attorney General today. They implied today—in fact, they said straight out—in their contribution to this debate, and also in question time, that if we do not support this legislation holus bolus and with complete enthusiasm, or if we try to amend it in any way, we will not be supporting the police. I find that highly offensive, as would, I suspect, some police officers whom I know well.

I want to compliment the police whom I deal with. My electorate is covered by Kiara Police Station, and Sergeant John Waghorn, who is in charge of that police station, is doing an excellent job. He knows that he has my full support in very practical measures. There have been a number of issues on which I have supported the police. One issue was the misinformation that was going around my community about the police response times. Sometimes I have angered my constituents in pointing out to them quite publicly the error of their ways and in supporting the police. That is the sort of real support that we can, and should, demonstrate for our police, rather than taking a populist line just because it is so easy to take.

The member for Darling Range alluded to one of the failures of this legislation; that is, that the situation with Constable Butcher was a failure to convict, not a failure to sentence. If we are to do more than just get a couple of days of cheap political headlines out of this, we need to examine the circumstances of that failure to convict, and figure out why it happened. It might make us feel better to have done something, but unless we address the real issues, we simply will not be taking appropriate steps.

I have some concerns about the move towards mandatory sentencing. I have absolutely no sympathy whatsoever for yobbos who get full of grog, amphetamines or both, lose control and assault police. As far as I am concerned, they can be locked up for a very long time. I also have no sympathy for excuses. Far too often, drugs, alcohol or even a hard life or mental health issues are used as excuses for unacceptable behaviour. We need to have an approach that accepts very few excuses. However, I can imagine instances in which we could see people jailed, whom none of us, if we understood the circumstances, would want to see jailed. Every example I could think of seems somewhat absurd, but as the member for Mindarie said in his speech, the truth really is stranger than fiction. It sounds absurd, but let us take the example of a parent who saw as a result of a horrible policing

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

accident a young child injured or killed, and that father or mother reacted in anger, rage and grief and assaulted a police officer. In the consideration in detail stage, I would like to be assured that there is enough discretion in the bill for those circumstances to be considered, and the option applied for not having a custodial sentence. I know it sounds absurd and impractical, but things like that happen. Life is entirely unpredictable. Do we really want to remove all the discretion of a presiding judge? Make no mistake, here and now we are saying that in all circumstances we have perfect foresight; we know better, here and now, than the judges who will be presiding on cases in the future, sitting through the entire case and learning the full circumstances.

We need to look at why we are removing the discretion that is currently afforded to judges. The argument that has been put forward—I think it may have some merit—is that we may be sending a message of deterrence. Maybe that is true, and maybe not. At this stage, I am not convinced. I think the member for Forrestfield made the point that often people who commit these kinds of acts are not rational people. They do not look ahead and see that if they take a particular action, they will be facing a mandatory 12-month sentence. I would think that most people, if they were at all rational, even if they had no concern for the welfare of any other human being whatsoever, would currently consider that if they belted a policeman, they would face a custodial sentence. I am not sure that, by removing all discretion under all circumstances, we are creating a rational deterrence. I ask the Attorney General to fly in the face of what he seems to think is politically opportunistic and the response that he gave today, and to be open to amendments that prevent the worst potential outcomes from this legislation. There needs to be a capacity for those exceptional and unforeseen circumstances in which we would not want people to be jailed, or to be put into a situation in which there is no other option but for that to happen. I ask the Attorney General to give some serious consideration during the consideration in detail stage to the amendments that will be proposed.

MR C.C. PORTER (Bateman — Attorney General) [10.24 pm] — in reply: I thank all members for their various contributions to this debate. I will briefly throw in a few points before we commence the consideration in detail stage of the bill. These are points that may not get addressed during that stage; no doubt many will, but there are some that may not. Having listened to almost all the speakers in this debate, apart from when I was unable to be in the chamber, it appears that everyone seems to support the bill, whatever that means; we will have to wait until the consideration in detail stage to find out.

In 1992, the Legislative Assembly debated the issue of mandatory sentencing for aggravated burglary. The then Labor government passed mandatory sentencing legislation for offenders who had committed aggravated burglary three times in a row; after three strikes, a mandatory sentence of one year would apply. If members have the opportunity, even briefly, to read that debate, they will find that it is not at all dissimilar from the debate we are having now. Indeed, strong cases were put that although mandatory sentencing sends a very strong message, it has the capacity to totally remove discretion from a sentencing judge and thereby produce anomalies in sentencing. A couple of matters relevant to the 1992 legislation brought in by the then government have been brought to my attention. People of differing views might argue about whether a perpetrator upon whom a mandatory sentence was imposed after three strikes ought to have gone to jail; however, I cannot recall a single case about which one could say that a complete injustice had been carried out by virtue of the fact that the person had been sent to jail for a 12-month period after having burgled houses three times—not necessarily the same house, but three burglaries.

The same arguments were run then that are being run now, and after having listened to the debate today, I have a great deal of admiration for the member for Warnbro, who went to Matthew Butcher today and told him, as I understand it, that he did not really support mandatory sentencing, because mandatory sentencing robs a judge of his discretion; it takes his discretion in sentencing from him. The member for Warnbro also complained, as did the member for Armadale, about the nature of the debate. They were concerned about the nature of the debate. The member for Victoria Park said that what had aggrieved him—the three members expressed a similar sentiment—was the fact that the debate had morphed into a “either you’re with us or against us” debate; they were the words used by the member for Victoria Park. I think he meant that the debate was being run along the lines that one was either with this legislation or against police officers. This was a complaint raised by many members opposite—that somehow the debate had morphed into those terms. I am sorry if members feel that I have put the debate into that context; it was never my intention to do so, and I do not believe that I have done that. I have pointed out consistently from the commencement of this debate—indeed, I pointed out in similar debates last year—that mandatory sentencing actually means something quite specific in the law. That is why

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

people speak in debate so passionately about it, because it means something quite specific: it means that once a person has been convicted of an offence, the judge has absolutely no discretion but to do what is written in black and white ink on the paper. That is mandatory sentencing.

There are certain ways in which an amendment might be moved to soften that effect, but that will have the effect of changing mandatory sentencing into something else. The amendment proposed by the member for Fremantle, which I alluded to during question time, was a proviso akin to a provision in section 279(4) of the Criminal Code. This amendment was also spoken about by the member for Armadale. Until last year, there was a minimum non-parole period for murder in this jurisdiction—a minimum mandatory penalty for murder. However, there were some amendments, and I opposed them at the time because I thought that the absolute baseline standard of minimum mandatory sentencing for murder should have stayed. I argued against them at the time. In effect, this proviso created a minimum mandatory sentence for murder unless the judge thought that the circumstances were clearly unjust. The point about mandatory sentencing is that we cannot give back a little bit of discretion. Once we give back discretion, the sentencing is no longer mandatory.

I find it difficult when many members opposite complain and express concern about the nature of the debate. Insofar as I say that members opposite are either for or against mandatory sentencing, I am not saying they are not for police officers; I am simply saying that they are not for mandatory sentencing. That means I think members opposite should not tell the media that they support mandatory sentencing and they will extend it to all and sundry for all categories, and then sneakily try to move amendments in this place that change mandatory sentencing into something else. Members opposite cannot complain about the nature of the debate and then engage in dishonesty in the debate. In effect, that is what members opposite have done. That is a very important. Ultimately, what the government is doing is making its best assessment of the mandate given to it at the last general election in this state on the sentencing provisions for assault occasioning bodily harm on police officers. I do not think there is any doubt that when there has been an assault occasioning bodily harm against a police officer, the government's mandate is to pass legislation that sets a mandatory penalty. Any amendment which changes the mandatory penalty into something else, something that gives back just a little bit of discretion, is not part of the mandate we were given.

It is not good enough for members opposite to complain about the nature of the debate. If I may say so, the member for Kwinana is perhaps the most egregiously guilty of this when he goes outside and says, "We want to extend mandatory sentencing to nurses." Of course, what he actually wants to extend is not mandatory sentencing. Members opposite should equally be concerned about that aspect of the nature of debate as they are about the complaints they have levied at the government today.

I implore members opposite to think very carefully about mandatory sentencing because I understand the difficulties that can arise—I have always been open about that. What I have said is that we face a situation that is so serious in terms of the culture change that we must effect for police officers and the other uniformed officers we have nominated that, notwithstanding those difficulties, we must take this very, very strong step. Playing the political game of one-upmanship and telling the media that the opposition is in favour of mandatory sentencing for the purpose of pretending it wants to extend that to further categories, means members opposite may well end up in this house supporting a position of extending mandatory sentencing to further and further categories and thereby creating further and further chances that things can go wrong. I will ensure that the government rejects any amendment that changes mandatory sentencing into something else, because that is not our mandate.

If all of us go back to our electorates and say that we accepted an amendment that changes mandatory sentencing into something else, then we will have failed. That is why I argued very strongly to quarantine very carefully the groups of individuals to which we apply true mandatory sentencing. We have to be careful about the words that we use. Do members remember the truth-in-sentencing legislation—true truth in sentencing? Now we are debating true mandatory sentencing: the mandatory sentencing that dare not speak its name. We must be very careful when we use the term because it means something very, very specific.

Section 297(4) that the member for Fremantle referred to in the document I have is sometimes called, I think, a presumption in favour of imprisonment. A presumption in favour of imprisonment is written into the legislation. It is a technique that has been used in New South Wales for a range of offences. It is now a technique in which we engage in our own code for the offence of murder. But I assure all present that a presumption in favour of

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

imprisonment is not mandatory sentencing. If members opposite want to pass, or attempt to pass, an amendment that creates a presumption in favour of imprisonment for all the categories under the sun, that is simply not what the people have elected us to do. We must be honest about that and we must assess whether any amendment attempts to change the nature of mandatory sentencing, because mandatory sentencing is a very strong tool.

I will address a few points by members that I thought were of some interest and merit. The member for Mindarie referred to section 318, which is headed “Serious assaults”. As I understood it, the member for Mindarie was asking which types of assaults did not result in terms of imprisonment but which we would expect, pursuant to this legislation, would do so, because that is ultimately what we are trying to achieve. We are saying that, particularly at the level of bodily harm, some sentences have been handed down that do not accord with community expectations. The member for Mindarie raised a fair point. During the debate on the mandatory sentencing bill introduced by the Minister for Police when he was in opposition last year, a number of examples were raised. The two that spring to my mind were the officer who was scalded when boiling water was poured on him in a doorway and the offender received either a fine or a suspended term of imprisonment. In another instance an officer was stabbed in the eye with a burning cigarette, and that caused bodily harm. Again, the sentence did not involve imprisonment. It is very difficult to trace them all back to the Magistrates Court and get transcripts. We were given by the Western Australian Police Union, an organisation the member will be familiar with, a very strong collation of those examples, and there were many more of the types of categories we would expect to be lifted up towards imprisonment by this legislation.

Mr J.R. Quigley: Do you have that compilation of cases? I have written to the union three times and they said their computer is down and they cannot find the cases. They have never given us a list.

Mr C.C. PORTER: I have what the union sent me for the material I used this time last year. I am quite happy to give it to the member.

Mr J.R. Quigley: Only three cases were mentioned.

Mr C.C. PORTER: From my recollection, there were more. I think many more were mentioned in the second reading debate.

Mr J.R. Quigley: Is that in the second reading speech of the Minister for Police on 17 March 2008?

Mr C.C. PORTER: They were mentioned during the entire second reading debate for the bill among all those who spoke on that legislation. I remember raising three or four of the examples. The point is they are there. I do not think there are hundreds of them; there may not be 50 of them. It is very difficult to tell. It is difficult to tell from the data exactly how many instances of bodily harm we would expect to attract a prison sentence but have in fact attracted only a suspended sentence. I think the reason for that, from the data I have asked to have collated, is that the offence we are dealing with—section 318 “Serious assaults”—covers a variety of behaviours. What makes a section 318 assault serious is that it is an assault against a police officer or another person nominated in the legislation such as ferry drivers, nurses, health workers and other people. It may be a 318 assault and a simple assault, or a 318 assault and an assault of bodily harm or a 318 assault and, in certain circumstances, aggravation. It categorises a lot of scenarios. Unfortunately, when the offenders are charged, they are charged only under section 318, and there are no records of whether they are charged 318 bodily harm, so it is very difficult to get an analysis of the data. What is absolutely crucial here is the definition of “bodily harm”. The police guidelines that will go in the standard operating procedure manual do no more than define bodily harm as it is defined in the two lead cases; namely, Scatchard and Tamcelik. Both those cases set out quite clearly what bodily harm is.

I have had a number of people ask me, “What if someone has a scratch; is that bodily harm? What if someone has got a bruise; is that bodily harm? What if someone has been pushed; is that bodily harm?” I cannot answer those questions without making this inquiry: What sort of scratch is it? Is it a scratch that is more than transient or trifling or minor? If it is, it is likely to be bodily harm. If it is not, it is unlikely to be bodily harm. What those guidelines do, and what is often the case with police guidelines throughout their standard operating procedure manual, is it directs charging officers to the law. It does so in quite simple, straightforward terms so that they know before they charge for a certain offence that this is what bodily harm is. Bodily harm has come to have a quite clear meaning because of the fact it is a circumstance of aggravation that is pleaded in other offences.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

I would definitely argue against any attempt to define “bodily harm” in the legislation because it has a definition that comes from case law. No doubt we will move now to consideration in detail. This debate must be fairly and firmly framed. If a little bit of discretion is given back to a judge, the sentencing is no longer mandatory. That will not be accepted by the government because the promise that we have made is to institute mandatory minimum penalties for assaults on officers in the categories that have been nominated.

Question put and passed.

Bill read a second time.

Leave not granted to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Section 297 amended —

Mr C.C. PORTER: I have an amendment to clause 4 standing in my name. It is not on the notice paper but it has been circulated. I wish to move that amendment.

Point of Order

Mr J.C. KOBELKE: I thought that the Attorney General indicated that the amendment was not on the notice paper. My understanding is that, under standing orders, the Attorney General needs to move it. We cannot simply take it as being moved from the notice paper because it is not on the notice paper.

The SPEAKER: I think I heard the Attorney General move it. He does need to read it out.

Debate Resumed

Mr C.C. PORTER: I move —

Page 2, lines 15 and 16 — To delete “the circumstances set out in subsection (4)(a) or (b) against a public officer who is a police officer,” and substitute —

prescribed circumstances

Amendment put and passed.

Mr J.A. MCGINTY: I have arranged for an amendment to clause 4 to be circulated. I move —

Page 2, line 27 — To delete “as the court thinks fit; and” and substitute —

unless —

- (i) that sentence would be clearly unjust given the circumstances of the offence and the person; and
 - (ii) the person’s criminal record indicates that they are unlikely to be a threat to the safety of the community; and
 - (iii) the imposition of a term of imprisonment would not act as a general deterrent; and
 - (iv) a term of imprisonment would be contrary to the public interest; and
 - (v) the court has afforded the victim of the offence an opportunity to make submissions either personally or in writing as to whether a term of imprisonment should be imposed, and
- (b) if it does not sentence a person guilty of the offence to a term of imprisonment it must give written reasons why a term of imprisonment was not imposed; and

In replying to the second reading debate, the Attorney General dealt with the issue of what occurs when there is a clear injustice. He was essentially saying, “Well, so be it.” Today we saw the police guidelines produced, which are designed to ensure that charges are not laid against minor offences. We can all think of many circumstances coming out of human experience in which it would be clearly unjust for a person to be sentenced to a term of imprisonment. We have given some thought to how this can best be prescribed. The Attorney General will no

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

doubt make the point that this is no longer mandatory sentencing. Frankly, neither was it when he came forward with the police guidelines, which will exempt minor cases of bodily harm from those offences that would be charged. We are tackling the issue from different points of view. He is seeking to exclude minor bodily harm cases from what will be charged in order to avoid the obvious injustice. All members need to do is read the last paragraph on the first page of the police instructions, which makes it abundantly clear that these are cases that could constitute bodily harm, but they are minor and, therefore, no charge should be laid. That is the government's way of avoiding mandatory sentencing for those minor cases. We believe that is best done in cases of a clear injustice by retaining the ability for the judge, rather than the police sergeant, to determine that it would be contrary to the public interest and unjust for a person to be imprisoned in those circumstances. It is a provision comparable to the provision for murder, to which the Attorney General has already referred. We believe that it will ensure that people who commit serious assaults against public officers will go to jail, which is the purpose of this legislation. At the same time, it will ensure that the law is ameliorated to that effect in the odd case involving an offence of a minor nature in circumstances that constitute a clear injustice. As I have indicated, the government has sought to do that by way of police guidelines. We believe it is best to do it via this mechanism. A number of members have indicated that they would prefer this approach; nonetheless, it is a matter for the house.

Mr C.C. PORTER: It is nice to be able to read the future, as I guessed that this would be the amendment. It is fine for the member for Fremantle to move this amendment. We will never accept this amendment because it fundamentally changes mandatory sentencing into discretionary sentencing. It does that in a wide variety of ways, does it not? The amendment states —

unless —

- (i) that sentence would be clearly unjust given the circumstances ...

Mr E.S. Ripper: And all those things have to be taken into account.

Mr C.C. PORTER: I thank the Leader of the Opposition very much for that. I have had some experience in reading the legislation.

Mr M. McGowan: Don't be so condescending; don't be so arrogant!

Mr C.C. PORTER: I will get to the "and"; I will get to the conjunctive.

Mr E.S. Ripper: I thought you might need a bit of help!

Mr C.C. PORTER: I will get to the conjunctive, but I thank the Leader of the Opposition. The amendment states —

unless —

- (i) that sentence would be clearly unjust given the circumstances of the offence and the person; and
- (ii) the person's criminal record indicates that they are unlikely to be a threat to the safety of the community; and
- (iii) the imposition of a term of imprisonment would not act as a general deterrent; ...

It is very interesting to see how that amendment was worked out. I wonder how one would work out that the imposition of a term of imprisonment would not act as a general deterrent. How would the member for Mindarie work that out?

Mr J.R. Quigley: How would you work out that it isn't?

Mr C.C. PORTER: Exactly. It is almost impossible to determine. The amendment continues —

... and

- (iv) a term of imprisonment would be contrary to the public interest; and
- (v) the court has afforded the victim of the offence an opportunity to make submissions either personally or in writing as to whether a term of imprisonment should be imposed, ...

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

That is fine, if the opposition does not want mandatory sentencing. It is one thing to move this amendment but it is another thing at the same time for the member for Fremantle and the member for Kwinana to go out and promise nurses they are going to get mandatory sentencing when they are not going to get mandatory sentencing —

Mr R.H. Cook interjected.

Mr C.C. PORTER: — but are going to get this amendment. Is this mandatory? The member for Fremantle has acknowledged that this is not mandatory sentencing.

Mr R.H. Cook interjected.

Mr C.C. PORTER: Mr Speaker, if I might address the idea that somehow —

Mr R.H. Cook interjected.

The SPEAKER: Order, member for Kwinana!

Mr C.C. PORTER: The members for Fremantle and Kwinana are playing a dangerous game, because they are out in the community promising something to people that they do not want to give them.

Mr R.H. Cook: No; you promised.

Mr C.C. PORTER: I promised mandatory sentencing and we are delivering mandatory sentencing. The members for Fremantle and Kwinana are promising mandatory sentencing unless that sentence would be clearly unjust given the circumstances of the offence. That is not mandatory sentencing.

Mr R.H. Cook interjected.

The SPEAKER: Attorney General and the member for Kwinana, thank you. Attorney General.

Mr C.C. PORTER: Mr Speaker, thank you. I refer to the suggestion that somehow, because we have asked the Commissioner of Police to draft guidelines as to the appropriate circumstances in which to charge this offence, it is turning a mandatory provision into a discretionary provision. There exists such a thing as the commissioner's operating procedure manual. It is a very large manual. That manual spells out a range of things. It sets out further procedures and orders that must be considered when charging. It sets out case law for the benefit of officers before they charge. It sets out procedures as to how to put a brief of prosecution together. It does a range of things. It is actually a very big document. I do not have a full copy of it with me tonight. It is very interesting that when one looks into it, it contains a whole range of case law for a whole range of cases—cases which the police face regularly at the charge stage. It contains quite a detailed provision that deals with section 338B of the Criminal Code. It is headed "Threats"; that is, threats to kill. It sets out the law for threats to kill and outlines when somebody should lay a charge for a threat to kill. The guidelines will outline to charging police officers and prosecuting sergeants when they should pursue a charge of assault on a police officer of bodily harm. It outlines what is bodily harm; it is a bodily injury that is not mere pain and is an injury that is more than transient or trifling and not minor in nature. That is what the case law says.

Let us at least understand that this amendment would change entirely the complexion of the bill. We will leave this debate tonight and go to the public and say, "We would not accept an amendment that will turn the mandatory sentencing legislation into something that is not mandatory sentencing legislation." This amendment really is unbelievable. It is not about mandatory sentencing. When we look through the police guidelines as they apply to charges, do we presume it is the case that we should amend every section of the Criminal Code?

Mr R.F. JOHNSON: It is imperative for the benefit of the chamber that the Attorney General be allowed to continue his remarks.

Mr C.C. PORTER: Is the opposition suggesting that we should amend all the Criminal Code provisions by placing in those provisions all the case law that we have in the standard operating manual for procedures for police? The Criminal Code would look like the tax law and the corporations law if we did that to it. It is an absolutely ridiculous suggestion.

The point to this legislation is that a great tactic in a criminal trial that defence barristers often use is to muddy the waters—they drag things in, create confusion and do not have the lines of debate drawn clearly. That is not the case with this legislation, because the lines of debate are drawn very clearly.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

I am not saying that if members opposite are not in favour of mandatory sentencing they are against police; I am saying that if this amendment is put they are not for mandatory sentencing.

Mr J.R. QUIGLEY: The Attorney General has emphasised once again that there would be no flexibility or room for a judge on the criteria set out in the amendment moved by the member for Fremantle at all. There is no room for justice in a particular case.

As I said in my contribution to the second reading debate, this Parliament, by passing this legislation in its original form and without the member for Fremantle's amendment, is saying to the judges, "We don't trust you. We don't trust you to do the job right." The member for Wanneroo is saying that this Parliament is saying that it does not trust the judges. The member for Southern River is also saying, "We don't trust the judges". The message they must be getting from the Attorney General is that he does not trust the judges. I have already said that that step should be taken only where it is clearly demonstrated that the judiciary has failed.

As I pointed out in the second reading debate, the Attorney General said in an article published this month quoting him that he thinks the job of Attorney General is two things. He said that in a significant and primary sense the Attorney General is the guardian of systems that governments inherit from previous generations of Attorneys General, legal systems, criminal justice systems, systems of civil law and systems of court, and he has to maintain the integrity of those systems. He said that the second part of the job is about understanding the public's desires in respect of legal systems and engaging in law reform and doing so in a cautious and scholarly manner. Setting out the failure of the judges is not a cautious and scholarly approach. He also said that other members have referred to cases in their speeches that would demonstrate this failure by the judiciary. He then cited the case of Lewington, not by name but by circumstance, when he said that that was a case in which an officer had some scalding water thrown at him when he was in a doorway and he suffered serious scalding and serious damage to a vein in his right shoulder. The case went before a Magistrates Court. The police did not challenge that decision as being inappropriate. I agree with the Attorney General that we do not have all the transcripts from all the Magistrates Courts, but it is most significant that it was not an unacceptable outcome for the police. The police did not appeal that case, as with the Ball case. It was not a case which, on balance, was unacceptable to the police, and they did not seek to have it reviewed. It cannot be said that either the judiciary or the judicial process has failed if the judicial process has not been fully trialled by the case not being taken through the court process. How can it be said that the judiciary has failed when the appeal court has never had the case before it for consideration?

When the Attorney General makes a case for this amendment on the basis of Lewington, he fails to convince this Parliament that the judges have so totally failed that we need to have such rigidity by edict from this Parliament—by statute from this Parliament—and that the amendment before the chamber on the motion of the Attorney General should be disallowed; clearly the clause should be allowed.

Mr M.P. WHITELY: During my contribution to the second reading debate, I do not know whether the Attorney General heard my reference to a hypothetical situation. Often truth is stranger than fiction, but let me pose a hypothetical situation whereby a parent was with a child, and because of an accident involving police in the conduct of their duties, the child was injured or killed. Because of the parent's grief and anger, that parent might react in a temporarily violent manner and strike out at the police officer and give the police officer a black eye. As I understand it—please correct me if I am wrong—under those circumstances, there would be no judicial discretion and the parent would go to prison for a minimum of nine months because the parent, completely out of character, had reacted out of anger and grief. I would have thought that nobody would want to see that parent go to prison. Will the Attorney General just give me some details on how this legislation would apply in that case?

Mr C.C. PORTER: Firstly, I will deal with the Lewington matter that the member for Mindarie raised. Is not the point, member for Mindarie, that the police did not appeal that decision? Is the real point not that the reason they did not appeal that decision was because, as the member and I both know, that decision was well within the discretionary range? It could not have been argued that that decision was manifestly inadequate. The point was not that the police chose not to appeal it, but that they took what I think is the quite reasoned legal opinion that an appeal of that decision, which many of us in the community found unacceptable, would have been doomed to failure.

Without knowing any more information, it is conceivable that a parent who, in a frenzied fit of despair or anger, lashed out and caused bodily harm to a police officer, would face a mandatory term if convicted. From the very

Extract from Hansard
[ASSEMBLY - Tuesday, 17 March 2009]
p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

little information that the member has told me about the circumstances that he envisaged, there would be at least three or four highly cogent defences. I can see the member for Mindarie's defence counsel's mind ticking over at the speed of light, thinking about the defences of involuntarism, accident, lack of intent, insanity, or indeed temporary insanity. I would have thought that in the very broad terms the member has given to me, any of those defences would be likely defences to be argued, and perhaps even successfully so.

What we have seen in the recent Matthew Butcher trial is that it is actually very difficult to prove something to the standard of beyond reasonable doubt. It is very difficult to overcome a great number of sometimes complicated and intertwining defences. In the scenario the member has given me, I would have thought that any defence counsel worth his salt would give that defence a real good run for its money. I do not think that the lady the member has described would be likely to be successfully convicted of the offence that we are now dealing with —

Mr M.J. Cowper: Or would be charged in the first place.

Mr C.C. PORTER: Indeed.

Amendment put and a division taken with the following result —

Ayes (27)

Ms L.L. Baker	Mr F.M. Logan	Mr P. Papalia	Mr C.J. Tallentire
Mr A.J. Carpenter	Ms A.J.G. MacTiernan	Mr J.R. Quigley	Mr A.J. Waddell
Mr R.H. Cook	Mr J.A. McGinty	Ms M.M. Quirk	Mr P.B. Watson
Ms J.M. Freeman	Mr M. McGowan	Mr E.S. Ripper	Mr M.P. Whitely
Mr J.N. Hyde	Mrs C.A. Martin	Mrs M.H. Roberts	Mr B.S. Wyatt
Mr W.J. Johnston	Mr M.P. Murray	Ms R. Saffioti	Mr D.A. Templeman (<i>Teller</i>)
Mr J.C. Kobelke	Mr A.P. O'Gorman	Mr T.G. Stephens	

Noes (29)

Mr P. Abetz	Dr E. Constable	Mr R.F. Johnson	Mr A.J. Simpson
Mr F.A. Alban	Mr M.J. Cowper	Mr A. Krsticevic	Mr M.W. Sutherland
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr T.K. Waldron
Mr I.C. Blayney	Mr B.J. Grylls	Mr P.T. Miles	Dr J.M. Woollard
Mr J.J.M. Bowler	Dr K.D. Hames	Ms A.R. Mitchell	Mr J.E. McGrath (<i>Teller</i>)
Mr I.M. Britza	Mrs L.M. Harvey	Dr M.D. Nahan	
Mr T.R. Buswell	Mr A.P. Jacob	Mr C.C. Porter	
Mr G.M. Castrilli	Dr G.G. Jacobs	Mr D.T. Redman	

Pairs

Mr V.A. Catania

Mr J.H.D. Day

Amendment thus negated.

Mr C.C. PORTER: I move —

Page 3, lines 5 to 7 — To delete “the circumstances set out in subsection (4)(a) or (b) against a public officer who is a police officer” and substitute —

prescribed circumstances

Amendment put and passed.

Mr J.A. McGINTY: I am sorry; there is a typographical error in the copy of the amendment that has been prepared. Subparagraph (ii) should not appear there. Therefore, I move —

Page 3, line 13 — To insert after “paragraph (a)” —

unless —

- (i) that sentence would be clearly unjust given the circumstances of the offence and the person; and

Extract from Hansard

[ASSEMBLY - Tuesday, 17 March 2009]

p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

- (ii) the person's criminal record indicates that they are unlikely to be a threat to the safety of the community; and
- (iii) the imposition of a term of imprisonment would not act as a general deterrent; and
- (iv) a term of imprisonment would be contrary to the public interest; and
- (v) the court has afforded the victim of the offence an opportunity to make submissions either personally or in writing as to whether a term of imprisonment should be imposed; and
- (vi) it has given written reasons why a term of imprisonment was not imposed.

This amendment is in substance identical to that which has just been defeated by the house. The first amendment related to juveniles who commit grievous bodily harm against certain public officers. This amendment relates to a comparable provision in respect of adults who are found guilty of that offence. As I have indicated, the provision is substantially that which was just defeated. In the copy that has been circulated there is a subparagraph (ii), which is a typographical error; it should not have appeared in there. Therefore, the remaining subparagraphs will need to be renumbered on the copy that has been provided to the Clerk.

The ACTING SPEAKER (Mr P.B. Watson): It has been noted.

Mr J.A. McGINTY: I draw attention to the fact that this is designed to ameliorate circumstances that are clearly unjust. It is also to be applied only after the court has afforded the victim of the offence—that is, the public officer—the opportunity to make submissions to the court, either personally or in writing, as to whether a term of imprisonment should be imposed. I think it is appropriate that the interests of the victim be taken into account. There is then a requirement that the court, if it is not to impose a term of imprisonment, must publish reasons why that has not been done. Otherwise the arguments I advanced in the debate on the last amendment are equally applicable to this amendment.

Mr J.R. QUIGLEY: I wanted to get the call before the Attorney General so that he has the chance to respond, because what is being included in the amendment is, as I say, the discretionary safety valve. What the Attorney says is mandatory is mandatory and there is no discretion at all. I sought to argue in the second reading debate that the government is seeking to remove the discretion from the judiciary and place it with the police. The Attorney says that is a nonsense, because if we read the cops' manual, it only repeats in short form the law in *Scatchard and Tamcelik*. However, that is not the case. The first heading in the commissioner's guidelines is "Considerations for laying of charges". The guidelines then set out in short form the law on bodily harm. The final paragraph under that heading states —

Officers are to be aware that due to the mandatory imprisonment requirement for persons found guilty of a s 318 offence in prescribed circumstances, there should not be an allegation that bodily harm has occurred to a complainant unless the bodily harm can be fairly and medically assessed as reaching a level of significance which would exclude any reasonable description of the injury as being insignificant or trivial or minor or transient.

That repeats—I agree with the Attorney General—the case law in short form. However, once we have excluded a case in which the injury does not meet the threshold of the common law, and when it becomes a case in which there is, therefore, assault occasioning bodily harm, what happens then? The guidelines go on to say, under the heading "Procedure where complainant is a Police Officer" —

Where a police officer is assaulted and it is appropriate to prefer a s 318 charge alleging bodily harm, the following procedures are to be followed:

The guidelines are now dealing with those cases in which there has been bodily harm. The guidelines continue —

- a. The injured officer is to be examined by a Doctor or Remote Area Nurse where access to a Doctor is restricted and obtain a certificate outlining the injuries they sustained.

That is the injury of bodily harm. They continue —

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

- b. The certificate is to be presented to an officer of the rank of Sergeant or higher who will then give permission for a charge of Assault Public Officer (Police Officer Bodily Harm) to be preferred.
- c. A copy of the medical certificate is to be attached to the first appearance police brief prior to the first appearance of the accused in court.

I will not read it all out. However, the guidelines are clearly dealing with those categories of cases that have passed the injury threshold of bodily harm.

Mr C.C. Porter: I do not think so.

Mr J.R. QUIGLEY: That is what it says. It says —

Where a police officer is assaulted and it is appropriate to prefer a s 318 charge alleging bodily harm, the following procedures are to be followed:

Mr C.C. Porter: Where it is appropriate to charge.

Mr J.R. QUIGLEY: Yes, where it is appropriate to charge, and it sets them out. The guidelines then set out, under the heading, “Arrest of Accused”, a number of points. The last point under that heading states —

- j. Prosecuting Division Perth will have the ultimate discretion to decide if a charge of this nature is to proceed and may remove the circumstance regarding bodily harm if they decide it is not to be proceeded with (even if a medical certificate is attached).

This is referring to the group of cases that have already passed the threshold. This is not the group of cases in which the injury is insignificant or trivial or minor or transient, because they are the cases that—as the Attorney General has agreed and has ably pointed out to the chamber this afternoon and this evening—do not constitute bodily harm. This is the cops’ manual—or the sops’ manual, actually—that sets out in short form what is bodily harm; and those cases are not bodily harm. However, when we go to those cases in which —

Mr P. PAPALIA: I would very much like to hear more from the member for Mindarie.

Mr J.R. QUIGLEY: When an officer is assaulted and it is appropriate to prefer a 318 charge, that is now directing the sergeant’s attention to those cases in which the injury was not insignificant, trivial, minor or transient—that is, bodily harm on a police officer—the prosecuting division in Perth will have the ultimate discretion as to whether a charge of this nature is to proceed, and may remove the circumstances of bodily harm if it decides it is not to be proceeded with even if a medical certificate has been attached. That is a prosecutor’s discretion, not based upon the charge not involving bodily harm. One could see where a prosecutor, looking at a case—for example, the kickboxer case—decides not to proceed with the charge because he thinks it is an accident. It is non-specific here, but it is unequivocally vesting in the police a discretion as to whether to proceed on a charge when the injury has passed the threshold and it is appropriate to prefer an assault occasioning bodily harm charge.

Mr C.C. PORTER: This does not vest the discretion in the police. The police have that discretion, as the member well knows. The police have the discretion, for instance, to determine whether a charge of grievous bodily harm or bodily harm is laid, depending on what they view the injury to be. I am thankful that the member has acknowledged that what appears at the first page of these guidelines is in essence a fair summary of the case law as it pertains to bodily harm. I will take the member through what he has taken me through. The guidelines state that where a police officer is assaulted and it is appropriate to prefer a section 318 charge alleging bodily harm, certain procedures are to be followed. I believe that these are fairly standard professional guidelines, literally cut and pasted from the procedures manual, although obviously not for this offence but for other offences. Where the investigating officer thinks it is appropriate, he follows these procedures. Even if a medical certificate is attached, and the more senior officer—the sergeant—considers that the medical certificate does not evidence bodily harm, he has the discretion.

Mr J.R. Quigley: It does not say that.

Mr C.C. PORTER: Quite clearly, that is what is meant to be conveyed by any normal reading of this.

Mr J.R. Quigley: Why?

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr C.C. PORTER: The member would have been a great defence counsel, because of the tortuous jumps he goes through to try to reach that view. It is quite clear. The investigating officer investigates. If he thinks that it is appropriate for a section 318 charge, he gets a medical certificate. This is exactly the point I raised in the final part of the second reading debate. If a member says to me that it was a scratch or a bruise, and asks whether that was bodily harm —

Mr J.R. Quigley: That is another point.

Mr C.C. PORTER: Of course, but an officer in the first instance might consider that the scratch or bruise with a medical certificate constitutes bodily harm. A prosecuting sergeant later on might consider, even in the light of the medical certificate, that it is not bodily harm. It would of course depend on the nature of the scratch or the bruise. This provides a quite regular precedential safeguard to make sure that the charge is appropriate to the injury. It does no more than that, and I think the member knows that. It does not vest in police anything that they do not already have.

The amendment moved by the member for Fremantle, to which we are in effect speaking, is the same amendment that was moved before. As I have said during the debate, I do not say that members opposite are against the police if they are not in favour of mandatory sentencing, but I do say that these amendments are not mandatory sentencing. For all the Labor members to move to that side of the house means that they voted for amendments that would have destroyed the mandatory nature of this bill. It is a vote against mandatory sentencing. It is not a vote against police, but let us at least be clear about it. At least the member for Warnbro has the gumption to say that he actually does not believe in mandatory sentencing. That is fine, but he is one of the few who has actually said that. The rest of the members opposite want to pretend that they do support mandatory sentencing, while suggesting amendments that take away the mandatory nature of mandatory sentencing. This is an absolute joke, and the opposition knows it is. It is a joke for the opposition to come into the chamber and lecture us about the unfair way in which the debate has been framed, and then engage in that level of dishonesty. I ask the member for Kwinana what he will do about the categories now that the bill is actually about mandatory sentencing. We know that, because of the numbers, the amendments that would have been used to attempt to change the legislation from mandatory sentencing to discretionary sentencing will fail. To extend that further would be terribly incautious, as members opposite know. The government will not accept those amendments.

Mr A.J. WADDELL: We appear to be debating the guidelines. I have not seen the guidelines; they have not been tabled. It seems that Parliament has absolutely no oversight of these guidelines. Whatever the Attorney General may assure members to be the guidelines now, they may not be the guidelines tomorrow. Could I at least ask that today's version of the guidelines be tabled?

Mr C.C. PORTER: I thank the member for that point. The guidelines can be tabled but they are not a parliamentary document; they are big manuals that sit on every police officer's desk. They are subject to change under different circumstances; they change all the time. They are guidelines for police operations; they help police understand charges and put the law into simple language for police officers. They are like a "how to" manual. Prosecutors also have guidelines; they have what the Director of Public Prosecutions calls a manual. It is a great big document, and that is not a parliamentary document either. Parliament does not control that. It is in existence and I am very happy for it to be tabled.

An opposition member interjected.

Mr C.C. PORTER: Do judges have them as well? No, they are not issued to judges, they are issued to prosecutors. I am sure some judges at the DPP might have a sneaky copy somewhere.

Mr E.S. Ripper interjected.

Mr C.C. PORTER: If they do, the Leader of the Opposition might want to read them, because it is farcical for the opposition to suggest that it is in favour of mandatory sentencing when it is not.

Mr J.R. QUIGLEY: The Attorney General, in response to my earlier comments, said that paragraph j of the commissioner's directions can only be read in a certain way. It states —

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Prosecuting Division Perth will have ultimate discretion to decide if a charge of this nature is to proceed and may remove the circumstance regarding bodily harm if they decide it is not to be proceeded with (even if a medical certificate is attached).

The Attorney General suggested that the only reading or interpretation of that paragraph is that it will not be proceeded with if it is not bodily harm. It would be a leap of faith by the Attorney General and every police sergeant around the state to say that the only time they will order a removal of the circumstance of bodily harm is in situations in which it is not bodily harm. It does not say that at all. There are many compassionate and understanding police officers around the state who might say, “The circumstances under which that woman scratched the police sergeant were such that we don’t really want to see her go to jail. We don’t want mandatory imprisonment to be invoked against this woman, so we’ll just remove the aggravating circumstance of bodily harm from the complaint sheet.” This leaves discretion in the hands of the police, but it is nevertheless discretion, and it is not an exercise of discretion that is limited to situations in which there has been no bodily harm. It is an unfettered discretion in this instruction. There is nothing in these instructions to support or even hint at the Attorney General’s interpretation. It has to be said that if a police sergeant does not want to see someone go to jail for a particular assault that may have resulted in bodily harm, he will simply invoke paragraph j and say, “Constable, I’d like you to drop the allegation of bodily harm.” A judge cannot do that; only the police can. That discretion has been taken away from the judiciary. Before Parliament takes that serious step, the case must be made—as the member for Southern River, the member for Wanneroo and the Attorney General would have us believe—that judges cannot be trusted with this. That is what this legislation is all about, and it is totally and wholly unjustifiable to charge judges with untrustworthiness. All that has been cited in support of the incredible proposition that the judiciary cannot be trusted are three cases arising from the Magistrates Court in which there were no appeals, to which the Attorney General says, “Well, they would fall within the sentencing range.”

Sorry, but throwing hot water on a police sergeant and causing him serious injury and not getting a custodial sentence does not fall within the range! At the time this was first debated, I can remember the police commissioner saying he would ask his prosecuting staff to be more vigilant and, in their review of sentences, to see whether appeals could be mounted. The amendments to section 318 and the serious assault offences introduced last year have not had sufficient time to run through the system. There have not been sufficient charges under that section dealt with by the court for this place to say, as have the members for Southern River and Wanneroo, who have been the most vocal in this place, and as has the Attorney General, that judges cannot be trusted. It is an insult to the judiciary, and it is convicting judges of not being trustworthy on no basis whatsoever. It is terrible.

Mr C.C. PORTER: Very briefly, and for *Hansard*, so that it is clear, we are not giving police a discretion that they do not already have. Police have one of the widest discretionary powers of any public officer in the state. It might be the case that on a dark night in Kununurra—which I think is where the member for Murray-Wellington was stationed for a while—or wherever it might be, if something happens to a police officer, and he cops a slap to the face, that police officer may well decide not to do anything. That police officer may decide not to tell another living soul what happened or he may decide not to charge the offender. That is the ultimate discretion that exists already for police officers, and it is not something we should ever take away from them. We are not giving them something that they do not already have.

Mr M.J. COWPER: The police have a discretionary register. If a police officer, for whatever reason, wishes to withdraw a charge, whether it is a speeding ticket, an assault charge or whatever, he or she can make application to a commissioned officer, who has that discretionary power. That power has been in existence for probably six or seven years now, and the commissioner has clear guidelines setting out how that discretionary power is applied.

Mr J.R. QUIGLEY: The member for Murray-Wellington trusts the police with that discretion, and says that this is a discretion they have always had, and the Attorney General says that he trusts the police with that discretion, but he will not trust the judiciary with that discretion. That is lamentable.

Amendment put and negatived.

Mr C.C. PORTER: This amendment will insert new subsection (8). I move —

Page 3, after line 13 — To insert —

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

(8) In subsections (5) and (7) —

Prescribed circumstances means any of these circumstances —

- (a) where the offence is committed in the circumstances set out in subsection (4)(a) or (b) and the public officer is —
 - (i) a police officer; or
 - (ii) a prison officer as defined in the *Prisons Act 1981* section 3(1); or
 - (iii) a security officer as defined in the *Public Transport Authority Act 2003* section 3;
- (b) where the offence is committed in the circumstances set out in subsection (4)(d)(i), (f) or (g)

Mr J.A. McGINTY: I wish to move an amendment to the Attorney General's amendment —

To insert new paragraph (c) —

- (c) where the offence is committed in the circumstances set out in subsection (4)(d)(ii) or (iii).

The purpose of this amendment is to include firefighters within the protection of this legislation. Section 297(4)(d) of the Criminal Code provides —

- (i) an ambulance officer; or
- (ii) a member of a FESA Unit, SES Unit or VMRS Group (within the meaning given to those terms by the *Fire and Emergency Services Authority of Western Australia Act 1998*); or
- (iii) a member or officer of a private fire brigade or volunteer fire brigade (within the meaning given to those terms by the *Fire Brigades Act 1942*),

This amendment seeks to extend the coverage of this legislation to deal with firefighters, whether they be part of FESA or part of a volunteer fire brigade, and other State Emergency Service workers. The government has indicated that it is proposing to extend the legislation to protect private contract security officers in certain circumstances. I would have thought that other emergency service workers who are assaulted during the course of their employment ought to be offered similar protection. Fire brigade staff are often confronted with the threat and reality of an assault. It is our view on this side of the house that the protection of the law should be extended to firefighters and State Emergency Service people, both paid and volunteers, in order to ensure they are adequately protected.

Mr C.C. PORTER: Let us have a little think about how Orwellian this all is. Like me, there are members opposite who think caution should be applied in mandatory sentencing. What we have now is mandatory sentencing, but this amendment and another two amendments that the member for Fremantle wants to move would extend it to all FESA employees, all hospital workers —

Mr J.A. McGinty: Did you promise that?

Mr C.C. PORTER: Let us think about it while we are all here and have a chance to talk about it. The member for Fremantle wants to extend it also to teachers—in all, another three groups. We are not going to support those amendments. Members opposite should think about all the impassioned pleas that were made. Good people like the member for Forrestfield said “be cautious”. We should think about how strong a tool mandatory sentencing is and where the line should be drawn. If there is the capacity for difficulties to arise, what the opposition is doing with amendments such as these, for the cheapest of political gains, is to exponentially —

Mr J.A. McGinty: Was it a cheap stunt when you promised it?

Mr C.C. PORTER: I am standing up now arguing against the member for Fremantle's amendment.

Mr J.A. McGinty: Arguing against your own promise that you personally gave.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr C.C. PORTER: It will exponentially increase the difficulties that almost every single member opposite raised today.

Mr J.A. McGinty: Is mandatory sentencing that bad?

The ACTING SPEAKER (Mr P.B. Watson): Order, member for Fremantle!

Mr C.C. PORTER: Members opposite should have a little think about that before they are led down the merry path by someone who wants merely to have some kind of minor, albeit Orwellian, point to hang his hat on in the future.

Mr J.A. McGinty: It was not Orwellian when you promised it.

Mr C.C. PORTER: Members opposite should have a think about how unbelievably hypocritical it is.

Mr J.A. McGinty: Not in the least.

Mr C.C. PORTER: What I am saying and have said publicly before is that the definition of public officer is far too wide and far too dangerous. Where we have drawn the line is a good place. To risk all that for what is one of the most unbelievably hypocritical manoeuvres we could conceive of would be very dangerous.

Mr J.A. McGinty: The Attorney General asked people to vote for him on the basis of that promise, and now he has broken it!

The ACTING SPEAKER: I call the member for Fremantle to order for the second time.

Mr C.C. PORTER: This was always about police officers, but it has gone a little bit further than that. The member now wants to extend it well further than that. The member should have a think about the words that came out of the mouths of members opposite about the difficulties with drawing this line too broadly before he hops on the bandwagon.

Mr J.R. QUIGLEY: This is not borne into this chamber on the wings of hypocrisy at all; it comes before us because of the difficulties that “mandatory sentence” itself imposes. Where legislation refers specifically to one class of person and omits others, the courts will say “and they intended to do that”. Where, for example, Parliament decides to impose, without the safety valve that we have just argued, mandatory sentencing for an assault upon a police officer, where there is a nurse assaulted in the presence of a police officer in the same incident, the court will have to say Parliament intended a lesser penalty when a nurse is struck. This is not some sort of fantastical, invented circumstance. There are plenty of times, as the Attorney General and other members know, when police officers have to take difficult people, such as quarrelling drivers, for blood tests down at Royal Perth Hospital—they are full of fight. The member for Murray-Wellington knows what it is like—full of fight. When the officer has the A bag and the B bag down in the emergency department, and has asked the doctor to take the blood sample, the drunk driver lashes out at the officer to punch him. The officer, being quick of wit and having the presence of mind, ducks, and the punch floors the nurse who happened to be standing by the policeman. The drunk driver floors the nurse, breaks her nose and drops her on the tiles. The court has then to say, “That is a lesser offence.”

This difficulty arises by the mandatory nature of what we have passed. The court will have to say, “We’re not looking. Yes, we agree, Mr Prosecutor: had the punch landed where it was intended to land on the snout of the policeman, the mandatory term would have applied and the defendant would have been straight off to jail.” But the policeman in this example ducked and the punch landed on the nurse and injured her and dropped her. That is then dealing with a different set of circumstances arising out of the same incident. This is not borne on the wings of hypocrisy; this is a difficulty that is coming out of this sentencing regime.

Mr M.J. Cowper: We’re trying to protect police officers who are in the firing line day in, day out.

Mr J.R. QUIGLEY: I agree with the member about protecting police officers in the firing line day in, day out. I could mention the cases that they deal with, and the courts consistently protect the officer. Under this measure, the courts will have to say, “Had Parliament intended the accused to go to jail for punching the nurse in the emergency department, it would have said so in this legislation; however, the officer ducked, the punch whistled over his head and floored the nurse, and that is a different situation.” The same will apply to the ambulance driver who brings in the crazed patient on amphetamines who is restrained on the trolley, as they have to be sometimes. The ambulance driver wheels him into the emergency department, removes the restraints, and the

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

person lashes out at the ambo, misses and hits the nurse. A different situation also applies to that nurse. The whole of the nursing profession will find that enormously unjust, and will say, "The judiciary has failed us." We are always then pointing the finger at the judiciary because no-one wants to take the responsibility in this chamber. The members who have spoken on the other side say, "Blame the judges." When the Attorney General appoints the next judge, I wonder whether he will say, "I'm offering you a judicial appointment but I don't trust you to do the right thing when it comes to sentencing." This situation with the nurses has been created by what has passed earlier in this chamber.

Mr C.C. PORTER: I will be very brief. I am a bit slow, but I have just cottoned on to it. These amendments broaden the categories that the opposition appears to want to move with respect to only the section 297 charge, which is grievous bodily harm, where there is a very high probability of people going to jail in any event. The opposition will not be moved with respect to section 318, which is the bodily harm charge. It is literally one of the most bizarre things that we could conceive of in terms of potential consistency. The member for Mindarie says, "Well, Attorney General, you're violently robbing judges of their discretion, telling them that they are all useless. Of course, we'll do the same thing for more people, but only with respect to grievous bodily harm and not with respect to bodily harm." If anyone can make any sense whatsoever of that, good luck, good night and farewell.

Amendment on the amendment put and negatived.

Mr J.A. McGINTY: I move another amendment to the Attorney General's amendment —

To insert new paragraph (c) —

(c) where the offence is committed in the circumstances set out in subsection (4)(e).

The import of this amendment to the Attorney General's amendment is to extend the protection of the laws to nurses and others delivering hospital and health care services to the community. We all know that after police, hospital staff, particularly those working in emergency departments, are the most assaulted group of public sector workers. There is ample evidence of the extent to which hospital staff are assaulted, particularly in emergency departments. In question time today we heard examples of two community mental health nurses who were viciously assaulted, one within an inch of her life and the other one, who was stabbed in the head with a screwdriver, was very lucky to survive as well. An extraordinary number of assaults also occur in hospitals, particularly in the emergency departments.

It is our belief that nurses should be granted equal protection of the laws that are being considered tonight by the Parliament to ensure that if a deterrent is associated with these laws, it acts as a deterrent in the front door of our hospitals as well. I would be very disappointed if the Minister for Health and the Minister for Mental Health did not vote for this amendment to show that they care about nurses and that they are concerned to make sure that nurses are adequately protected from the violent and nasty attacks that occur on them. It is abundantly apparent that they have not done what we would expect ministers to do; that is, to be solid advocates for the employees who work in their respective departments, whether they be mental health nurses or nurses working in our emergency departments in our hospitals where assaults are unfortunately all too rife. Maybe nurses do not have the political clout that the police do. It will be a pity if this amendment is not carried.

Dr J.M. WOOLLARD: Members know that when I spoke earlier today in the debate on this bill I said that I wanted nurses included in it. When this legislation was initially discussed it was meant to include all public officers. Then in November last year it was to be police only. Yes, I support the police. The three professions that have fallen behind, in terms of not only violence, but also salaries and all things, are nurses, police and teachers. I do not see a number of teachers being assaulted; however, a large number of nurses are assaulted on a regular basis at not only Royal Perth Hospital, but also other hospitals. I believe the shadow Attorney General's amendment is too broad. He referred to nurses and other hospital workers, but that definition would include between 50 and 100 different professions.

Dr G.G. Jacobs: Janet, kitchen staff!

The ACTING SPEAKER (Mr P.B. Watson): The member for Eyre should refer to the member by her electorate, not by name.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Dr J.M. WOOLLARD: I believe that nurses should be covered by this legislation. If nurses are not ultimately covered by this legislation, I will certainly be pushing for them to be covered. Just as there was a rally at the front of Parliament today with a large number of police, who did a wonderful job of letting the government know that they wanted this legislation through the Parliament for protection, nurses also want protection. I hope that Mark Olsen is listening to this debate tonight or reads it tomorrow and that he organises 2 000 nurses to be out in front of Parliament next week. I hope that even if the bill goes through this house without including nurses, the legislation will be amended in the upper house to include them. However, I believe the shadow Attorney General is going too far with his attempt to include the groups of workers that he wants included in the bill. I do support nurses being included in this legislation. However, the amendment should not include “other hospital workers” because there are just too many professions that work in hospitals that are not in the line of attack. This legislation is meant to protect public officers from attacks. Nurses are one group of public officers that is attacked on a regular basis, and the legislation should give them protection.

Dr K.D. HAMES: I have not spoken previously on the legislation, as the convention is that ministers do not normally do so. However, I want to respond to the comments made by both the Deputy Leader of the Opposition and the former Minister for Health about the supposed lack of involvement by me as Minister for Health in support of nurses. That is not the case. The issue of including nurses, and other professions for that matter, in the legislation was debated at length. I very strongly accept the Attorney General’s point that it is not appropriate for those other professions to be included in this mandatory sentencing legislation. That is not to say that we do not support them. We strongly oppose any action involving people attempting to assault or injure nurses in any way. We supported legislation that the opposition brought forward in this house last year to increase penalties for assaults on public officers, particularly an increase in the penalty for assaults on nurses, so that anyone convicted of an assault on a nurse could serve, depending on the nature of the injury, up to 14 years’ jail. We believe that is a very strong penalty and a strong disincentive for assaults. However, nurses are not required to go out into the community and take action against patients when violence is occurring, as opposed to police officers who are required to go out into the community and take action to protect the public. What nurses must do is call for the security guards, and there are security guards in our hospitals. I have made a commitment, and I have said so publicly today, to increase security arrangements in hospitals. I have requested the Department of Health to review the security arrangements in all our hospitals, to consider increasing security in emergency departments in particular, and to consider making sure that nurses going to and from their vehicles are safe. I do not think that nurses or members of those other professions need to be there as part of mandatory legislation. Mandatory legislation needs to be applied to exactly what the Attorney General said.

Mr J.A. McGINTY: I am keen to put a question to the Minister for Health. I understand the point he is making, but why include paramedics if we do not include nurses? The arguments the minister put do not apply to paramedics. Paramedics are in that sense in a very similar position to that in which nurses and others find themselves. The issue is that the government is providing nurses, in particular, with lesser protection than paramedics. That is the problem with the argument the Minister for Health put.

Mr C.C. PORTER: I am slowly working it out. How does the member for Fremantle convince his colleagues who do not believe in mandatory sentencing to extend the offence of grievous bodily harm to hospital workers? I refer members to the definition of “hospital worker”, which is what we are referring to. The statistics show that since that definition came into play—about April last year—the number of offences committed on hospital workers while working in a hospital or in the course of providing a health service to the public that resulted in an assailant being charged under section 297 with committing the relevant offence is, of course, zero. That is how the member for Fremantle convinces his colleagues who do not believe in mandatory sentencing to apply it to this category, because there has not been any.

Amendment on the amendment put and a division taken with the following result —

Extract from Hansard
[ASSEMBLY - Tuesday, 17 March 2009]
p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Ayes (27)

Ms L.L. Baker	Mr F.M. Logan	Mr P. Papalia	Mr C.J. Tallentire
Mr A.J. Carpenter	Ms A.J.G. MacTiernan	Mr J.R. Quigley	Mr A.J. Waddell
Mr R.H. Cook	Mr J.A. McGinty	Ms M.M. Quirk	Mr P.B. Watson
Ms J.M. Freeman	Mr M. McGowan	Mr E.S. Ripper	Mr M.P. Whitely
Mr J.N. Hyde	Mrs C.A. Martin	Mrs M.H. Roberts	Mr B.S. Wyatt
Mr W.J. Johnston	Mr M.P. Murray	Ms R. Saffioti	Mr D.A. Templeman (<i>Teller</i>)
Mr J.C. Kobelke	Mr A.P. O’Gorman	Mr T.G. Stephens	

Noes (29)

Mr P. Abetz	Mr E. Constable	Mr R.F. Johnson	Mr A.J. Simpson
Mr F.A. Alban	Mr M.J. Cowper	Mr A. Krsticevic	Mr M.W. Sutherland
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr T.K. Waldron
Mr I.C. Blayney	Mr B.J. Grylls	Mr P.T. Miles	Dr J.M. Woollard
Mr J.J.M. Bowler	Dr K.D. Hames	Ms A.R. Mitchell	Mr J.E. McGrath (<i>Teller</i>)
Mr I.M. Britza	Mrs L.M. Harvey	Dr M.D. Nahan	
Mr T.R. Buswell	Mr A.P. Jacob	Mr C.C. Porter	
Mr G.M. Castrilli	Dr G.G. Jacobs	Mr D.T. Redman	

Pair

Mr V.A. Catania

Mr J.H.D. Day

Amendment on the amendment thus negated.

Mr J.A. MCGINTY: I think this will be the last matter on which we will be seeking to divide, in terms of the opposition’s amendments at least. I move an amendment to the Attorney General’s amendment —

To insert new paragraph (c) —

- (c) where the offence is committed in the circumstances set out in subsection (4)(a) or (b) and the public officer is a teacher as defined in the *School Education Act 1999*.

We indicated during the course of the debate this morning that there were three categories of public officers that we thought should be included within the protections offered by this legislation: nurses and health workers; firefighters—both of those amendments have been defeated by the house tonight; and schoolteachers. We are all aware of some quite tragic assaults that have been caused to schoolteachers by parents of children, more often than not in a family breakdown situation whereby it is a question of custody of the children and children being released from the school to a parent in an estranged relationship. There have been some quite tragic consequences for the teachers involved, some of whom have been seriously assaulted. I think the arguments put for the other categories of employees are equally applicable to schoolteachers, and I commend the amendment to the house.

Mr C.C. PORTER: Again, according to the statistics I have, since the section came into being in or about April of last year that elevated the status of a teacher in terms of the maximum penalty that could be imposed, and thereby delineated the category of teacher, no teacher has been the victim of a grievous bodily harm charge under section 297. It has not occurred and I would have thought it would be highly unlikely. If it did occur, I think it would be very likely that a prison term would result anyway. In those circumstances, it is not the government’s intention to accept this amendment.

Amendment on the amendment put and a division taken with the following result —

Extract from Hansard
[ASSEMBLY - Tuesday, 17 March 2009]
p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Ayes (27)

Ms L.L. Baker	Mr F.M. Logan	Mr P. Papalia	Mr C.J. Tallentire
Mr A.J. Carpenter	Ms A.J.G. MacTiernan	Mr J.R. Quigley	Mr A.J. Waddell
Mr R.H. Cook	Mr J.A. McGinty	Ms M.M. Quirk	Mr P.B. Watson
Ms J.M. Freeman	Mr M. McGowan	Mr E.S. Ripper	Mr M.P. Whitely
Mr J.N. Hyde	Mrs C.A. Martin	Mrs M.H. Roberts	Mr B.S. Wyatt
Mr W.J. Johnston	Mr M.P. Murray	Ms R. Saffioti	Mr D.A. Templeman (<i>Teller</i>)
Mr J.C. Kobelke	Mr A.P. O’Gorman	Mr T.G. Stephens	

Noes (29)

Mr P. Abetz	Dr E. Constable	Mr R.F. Johnson	Mr A.J. Simpson
Mr F.A. Alban	Mr M.J. Cowper	Mr A. Krsticevic	Mr M.W. Sutherland
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr T.K. Waldron
Mr I.C. Blayney	Mr B.J. Grylls	Mr P.T. Miles	Dr J.M. Woollard
Mr J.J.M. Bowler	Dr K.D. Hames	Ms A.R. Mitchell	Mr J.E. McGrath (<i>Teller</i>)
Mr I.M. Britza	Mrs L.M. Harvey	Dr M.D. Nahan	
Mr T.R. Buswell	Mr A.P. Jacob	Mr C.C. Porter	
Mr G.M. Castrilli	Dr G.G. Jacobs	Mr D.T. Redman	

Pair

Mr V.A. Catania

Mr J.H.D. Day

Amendment on the amendment thus negated.

Dr J.M. WOOLLARD: I have an amendment to the Attorney General’s amendment. I move —

To insert new paragraph (c) —

- (c) where the offence is committed in the circumstances set out in subsection (4)(a) or (b) and the public officer is a nurse as defined in the *Nurses and Midwives Act 2006*.

In speaking to this, as I said before, I think the previous amendment put up by the shadow Attorney General was far too broad. It encompassed far too many professional groups who work within a hospital setting. Most of those groups would not be seriously attacked. The legislation that was introduced in 2008 simply focused on police officers. Since that time there have been discussions and other public officers have been added into this bill. I believe that nurses deserve to be included. The newspaper today reported the number of assaults at only one hospital. The assaults do not occur at just one hospital. I have worked in many areas within hospitals. The Leader of the House questioned me today, and when I said that I am a nurse, he said that I am a member of Parliament. I am also a nurse, just as I am sure the Minister for Health likes to be considered a doctor. I am very much a nurse.

Dr K.D. Hames interjected.

Dr J.M. WOOLLARD: I do not hear those comments by the Minister for Health. I am very proud to be a nurse, and I am proud to still be a member of the Australian Nursing Federation. I believe that nurses have held together the health care system and have not been given credit for the work that they do. One way of acknowledging the work that nurses do in health is by saying that we will give to them the same protection through this legislation that we will give to paramedics. There may not be the same number of assaults on nurses. I listened to the member for Murray-Wellington and the Attorney General when they referred to the number of assaults against police. There may be more assaults against police, but they should table the numbers. What is the number of assaults against people in all those other groups that are being added to this legislation? If there is a sliding scale and this has been based on a sliding scale, and if the government can show why it has included those groups and why it has not included nurses, maybe we could go back and look at it. However, at the moment, the issue of who has been included in this legislation seems to be arbitrary. I believe that nurses should be included in this legislation and that this government should be protecting nurses.

Mr C.C. PORTER: This amendment is very similar to the member for Fremantle’s previous amendment, but perhaps it might be described as simply setting out a subcategory of it. I have listened to what the member for

Extract from Hansard
[ASSEMBLY - Tuesday, 17 March 2009]
p1898b-1968a

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Alfred Cove has said. I say again that this pertains to the charge of assault on a nurse when grievous bodily harm has been done. Since this offence has come into being, there has not been one of those cases. However, I would also say that when we tried to draw this line, as I have stated previously, we looked at uniformed officers and people who find that it is an intrinsic, and not ancillary, part of their public duties to face violent conduct on a daily basis, and those people who the statistics showed had the greatest need because of existing violent offences and sentencing practices. Those matters were brought to bear on all of the many categories that might otherwise have been inside the line that had been drawn. However, we found that in these circumstances it was such a difficult area of mandatory sentencing that caution was the best approach, and it was in those circumstances that we determined upon that course. It is also the case that we certainly consider that, particularly in emergency departments, there is scope for increasing the security that is available, and also, indeed, in car parks, for nurses at hospitals, but we do not support this amendment, which is, in effect, the same as the last amendment.

The SPEAKER: The question is that the words to be inserted into the minister's amendment be inserted. All those in favour say aye.

Dr J.M. Woollard: Divide.

The SPEAKER: All to the contrary say no. I believe the noes have it.

Dr J.M. WOOLLARD: Divide. Mr Speaker, I had called "divide", and I think the Clerk Assistant heard me call "divide".

The SPEAKER: I had declared the vote in favour of the noes.

Point of Order

Mr J.A. McGINTY: I have a point of order, Mr Speaker.

The SPEAKER: Before I take the point of order, I will address my comments to the member for Alfred Cove. I had called the noes as winning that debate. I gave ample opportunity for a division to be called by a member. I did not hear anything. However, in the spirit of this particular debate and the comments the member has made, I will accept her call for a division. I do not know whether the member for Fremantle wants to make a point of order, but I am going to call a division.

Mr J.A. McGINTY: Mr Speaker, my point of order was simply going to be that I heard the member call for a division before you declared the vote, but it was obvious that you and the Clerks did not hear that call.

The SPEAKER: I thank the member for Fremantle.

Debate Resumed

Amendment on the amendment put and a division taken with the following result —

Ayes (28)

Ms L.L. Baker	Mr F.M. Logan	Mr P. Papalia	Mr C.J. Tallentire
Mr A.J. Carpenter	Ms A.J.G. MacTiernan	Mr J.R. Quigley	Mr A.J. Waddell
Mr R.H. Cook	Mr J.A. McGinty	Ms M.M. Quirk	Mr P.B. Watson
Ms J.M. Freeman	Mr M. McGowan	Mr E.S. Ripper	Mr M.P. Whitely
Mr J.N. Hyde	Mrs C.A. Martin	Mrs M.H. Roberts	Dr J.M. Woollard
Mr W.J. Johnston	Mr M.P. Murray	Ms R. Saffioti	Mr B.S. Wyatt
Mr J.C. Kobelke	Mr A.P. O'Gorman	Mr T.G. Stephens	Mr D.A. Templeman (<i>Teller</i>)

Noes (28)

Mr P. Abetz	Mr G.M. Castrilli	Mr A.P. Jacob	Dr M.D. Nahan
Mr F.A. Alban	Dr E. Constable	Dr G.G. Jacobs	Mr C.C. Porter
Mr C.J. Barnett	Mr M.J. Cowper	Mr R.F. Johnson	Mr D.T. Redman
Mr I.C. Blayney	Mr J.M. Francis	Mr A. Krsticevic	Mr A.J. Simpson
Mr J.J.M. Bowler	Mr B.J. Grylls	Mr W.R. Marmion	Mr M.W. Sutherland
Mr I.M. Britza	Dr K.D. Hames	Mr P.T. Miles	Mr T.K. Waldron
Mr T.R. Buswell	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr J.E. McGrath (<i>Teller</i>)

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Pair

Mr V.A. Catania

Mr J.H.D. Day

The SPEAKER: Members, the result of the division is ayes 28, noes 28. I will cast my vote with the noes. The result is, therefore, ayes 28, noes 29.

Amendment on the amendment thus negatived.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5: Section 318 amended —

Mr C.C. PORTER: I move —

Page 3, lines 20 to 22 — To delete “subsection (1)(d) or (e) against a public officer who is a police officer and the police officer suffers bodily harm,” and substitute —

this section committed in prescribed circumstances,

Amendment put and passed.

Mr J.A. McGINTY: I move —

Page 3, line 31 — To delete “as the court thinks fit; and” and substitute —

unless —

- (i) that sentence would be clearly unjust given the circumstances of the offence and the person; and
- (ii) the nature of the injury suffered was at the lower end of the scale; and
- (iii) the person’s criminal record indicates that they are unlikely to be a threat to the safety of the community; and
- (iv) the imposition of a term of imprisonment would not act as a general deterrent; and
- (v) a term of imprisonment would be contrary to the public interest; and
- (vi) the court has afforded the victim of the offence an opportunity to make submissions either personally or in writing as to whether a term of imprisonment should be imposed; and
- (vii) it gives written reasons why a term of imprisonment was not imposed; and

This is, in every respect bar one, identical to the amendments moved in respect of the grievous bodily harm provision. The difference is that it is designed to pick up minor assaults at the lower end of the scale within the discretionary exercise. Otherwise the arguments stand as they were originally put.

Mr C.C. PORTER: Again, this amendment, as the member for Fremantle has said, is in identical terms to the amendment previously moved with respect to section 297 of the Criminal Code. It is the provision that would change mandatory sentencing into discretionary sentencing, although with a presumption favouring imprisonment. It would fundamentally change the nature, scope and intent of the bill, and the government will not support it.

Amendment put and negatived.

Mr C.C. PORTER: I move —

Page 4, lines 9 and 10 — To delete “subsection (1)(d) or (e) against a public officer who is a police officer and the police officer suffers bodily harm” and substitute —

this section committed in prescribed circumstances

Amendment put and passed.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr J.A. McGINTY: I move —

Page 4, after line 21 — To insert —

unless —

- (i) that sentence would be clearly unjust given the circumstances of the offence and the person; and
- (ii) the nature of the injury suffered was at the lower end of the scale; and
- (iii) the person's criminal record indicates that they are unlikely to be a threat to the safety of the community; and
- (iv) the imposition of the term of imprisonment would not act as a general deterrent; and
- (v) a term of imprisonment would be contrary to the public interest; and
- (vi) the court has afforded the victim of the offence an opportunity to make submissions either personally or in writing as to whether a term of imprisonment should be imposed; and
- (vii) if it does not sentence a person guilty of the offence to a term of imprisonment it must give written reasons why a term of imprisonment was not imposed;

This deals with the offence of bodily harm at the lower end of the scale. It is the same argument as has been previously advanced.

Amendment put and negatived.

Mr C.C. PORTER: I move —

Page 4, after line 23 — To insert —

- (5) In subsections (2) and (4) —

prescribed circumstances means any of these circumstances —

- (a) where the offence is committed under subsection (1)(d) or (e) against a public officer who is —
 - (i) a police officer; or
 - (ii) a prison officer as defined in the *Prisons Act 1981* section 3(1); or
 - (iii) a security officer as defined in the *Public Transport Authority Act 2003* section 3,and the officer suffers bodily harm;
- (b) where the offence is committed under subsection (1)(h)(i), (j) or (k) and the person assaulted suffers bodily harm.

Mr J.A. McGINTY: I have two amendments to the Attorney General's amendment. I seek leave to move them together.

Leave granted.

Mr J.A. McGINTY: I move —

In proposed paragraph (a) — To insert a new subparagraph (iv) —

- (iv) a teacher as defined in the *School Education Act 1999*;

In proposed paragraph (b) — To delete "(i)," and substitute —

- , (i),

The effect of those amendments is to include teachers, nurses, health workers and firefighters within the protection laws offered in respect of assault occasioning bodily harm. The arguments have been previously advanced.

Mr Jim McGinty; Mr John Kobelke; Mr John Quigley; Mr Mark McGowan; Deputy Speaker; Mr Eric Ripper; Mr Murray Cowper; Mr Joe Francis; Ms Andrea Mitchell; Ms Margaret Quirk; Dr Janet Woollard; Mrs Liza Harvey; Ms Rita Saffioti; Mr Frank Alban; Mr David Templeman; Ms Alannah MacTiernan; Dr Mike Nahan; Mr Michael Sutherland; Mr Peter Watson; Mr Paul Miles; Mr Paul Papalia; Mr John McGrath; Mr Ben Wyatt; Mr John Bowler; Mr Albert Jacob; Mr Andrew Waddell; Mr Ian Britza; Ms Lisa Baker; Mr Tony Krsticevic; Mr Roger Cook; Mr Ian Blayney; Mr Tom Stephens; Mr Peter Abetz; Mr Mick Murray; Mr Tony Simpson; Mr Martin Whitely; Mr Christian Porter; Speaker; Mr Rob Johnson; Dr Kim Hames

Mr C.C. PORTER: The member's arguments have been previously put, and, again, the arguments for why the government will not accept them have also been previously put and will not be enhanced by repetition. The member for Fremantle moved two amendments. The second was to delete "(i)"—has that been moved as well?

Mr J.A. McGinty: I've moved both of them. It was to delete "(i)" and insert "(i)".

Mr C.C. PORTER: What was the effect of that?

Mr J.A. McGinty: It was to add nurses, health workers and firefighters.

Mr C.C. PORTER: In that case, that amendment is also opposed by the government.

Amendments on the amendment put and negatived.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 6 —

Ms M.M. QUIRK: I move —

Page 4, after line 24 — To insert —

6. Review of Act

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 3 years from its commencement.
- (2) The Minister shall prepare a report based on the review made under subsection (1), and shall, as soon as is practicable after that preparation, cause the report to be laid before each House of Parliament.

I foreshadowed this amendment. It is not a sunset clause. It is a review that can be conducted by anyone under the minister's discretion; it could even go to a parliamentary committee. The aim is to examine the impact and effectiveness of the legislation and to see whether there have been any unintended consequences, loopholes or inadequacies, or whether it impacts disproportionately on any particular group.

Mr C.C. PORTER: I have spoken with the member for Girrawheen about this clause. It is eminently sensible and I would be interested to see some statistical tracking of the results. The government accepts the amendment.

New clause put and passed.

Title put and passed.