CRIMINAL CODE AMENDMENT BILL 2008

Second Reading

Resumed from 18 August.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [5.44 pm]: Before the house rose last night, I was talking about my concerns about aspects of this legislation. After I got home, I thought about some of the earlier debate about the breakdown of the family unit, and that this is one of the core reasons why people no longer have respect and understanding of their role and responsibilities. I have drummed into my children that every action has a consequence, and maybe that should be a theme that the Attorney General should be encouraged to use if he agrees to promote this issue. People need to learn from a young age that every action has a consequence. I remember something that happened when my second daughter had a young friend over whose behaviour perhaps was not as good as it could have been, and I noticed that she was chucking spit balls up onto my bathroom ceiling. I heard my second daughter, who can sometimes be quite exuberant in her own way, say to this young friend, who was not invited over again after this visit, "No, no, don't do that. For every action there is a consequence." At the age of seven, she had gotten the message. She understood the message. The message that needs to be instilled into our young people and our community is that for every action, good or bad, there will be a consequence. I was thinking last night that maybe that is what we are missing: young people have become so blasé that they do not understand that. I was thinking that sometimes people, particularly when it involves acts of violence or crowd situations or situations that arise when people lose control, do not think about what happens if X is done. Young people are watching television shows or movies in which actions occur, but they do not understand that reality is different. In reality, if somebody does something that injures somebody, there will be a consequence.

I do not have any difficulty at all that if an individual either deliberately or in the heat of the moment, whatever the situation may be, physically harms a public officer, be it a police officer or any number of different individuals named in the legislation, then, yes, of course the individual should be appropriately punished. My concern with the Criminal Code Amendment Bill 2008 is that I do not know whether a mandatory jail sentence is the appropriate punishment. Last night I talked about that aspect and said that I thought in some circumstances maybe there should be a variety of options available. I note that a number of the same concerns have been expressed by the public. Even though I see that Hon Max Trenorden is not in the chamber now—I look forward to hearing his comments at some point—he is quoted in *The Sunday Times* of 31 May 2009 in an article headed "Nats could stop mandatory jail laws" as saying that he thought there were better ways to discourage antisocial behaviour, and that after a fight or assault the offender and victim could be fined and made to do community work if found to have drugs or alcohol in their systems. Hon Max Trenorden stated —

> "Some people who get bashed do so because they were shouting off their mouths," he said.
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> "I'd like to see a new group formed to oversee community work. The group could be made of people like ex-police officers, former army people and public servants."

That demonstrates that a number of people in the community think there should be a range of options, not just one. I hope that when we get to the committee stage, the government will be prepared to deal with that aspect. I know that this matter has become very emotional and one can understand why when a young man like Constable Matthew Butcher was so severely beaten with the result of life-changing ramifications for both him and his family. At the end of the day we have to think very carefully about the future implications of putting these laws into place, because it should not be just a quick fix now; we have to think about how it will play out in the future. I think that in appropriate cases there should be jail sentences imposed, but in other cases we should consider other options.

I note that there has also been significant comment from a range of legal practitioners. The WA Law Society has made some significant contribution to the debate on this legislation. One of its concerns is that police would get unprecedented discretion to lay charges, as quoted in *The West Australian* on 18 March —

> Police would get unprecedented discretion to lay charges which invoke mandatory jail under guidelines that would open the door to corruption and abuse of power.

That is a quote from Richard Utting. Then Hylton Quail of the Law Society makes the comment that —

> "Mandatory sentencing will not prevent assaults on police," …

There is some substance in that and although these tough laws will be in place, I do not know whether they will actually prevent all these things from happening. I heard on the radio the other day some commentary from people calling into a program and talking about the situation in Singapore of caning, death penalties and all those sorts of things, which I think are extreme. I do not know whether those penalties stem those activities, because

people are still committing offences. I do not know whether this legislation has been as well thought out as it could have been in the circumstances. I think it has been rushed through to appease some concerns. We are all concerned about the increase in violence in the community. There seems to have been a little spike over the past couple of years. We hear of incidents involving young people outside hotels late at night, such as one-punch-type situations and police getting beaten up. For whatever reason it is happening more and it needs to be addressed, but I do not know whether this legislation is the ultimate solution.

I want to talk about a few other concerns I have. I touched briefly last night on my concern about people with mental health problems and how they would be dealt with. For example, I had a fellow come into my office late one afternoon a few years ago. I was on the phone to a psychiatrist at Graylands talking about another constituent at the time. While I was on the phone to him, he was having to deal with somebody throwing a television across a room. The fellow said to me that he wanted a criminal lawyer and he said he wanted one immediately. I said okay and looked up the number for Sussex Street Community Law Service because I thought the people there might be able to give him some advice. It was after five o'clock. He started to absolutely lose it. I was the only one in the office at the time and I had forgotten to lock the door after hours because I was speaking on the phone. He was throwing things across the counter and saying all sorts of interesting things. I thought I was pressing the duress button but I was actually pressing the button that opened the door, which was really helpful! I told myself to calm down because I had dealt with some more interesting people in the workplace. I kept asking him to leave. I began to wonder whether he wanted a criminal lawyer for something he had done or something he was about to do, given the tone of the conversation. The psychiatrist could hear what was happening on the other end of the phone. He said to me that it sounded as though I had one of his clients. He asked me if I would like him to call the police for me, which he did. It was a bit long distance, and by the time the police arrived somebody else had turned up and the fellow had gone outside. When the police arrived he got a bit agitated and upset with them. They handled it very well. Given his situation, we did not take any further action because we felt quite sorry for the fellow and he needed some help. It was an interesting situation, and there was a particular line he used at one point which made me realise that he did have some serious issues. I will not repeat it in this place, because I would get into a spot of trouble with the language that was used. If this legislation was in place and if the police turned up and he became aggressive with them because he was not able to control how he handled himself in that situation, where would it put him? The bill contains no provisions that make allowance for that situation if one of the police had been hit or injured, not because the man intended it to happen, but just because he was not able to control how he managed himself. I just use that example. I have some concerns about how that situation would be handled. I would be interested to hear from the government during the committee stage whether it will facilitate discretion for people in that situation.

Another area of concern I have is one I am familiar with. I imagine that Hon Jock Ferguson might make a few comments on it. It is what happens when there is an industrial dispute. From time to time things can get a bit heated on a picket line or at a stop-work meeting. It is not because there is any malicious intent, but people get quite emotional at times and there might be a bit of argy-bargy. I think back to the major Patrick dispute when people were getting worked up. There was not anything directly against the police involved. However, if that were to happen after this legislation is passed, where would those individuals stand; where would the rank and file union members stand; and where would the union officials stand, when they might have just been doing their job at a stop-work meeting or on a picket line where there might have been a bit of physical argy-bargy that was not intended to cause deliberate injury? Would those people be sent away because of that situation? There needs to be a bit more clarity and a bit more thought about the different types of situations that can occur in our community where sometimes things will happen but not with malicious intent.

Another matter that has arisen with this bill is the fact that the Commissioner for Children and Young People has not been involved by giving comment on this legislation and its impact on children and young people. Hon Giz Watson raised this, and I note that a question was raised about this in the other place today. Given the passage of time since the then opposition, now the government, in its election campaign talked about how it would introduce this legislation, at no point from last year until now was the draft legislation, or the bill once it was read, provided to the commissioner and discussions were not held with the commissioner about the impact of the legislation on children. The member for Mindarie raised this matter with great concern during the debate in the other place. I would have thought at that point the government could have sent it off to the children's commissioner. Section 19(g) and (l) of the Commissioner for Children and Young People Act 2006 provides that the commissioner as one of her functions has the right to review draft legislation and has the right to make recommendations under another part of the act about the implications for young people. The Attorney General does not believe that the children's commissioner legislation mandates for that situation to occur. That is very interesting given the quite heated discussion that occurred sometimes during the debate on the bill when the Liberal Party, and in particular Hon Barbara Scott, pursued vigorously the provision that the commissioner for children should have access to draft legislation so as to provide an impact statement to the government of the day

to give it some direction about the implications for children and young people. It is very disappointing when we have this type of legislation that has very serious implications for young people that the commissioner has not been afforded that opportunity and a discussion has not been entered into. I would be interested in Hon Michael Mischin's comments on that when he responds and about why that did not occur and why the government has not utilised the commissioner. I would have thought that given the demands of the Liberal Party to have that as a key function, the government would seize the opportunity to have the commissioner's expert and specialised advice on how to address these problems for young people. It is quite disappointing that she is not being utilised as she should be on this occasion.

I will recap by saying that this is serious legislation that has serious implications for our community. The government was very clear during the election campaign, and since it has been in government, that it wanted to have this legislation in place. I accept that, but the government needs to consider very carefully how it will play out in the community. It would have been perhaps better if there had been a better thought out piece of legislation that picked up on the issues, or even when the bill went through the other place, if the government had been prepared to acknowledge the concerns of the opposition about the implications for children and also those in some of the other groups in our community who may come under this legislation if they are found to have committed an offence, not through any intent but because they cannot manage their own actions. I reaffirm that I firmly believe that anyone who deliberately causes harm or injury to a policeman, policewoman or other public officer should indeed receive an appropriate punishment, but I do not know whether sending people to jail without looking at all the circumstances or looking at other options is necessarily the only solution.

Sitting suspended from 6.00 to 7.30 pm

Hon KATE DOUST: Before the dinner suspension I was starting to wind up my remarks. I am sure members are pleased to hear me say that. In doing so, I want to reinforce that —

Hon Jock Ferguson interjected.

Hon KATE DOUST: Thank you, Hon Jock Ferguson; he will get a Christmas card this year!

Hon Simon O'Brien: He will probably get more than one, actually.

Hon KATE DOUST: One more than Hon Simon O'Brien will get!

I want to reinforce that it is my view, a view I know everyone will share, that when public officers such as police are targeted or there is intent to harm or injure them, of course, the full brunt of the law should be brought into play and the appropriate penalty applied. I think I talked about the number of concerns I have with this legislation. The capacity for judges' discretion to apply is lacking; children and young people, be they Indigenous or non-Indigenous, are covered by the legislation. I have talked about the fact that the Commissioner for Children and Young People was not consulted, and I look forward to the response from the parliamentary secretary in light of the letter I have been handed from the children's commissioner about this matter. I hope we can get some clarification on why the commissioner was not engaged. In this letter she has expressed quite clear views and concerns about this legislation and appropriate forms of penalty being applied to children. It is my view—it is shared by others such as Hon Max Trenorden and Hon Phil Gardner—that perhaps they need to look at broader types of appropriate forms of penalty in these situations and at taking into account circumstances as well as allowing judges' discretion.

If the government wants to put good legislation in place, it should indeed take into account this range of options, as has occurred in other states. I would hate to think that mandatory sentencing in this state would have the same consequence as it did in the Northern Territory where young people were imprisoned over banal situations such as stealing a packet of biscuits, and a young man committed suicide while in jail. I would hate to think we would get to that point with this type of legislation.

In wrapping up, although I have all these concerns, I fully understand that the government is very clear in its intent in proposing this legislation. I do not agree with its hard-line approach across the board on dealing with law and order; I think it is coming at it from the wrong way and it should address the core reasons people get into these situations. It should deal more effectively with how to provide support and advice to families so that young people in particular can learn that they do have responsibilities and that they must be accountable for their actions. During the dinner break I returned to my home to educate my son yet again that there are indeed consequences for every action, so I think he got that message tonight! It is an ongoing job as a parent, and that is something we all have to deal with. On that basis, although I have concerns about aspects of this legislation, I understand why it has been put forward and the concerns of the police. I appreciate the very difficult and quite dangerous situations they are put in. It is the one line of work in which, no matter what is done in the way of occupational health and safety, workers never know what hazards they will be exposed to on a daily basis.

Unfortunately, violence is the key hazard that the police have to deal with. On that basis, I will not be opposing this legislation.

HON HELEN BULLOCK (Mining and Pastoral) [7.36 pm]: I do not intend to speak too long on the Criminal Code Amendment Bill 2008, as other members have already done so. I just want to share with members some reflections I had while I was reading this bill. I will start with a quick outline of the bill, and some parts of the minister's second reading speech, to refresh the memories of members about what the bill is about. This bill amends the Criminal Code to provide that, when a person assaults a police officer, that offender must be sentenced to a term of imprisonment. This bill seeks to amend sections 297 and 318 of the Criminal Code. The first section deals with inflicting grievous bodily harm, which is permanent or serious impairment, and the second deals with serious assaults. The minister's second reading speech states —

> This bill sends a clear message to the community of Western Australia, to the police who protect them, to the courts and to offenders: the state now has a government that treats the safety of its police officers as a matter of the utmost importance and seriousness. Simply put, if one of these officers is assaulted and sustains bodily harm, the perpetrator of that offence will go to prison.

It is as simple as that—a very bald statement. Members in this house know that we are here as legislators; we are here to make laws. After we have made the laws, we pass them on to judges who interpret and execute the laws that we have made. This is called the separation of powers. However, by passing this bill it seems to me that we will be telling judges what to do instead of leaving them alone to do their job. This legislation takes discretion away from judges. It also runs contrary to the provisions of the Sentencing Act, section 6(4) of which states, in part —

> A court must not impose a sentence of imprisonment on an offender unless it decides that —

The key words here are "must not", unless subsequent conditions are met on a case-by-case basis. However, in passing this law, we seem to be saying "Don't worry about it—once you commit this offence, you'll go to prison." Once an offence is committed, an offender goes to prison. The Sentencing Act continues —

> (a) the seriousness of the offence is such that only imprisonment can be justified; or
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> (b) the protection of the community requires it.

Imprisonment is a sentence of last resort. It is not the only way to punish somebody who has done wrong. Lawyers know that before sentencing, there is nearly always a pre-sentencing report prepared by corrections officers from the Department of Justice. Sentencing is generally moved to a later date some weeks down the track, when the report is presented to the judge, prosecution and the defence. There will then be a hearing before the court regarding sentencing in which both sides argue their case and the judge decides on an appropriate penalty.

Apart from imprisonment, a judge has the option of imposing various community-based orders—a fine or a suspended term of imprisonment. The judge also considers whether parole should or should not be given to the offender. The mandatory sentencing provision removes these options because a sentence of imprisonment must be imposed if an offender is found guilty.

Tom Percy, QC, a national director of the Australian Lawyers Alliance, outlined the deficiencies of this bill, which I think any ordinary person would understand. This is what he said —

> The whole idea of appointing judges is so that they can exercise a degree of discretion, and where appropriate, mercy. Of course, community expectations have to be met at the same time but the best people to do this are the judiciary.
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> Any removal of the right of a judge or magistrate to impose a non-custodial sentence in a worthy case is effectively a sentence imposed by parliament, in ignorance of the facts of the case. It removes any consideration of special circumstances. That has to be wrong.
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> In reality, it is a comparatively rare event that anyone convicted of a serious assault on a police officer doesn't get prison. And that's the way it should be. The daily press blows up any case where there is a decision to the contrary, reporting only a sprinkling of the relevant facts on which the decision was made.
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> The mandatory sentencing debate is nothing but a chest-beating exercise by politicians in the pre-election bidding war as to who is the toughest on crime. It's got nothing to do with justice or common sense. Worse still, it just doesn't work.

Whenever we mention this bill, we always mention the Butcher case. That case is described as the straw that broke the camel's back.

Let us think about this: if this piece of legislation was in place before the Butcher case, would the outcome of the Butcher trial have been any different? The answer is no—the accused was found not guilty of assault. Another question is whether, under this legislation, there will be any advantage for an offender to plead guilty in court? The answer is no. Why would an offender plead guilty if it meant he would go to prison straightaway, without any further questions and without his case being looked at again? The imposition of this law will remove any benefit to an offender for entering a plea of guilty. Offenders will therefore be more inclined to take their chances and to instruct their lawyers to enter a plea of not guilty and to go to trial. This will have the effect of clogging the courts. This legislation is well intended, but the consequences of it will do more harm than good to the administration of justice in this state.

HON JOCK FERGUSON (East Metropolitan) [7.46 pm]: I recognise that this legislation is constructed to apply penalties to perpetrators, but not a lot has been said about the victims. The victims in this case are coppers. I think that people who smack coppers in the line of their duty, or just because of the fact that they are police officers, deserve everything they get. Whether they are drugged up or inebriated, it is no excuse for assaulting police officers in the line of their duty, or for the very fact that they are off-duty police officers. There is an inherent danger for police officers of assault in the line of duty. We have to take into consideration the number of police who leave the force with an illness or injury because of various things that have happened to them when carrying out their duty. We have to do all we can do to protect the safety of the police and put them on the same level as the community that they protect.

Coppers are workers, and as I said during the adjournment debate yesterday in reference to mining workers, they should enjoy the basic civil right of returning home after each shift with no physical or mental injuries. How can we expect to attract the next generation into the police force when they see what is happening to this generation, and the impact it has on their families? People join the police force so that they can serve society, and in my view they do an excellent job. Hon Kate Doust said that I might speak about police activity on picket lines—or should I say, "community protest lines"? They are not picket lines these days! I have been involved in a few in my day, and my experience was that the police always acted with great integrity, they were always aware of the circumstances and they did everything to keep the peace, which is their job. They understood the emotions involved in some of these disputes and took that into consideration before they acted. I found, in the majority of cases, that they acted very sensibly and very well indeed. As I have said, I think they do a damn fine job. In saying that, I have some grave reservations about this legislation, particularly the effect of mandatory sentencing on juveniles. I would like to draw the attention of the house to the United Nations Convention on the Rights of a Child, which sets out 11 fundamental binding principles to be reflected in sentencing all juvenile offenders. I quote from "Human Rights Brief No 2" —

> The CRC was adopted in 1989 and ratified by Australia in 1990. Many of its provisions are relevant to the sentencing process and the ultimate decision. Also relevant are
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> > the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)
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> > the United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines)
> >
> > the United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990.
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> These rules and guidelines are relevant and persuasive on their own account. More importantly, however, they have also been adopted by the Committee on the Rights of the Child …

As I said before, there are 11 principles that should be taken into account when sentencing. I will not go into the detail of the principles, but I will simply say that the 11 principles are participation; best interests; community safety; rehabilitation; not cruel, inhuman or degrading; a range of options; proportionality; review; detention as a last resort; free from arbitrariness; and the shortest appropriate time. Each category has questions relating to each of these rules. If the sentencing judge asks himself the question and the answer is no, then there has been a failure to implement the CRC sentencing principles in full. If the answer to the question is that he does not know, then there has also been a failure. I will quote some of the questions one must ask about the 11 principles —

1. **Participation**

   Does the young person fully understand his or her situation?

I would say that the answer to that one would be no. Further —

> Was the young person given an opportunity to make submissions on sentencing, in person or through counsel?

No, again. The next question is —

Did the young person feel free to participate?

The answer again is no, so the legislation has failed the first test of participation. The second test is —

2. **Best Interests**

Did the court investigate the young person's best interests?

Under this proposed legislation the answer would be no. The next question is —

Did the court make the best interests a primary consideration?

Under this proposed legislation the answer would be no. The next question is —

Was the young person's well-being a guiding factor?

Again, under this proposed legislation the answer would be no. That means that it fails the second principle, being best interests.

The third principle is —

3. **Community Safety**

Does the sentence reinforce the child's respect for the rights of others?

I would say that this legislation would not do that. The second question is —

Is it likely to discourage re-offending?

The answer to that one would be no, or do not know, so in my view it fails the third test.

The fourth principle is —

4. **Rehabilitation**

Does the sentence aim to rehabilitate the child?

Obviously the answer to that one is no. The next question is —

Will it do so in fact?

It will not. Therefore the legislation has failed the fourth test of juvenile sentencing.

The fifth principle is that of whether the sentence is —

5. **Cruel, inhuman or degrading**

Is the sentence humane taking into account the young person's age, physical and mental health, family and socio-economic background, cultural affiliations, intellectual development and level of education?

The sixth test is —

6. **A range of options have been explored**

Was a range of sentencing options available to the court?

The answer would be no under this legislation. The second question is —

Did the court consider a range of sentencing options?

No, it would not have. Therefore the legislation fails the sixth test.

The seventh test is —

7. **Proportionality**

Is the sentence proportional both to the young person's circumstances and to the offence?

I would say it is not, and so therefore it fails the seventh test. The next is —

8. **Review**

Is the sentence capable of review by a higher tribunal?

No, it is not; therefore, it also follows the eighth test of review. Next —

9. **Detention as a last resort**

In the case of a sentence of detention, was the sentence imposed as a measure of last resort?

No, it was not imposed as a measure of last resort; therefore, it fails that test. Next —

10. **Arbitrariness**

In the case of a sentence of detention, is the sentence free from arbitrariness (proportional, consistent, non-discriminatory, compatible with the principles of justice, applied according to clear standards and guidelines)?

I would say no; therefore, it fails that test. Lastly —

11. **Shortest appropriate time**

In the case of a sentence of detention, is the length of the sentence the shortest which is appropriate in the individual case?

No, it is not, because it is mandatory that these juveniles be sentenced for a particular length of time; therefore, it fails that test. I put it to the house that it fails all those tests, and it fails the test that it should not be applied to juveniles. I support the position put by other members yesterday and this evening, because I am very dubious about the whole legislation, and in particular I have a real problem with this legislation applying to juveniles. The police do a tremendous job and we should be doing everything we can to protect them. I would like to hear the government's position when we move into committee in response to some of the questions I have raised. I particularly do not think that this legislation should apply to juvenile offenders. I look forward to the government's response.

HON LJILJANNA RAVLICH (East Metropolitan) [7.58 pm]: As have my colleagues, I have some serious reservations about mandatory sentencing as a way of dealing with myriad issues and ills in society. One of those ills is assaults on police officers. When a public officer is assaulted, irrespective of whether a nurse, bus driver or police officer, there is no doubt the community feels alarm and seeks redress. No doubt pressure is put on governments and, consequently, governments are put in a position where they need to respond, as is the case with this legislation before us today. However, I have reservations because I believe that mandatory sentencing laws are often arbitrary and they can be discriminatory. There is no doubt that they have very little regard for the circumstances under which an offence has occurred. There is also no doubt that the fact that they are not reviewable by a court means that there is finality about them: an offender has done the wrong thing, which falls within the category of an offence and, therefore, the only redress is that offender is automatically put away in a prison.

There are many contradictions in our society. There is no doubt in my mind that there is a social scene in Western Australia that is heavily focused on alcohol consumption. I remember when I was minister responsible for the Liquor Licensing Act that I would come under pressure, almost on a weekly basis, because the number of small bars was not growing in this town. Our government was under constant pressure because at that time the opposition and the media were saying that we promised that there would be so many small bar licences and what were we doing about it. They said that there were not enough of them and that if we compared Western Australia with Victoria and other eastern states, we would find that we were really lacking in opportunities to have a drink. Can we believe it! Therefore, we have this culture with this enormous expectation that we will have this thriving social place, everybody will enjoy their alcohol and everything will be peaceful but, quite frankly, the world does not work like that. The world simply does not work like that. Of course, young people are often immersed in this culture. We have seen the advertisements on television, for example, which are anti-drinking advertisements I suppose to try to curb the level of drinking culture within the community, in which the father tells the young boy to pick up the can of beer out of the refrigerator during the family barbecue. From a very young age, if we like, those habits and alcohol-related practices are picked up and are in fact seen to be quite normal—they are normalised. Therefore, we have this culture in which there is the contradiction that we have a very strong drinking culture but people do not expect consequences as a result of that. We also have the contradiction whereby police officers as law enforcers are also encouraged to go into the community and be seen as friends. I sometimes think that there is a clash of these expectations and responses. We can quite easily imagine a situation whereby a group of young people who have probably had a little too much to drink bounce up to a police officer on a Friday night and of course something goes out of control and consequently a police officer may take offence to the fact that he has been inadvertently pushed or touched or whatever, ergo the question arises: was this an assault on a police officer; and, if so, what should be the penalty? My concern is that there may be such situations and there will be lots of grey areas to do with this issue. There will be many grey areas and young people, in particular, I believe will be caught out in these grey areas. That is what concerns me.

A lot has been said about this matter. Certainly, the Law Society of WA has put its position on this matter on the public record. The Law Society view is that mandatory sentencing for people who assault police officers and other emergency workers should not be introduced in Western Australia. The Law Society believes that this

legislation will not necessarily prevent assaults on police officers and it argues that for decades murder carried a mandatory sentence of life imprisonment in Western Australia, yet murder continued to be committed. People have differing views on what the net impact of this legislation will be. There is no doubt that many assaults occur on police officers, in particular, people working in hospitals and, to a lesser extent, possibly bus drivers, whereby we can imagine the situation. Somebody comes in who may be inebriated, who may have mental problems—we can imagine a whole range of circumstances whereby people committing the offence have that spontaneous emotive sort of response, if we like, to the alcohol that they have consumed or the drugs that they have taken or whatever. I do not want to be an apologist for people who do the wrong thing, but I guess the point that I am making is that under our judicial system every case is judged on its merits. In other words, there is a whole range of circumstances, issues and factors to be considered by the judge or the jury in making a final determination about whether that person intentionally went out to commit an offence such as assault an officer or whether he or she may not have had any intention at all of committing an offence but through a set of circumstances did so inadvertently.

Certainly, I fear for many young people. I understand that there is a view that police have been treated quite differently from other public sector workers. I understand that this law will also apply to security people on public transport. I have to say that the inclusion of security people on public transport is probably a response to pressure from the media vis-a-vis the attack on bus drivers. I am just wondering how long it will be before there is another media crisis about assaults on public officers and yet another category of officers is included in this list of officers against whom an assault becomes a matter to which the mandatory sentencing legislation is applied.

Having said all that, there is no doubt in my mind that it is totally unacceptable that officers are assaulted, in particular law enforcement personnel. When society loses respect for its law enforcers, it is in my view in very dire circumstances. There is no doubt in my mind that the situation needs to be redressed and control regained. I am certainly not soft on crime. I feel that most citizens in our community are good, law-abiding citizens and that people who do not obey the law simply make it a less desirable society for those who do obey the law and who do the right thing. I have been advised that only one in seven offenders convicted of assaulting public officers go to jail. The rate is, therefore, quite high.

I guess the issue for me is lower order assaults in which somebody pushes somebody, as opposed to somebody who punches somebody in the head intentionally and causes that person to fall and become paralysed. There are a range of offences as far as I am concerned on the question of assault. Of course, the question of intent or not is a matter that this mandatory sentencing legislation does not pick up in any way. Whether or not an assault was intended, the bottom line is that it is not about the input of the assault but about its output. The legislation is not about the reason for the assault but about the consequences of the action.

I get back to the point that very few people are jailed for assault on police officers. I was surprised to find that in Albany in 2008, for example, police had been physically attacked on at least 13 occasions. That figure seems incredibly high to me. It is fair to say that most people would think that number is way over the top, is totally unacceptable and such assaults simply must be stamped out.

I come to the point that this legislation is intended to also include children. That is a very dangerous way to go. It is fraught with problems. The Attorney General, Mr Porter, has said that there is a strong possibility that legislation that will force judges to impose mandatory jail terms for serious assaults against police and other officers will pass the Parliament. As I understand it, that legislation will also apply to children. It seems to me that, on the one hand, the Attorney General is taking a hard line on the inclusion of children, but, on the other hand, he sees no danger in allowing a multiple sex offender —

Hon Robyn McSweeney: Hang on!

Hon LJILJANNA RAVLICH: I do not see the Attorney General moving very quickly to amend that legislation. I am not seeing that at all. What I am seeing —

Hon Michael Mischin: What does that have to do with this?

Hon LJILJANNA RAVLICH: He can change the law in relation to Mr Michael Alexander McGarry. But, no, the Attorney General has not done that. All the Attorney General has done is say, "I cannot do anything about this. All we can do is assign a person to follow Mr McGarry around." That is going to cost more than it would cost for Mr McGarry to remain in prison.

Hon Michael Mischin interjected.

Hon LJILJANNA RAVLICH: The Attorney General is not doing anything about it. That is the point. The defence is that Mr McGarry will have to comply with 52 conditions.

Hon Michael Mischin: No. The court said that.

Hon LJILJANNA RAVLICH: I did not say that the Attorney General said that. I am happy to say that the court made that determination. The point I want to make is that the Attorney General should address this matter by bringing legislation into this Parliament to make sure that a sentencing judge cannot make such a determination in the future. That is the point I want to make.

Hon Michael Mischin interjected.

Hon LJILJANNA RAVLICH: The member will be able to make his point and say what he wants to say. That is the point I want to make. I do not know why members take offence at that. It is a plausible and reasonable position to put. Members know that it is a reasonable position to put. Members know that it is a very sensible approach. All I am saying is that, on the one hand, we have a situation where a young child who throws a rock and hits at a police officer will be put inside for three months under this legislation, but a serious sex offender, Mr Michael McGarry, who has sexually assaulted numerous young children, can end up walking the streets, with someone following him. There is something inherently wrong in all this. I make the point again, and I do not resile from it, and I will not resile from it, that the Attorney General was very quick to respond to the issue of mandatory sentencing for assaults on police officers, but he has sat on his hands, after the judge made that determination in the McGarry case, and has not done anything about Mr Michael Alexander McGarry. The Attorney General is happy to accept that Mr McGarry has to comply with 52 conditions, and he is confident that Mr McGarry will breach one of those conditions and will land back in jail. The real danger is that if it were our son or daughter that Mr McGarry had assaulted, and he was walking around, we would not be satisfied. I am amazed there has not been a major outcry in the community in respect of Mr McGarry.

Hon Robyn McSweeney: This decision was made by the court. McGinty did not overturn what came to him in 2005, either.

Hon LJILJANNA RAVLICH: Mr McGinty, to the minister.

Hon Robyn McSweeney: Mr McGinty. Sorry. Excuse me.

Hon LJILJANNA RAVLICH: The minister should have some respect for Mr McGinty, because when the minister has achieved what Mr McGinty has achieved —

Hon Robyn McSweeney interjected.

The DEPUTY PRESIDENT (Hon Helen Morton): Order! I think the member should confine her comments to the bill and not take those kinds of interjections.

Hon LJILJANNA RAVLICH: I agree with you, Madam Deputy President! It is disgraceful what the minister is doing to me!

There is no doubt in my mind that many young people will inadvertently be caught by the legislation. Indigenous and homeless kids will be at huge risk. Many children roam the street of Perth. The Minister for Child Protection has not been able to sort that out, although the Liberal Party promised that that was something it would do. The minister knows that there are children at risk.

Hon Robyn McSweeney: That is why we gave them $100 000.

Hon LJILJANNA RAVLICH: Gee whiz, $100 000!

There is a view that nice kids from the western suburbs probably will not get caught up by this legislation and that it is legislation that was designed for children from other suburbs. Wait until the first teenager from the western suburbs gets caught up in this and acts in a manner that leads to him automatically being locked up. We will wait until then to see what the response will be. This legislation will apply to all young people across the whole of the state, irrespective of who their mum and dad is and of how much they earn or where they live; they will all be bagged together under this very difficult legislation that applies to children.

I will not go on for too much longer but I make the point that those of us who have been here for many years listened to Hon Barbara Scott get on her feet day in, day out and talk about the establishment of a Commissioner for Children and Young People. That was her pride and joy. She always talked about the establishment of that office. Members of the government who were with her on this side of the house at that time were very supportive of her. They thought that the state absolutely needed that office and that, by golly, when they got into government, they would respect the position. In fact, they wanted it to be a huge office with all the bells and whistles and so on and so forth. The government's response was to show a lack of respect for the good work done by Hon Barbara Scott to establish that position. It has just ridden roughshod over the children's commissioner, which is deplorable. Members opposite should hang their heads in shame. I am amazed that Hon Robyn McSweeney, as the minister responsible for the interests of young children and making sure that they are

looked after and that their voice is heard—never mind the children's commissioner—as a senior minister, sat on her hands. Did she ever speak to the Attorney General and recommend to him that he should have discussed this matter with the children's commissioner? Did the minister do that?

Hon Robyn McSweeney: What was that? Are you talking to me?

Hon LJILJANNA RAVLICH: Yes. Just because the minister has had her hair done! The minister just has to concentrate.

Hon Robyn McSweeney: I am so used to your voice lulling me to sleep that I did not actually hear my name. I apologise.

Hon LJILJANNA RAVLICH: I am just saying that Hon Robyn McSweeney has a huge priority within her portfolio to protect the interests of children. Did the minister, at any point, recommend to the Attorney General that he should have consulted with the Commissioner for Children and Young People?

Hon Robyn McSweeney: This isn't question time. I am going back to doing my own work.

The DEPUTY PRESIDENT: Order! Please continue with the debate. Hon Ljiljanna Ravlich, you have the floor and it is not question time.

Hon LJILJANNA RAVLICH: Thanks; I know that. I would have thought that that was a reasonable question to ask. It was only in a very friendly way. I was hardly giving the minister a hard time or anything like that; let us face it. Silence is deafening anyway. We know that she did not, and that is very disappointing. The only point I make is that it is a shame, and Hon Barbara Scott really would be very disappointed that this has occurred.

Moving on to another Scott—that is, the Commissioner for Children and Young People, Michelle Scott—obviously, she is not very happy about the fact that she has not been consulted. I think the excuse that has been put on the public record by the Attorney General is very weak indeed. He stated that the reason he did not consult with the commissioner on the legislation that he was proposing was that he did not have sufficient time. He said that he had some conversations with her after the legislation was drafted. It is now 12 months since the new government took office. This was an election commitment, from memory. The Attorney General had 12 months to make some phone calls. It seems incredible to me that he could not make a phone call —

Hon Kate Doust: Maybe he doesn't have the competency to use a phone.

Hon LJILJANNA RAVLICH: It is just amazing, Hon Kate Doust, that one cannot pick up a phone. Quite clearly, he intentionally bypassed the commissioner on this legislation, and I fear he did so because he had some idea of what she would say and how she would respond. He knew that it would not be favourable to his case, so he isolated her and made sure that she had no input. Anyway, I am pleased to say that the Commissioner for Children and Young People has taken the initiative. As members would be aware, a letter to the Attorney General was tabled in the other place, and that quite clearly indicates that the Commissioner for Children and Young People certainly is not supportive of this legislation. She certainly can see that it is fraught with dangers, and she certainly is concerned about the impact the legislation will have on young people.

We find ourselves in a very interesting situation. We recognise that we cannot tolerate our police officers, the key law enforcement people in this state, being attacked as a common occurrence. We know that this has to stop. It must be stamped out. By the same token, we have some very serious reservations about how this legislation will impact on young people. We want to make sure that we protect our young people in any way that we can. Certainly, I do not think that this legislation is good legislation for the state's young people.

HON ADELE FARINA (South West) [8.23 pm]: It is a hard act to follow, at least in terms of entertainment value, but I will do my best. This bill was introduced into Parliament by the government in response to the recent attacks on police officers and the perceptions that the courts have been too lenient in imposing penalties against the perpetrators of such offences. Before proceeding, I need to place on the record my strong support for police officers and the difficult job that they do in very difficult circumstances. I want to put on the record my admiration and appreciation of the work of our police in the south west region, both past and present. We in the south west region have been, and are, very fortunate to have police officers who not only perform their duties to the highest of standards, and in many instances go beyond the call of duty, but also put a lot of their personal time into their communities, volunteering in a range of community organisations. Their commitment to the job and to serving the community at the highest possible levels ensure that our south west communities are safe places to live in, so I strongly support our south west police. I have heard from many of them about the challenges they face on a daily basis. They do an incredible job with limited resources and there is no question that, with the rate of population growth in the south west region, we need more police officers. However, that is an issue for another time.

I also need to place on the record that I have a personal interest in this bill. My brother-in-law is a police officer; my sister-in-law is a police officer; my young nephew is considering becoming a police officer when he grows up; and I have a number of friends who are police officers. My sister and my brother-in-law have three sons. I have had many discussions with my sister about the dangers of her husband's job and her fear that he could come home seriously injured one day or could, in fact, die on the job. My brother and my sister-in-law have a two-year-old daughter and I know of my brother's concerns for his wife's safety every day when she goes to work. My cousin's daughter's husband was seriously assaulted in 1994 when responding to a domestic issue. He was a police officer. He and his partner sustained serious injuries when they were attacked by three males in responding to that situation. He is no longer a police officer.

In my previous occupation as a defence lawyer and a personal injuries lawyer I got another and a slightly different insight into the daily challenges faced by our police officers and how very quickly what appears to be a very mundane, routine call-out matter can turn bad and become life-threatening to our police officers. Whenever I hear a story on the radio or the TV about an assault on a police officer, it has my complete attention as I listen to find out whether the police officer is my brother-in-law, my sister-in-law, one of my friends or an officer from the south west region. At the end of the day, the injured police officer is someone's partner, child, brother, sister, other family member or friend. No person should be subjected to assault or have to sustain bodily harm in the lawful performance of their duties. No person should be subjected to regular abuse or be spat at and assaulted. For many of our police officers, this is all in a day's work. It is simply unacceptable.

The government claims that this bill will protect our protectors—our police officers—and another small category of officers covered by this bill. Sadly, the bill will not do this. It is for this reason that it is incumbent on all of us in this house of review to carefully scrutinise this bill to ensure that it does what the government says in its second reading speech it will do. This bill falls far short of what the government rhetoric says it will do and it has many serious flaws that we need to consider and, I trust, eliminate during consideration of the bill in the committee stage.

In introducing this bill the government stated that the government is committed to protecting those who protect us—our police officers and the other small category of officers covered by this bill. In his second reading speech the then minister representing the Attorney General stated —

> This bill sends a clear message to the community of Western Australia, to the police who protect them, to the courts and to offenders: the state now has a government that treats the safety of its police officers as a matter of the utmost importance and seriousness.

They are strong words, yet this bill does not deliver on the rhetoric. This bill will not protect police officers from assaults. This bill is not about prevention, it is not about education nor is it about protecting our police officers. The provisions of this bill come into effect only in a situation in which a police officer is assaulted or has sustained bodily harm and the offender is charged and convicted. How does this protect our police officers? Offenders do not stop to think about the consequences of their actions before acting. If they did, then I am sure many of them would not so act. In many of the assaults on police officers we have seen in recent times, alcohol and/or drugs have been involved. It is therefore questionable whether the offenders had the capacity at the time of committing the offence to properly process any thought, much less the capacity to give consideration to the fact that if they assaulted a police officer, they could go to jail. It is the furtherest thing from their minds at the time of offending. It is often the case that the condition of offenders with mental health problems means that they do not have the capacity to give reasoned consideration to what they are doing. They often act before thinking, or act in a confused state. Those concerns are multiplied a hundred times in relation to young juvenile offenders.

There is a substantial body of evidence showing that increased penalties and mandatory sentencing offers little or no preventive effect. This bill, in addressing sentencing only, therefore falls short of providing police officers with the protection the government claims it provides. Mandatory sentencing will not prevent assaults on police officers. In promoting this bill the government and the police union have relied on the unfortunate case of Constable Matthew Butcher; a recent case that sparked community outrage. What happened to Matt Butcher is awful, although that is an inadequate word to use to describe what happened to him. I doubt that any word could adequately describe the trauma that Constable Butcher and his family have gone through. No person should be subjected to such harm in the lawful performance of his or her duties. The impact of the assault on Constable Butcher and his family is huge. Their lives will never be the same again; there is no question about that.

However, this bill does not address the Constable Butcher scenario. The problem with the government and the police union using Constable Butcher's case to advance the cause of this bill is that in this case there was no conviction. The jury found the accused not guilty. The issue of sentencing did not arise. This bill deals with the issue of sentencing only. It is therefore dishonest of the government and the police union to suggest that this bill would have protected Constable Matt Butcher or any other police officer in a similar situation. This bill is not

about mandatory conviction; it is about mandatory sentencing. To suggest that this bill offers a solution to the Constable Butcher case is to mislead the public and police officers. If this bill had been law at the time of the Constable Butcher incident, the outcome of the case would have been the same. This bill does not address whatever deficiencies one believes might exist in the justice system or in the criminal law that would provide a different outcome in the Constable Butcher case. It is important that police officers and the community understand that this bill does not address the Constable Matt Butcher scenario.

The sickening footage of the attack on Constable Butcher has touched all of us. I doubt that anyone could not have been moved by it. As a lawyer, I find it difficult to understand how a flying headbutt to the back of a person's head could be viewed as a defensive act. In my personal view, a flying headbutt to the back of a person's head is clearly an aggressive act; there is nothing defensive about it. I also find it difficult to understand how the self-defence provisions of the Criminal Code could be used in circumstances of the Butcher case. However, these are my personal views. I was not on the jury; I did not hear all the evidence presented to the jury that resulted in the jury forming a different view. I do not want anything I have said to be interpreted as an attack on the jury or as me criticising the jury; that is not my intention. The purpose of my raising this is that if the government really wanted to respond to the Butcher case and really wanted to protect police officers it would have introduced a bill very different from the one now before the house. This bill addresses sentencing only. It does not address the issues that go to the core of the problem. In truth, this bill provides no protection to police officers, and it will not prevent assaults on police officers.

The government and the police union have argued that if one does not support this bill, or raises any concerns about it, then one does not support police officers. Nothing could be further from the truth. This bill is not without significant flaws, and we have the responsibility in this place to carefully examine the bill, address the flaws contained in it and, I hope and trust, eliminate those flaws.

Usually, when a government introduces reform legislation, it does so because it has identified that a problem exists and that the current laws are inadequate, and it presents evidence to support that case. This government has introduced a bill that provides mandatory sentencing in the case of assaults against a specified category of public officers, but where is the government's evidence of the cases in which sentencing provisions have been inadequate? In fact, it has been highlighted by John Quigley, the shadow Attorney General, that in all but one or two cases presented by the government in advancing this bill, the police or the prosecution has withdrawn the charges. The assaults were not considered by the courts.

The judiciary has come in for significant criticism for being too lenient in sentencing. This reached a peak with the Butcher case, yet in that case the defendants were found not guilty—the issue of sentencing did not even arise.

To the best of my knowledge there has been no case presented by the government in which the police have successfully appealed a sentence on the basis of the sentence being too lenient. I am happy to be corrected on this. In any event, even if there have been some cases, my understanding is that there would be less than a handful of cases—I would be surprised if there were that many. The point I make is that there has been no evidence presented by this government to support the bill that has been introduced into this house to toughen sentencing. There has been no evidence by this government to show that the courts and the judiciary have been too lenient in the sentences that they have imposed. That is emphasised particularly in relation to juvenile offenders. I am not aware of any case that the government has presented in this debate, both here and in the public, in which a juvenile offender has assaulted a police officer and has got off on too lenient a sentence or in which the police have needed to appeal a sentence against a juvenile offender who assaulted a police officer. There have certainly been no cases in which they have successfully done so.

The issue here is: where is the evidence? Where is the argument backing what we are actually being asked to do in this house? I invite the government to present the evidence, because it has simply not been presented to the house. The government has a responsibility to present this house with the justification for what it is doing. To date, it has failed to do so. I warmly invite the government to present that evidence.

As I have said, the government has failed to present any evidence to support the misconceived public view that the judiciary has been too lenient in sentencing in relation to assaults on public officers. I wish to place on the public record that the attack that we have seen on the judiciary is, in my view, unfounded and unfair. There are clear sentencing provisions that are followed by the judiciary. Sentencing laws are passed by the Parliament. If there is a problem, the responsibility rests here with this Parliament, not with the judiciary. We need to take responsibility.

As I touched on earlier, this bill does not protect all public officers, as was promised by the government. It is unacceptable for any public officer—a teacher, a nurse, a firefighter or an ambulance driver, to name just a

few—to be assaulted during the course of the lawful performance of their duties. This government promised to protect all public officers. This bill does not do that. The government has failed to honour its promise to protect all public officers; as a result, this bill falls short. Teachers and nurses, to name just two professions that provide a service to the public, are far too frequently the subject of assault and deserve the protection of the government, yet this government has turned its back on them. This is unjust and inequitable. I do not understand how it can be determined that some public officers should be protected and others should not, if that is the government's position.

The Leader of the Opposition will move amendments to this bill in an effort to get the government to honour its commitment to all public officers. I trust that members on the government benches will listen to the debate and will search their hearts and do what is right and just, and support the Leader of the Opposition's amendments to extend the protections that are offered by this bill, if any, to all public officers.

There are other areas of concern in relation to this bill—one of those is our international law obligations. Australia is a signatory to three international covenants. The International Covenant on Civil and Political Rights was signed and ratified by Australia in 1980; the International Convention on the Elimination of All Forms of Racial Discrimination was signed and ratified by Australia in 1975; and the Convention on the Rights of the Child was signed and ratified by Australia in 1980. As a result, Western Australia is bound by these international laws. There is a substantial body of literature to argue that mandatory sentencing puts Western Australia in breach of a number of the articles of the conventions and covenants I have identified.

Western Australia has been roundly condemned by numerous national and international bodies for the "three strikes" laws that were introduced in the 1990s. Here we are today, intending to further widen our mandatory sentencing laws. Australia has a proud history of defending human rights, but our ability to do so is compromised if we as a state find ourselves in breach of the very international conventions and covenants that we use to seek to protect human rights in other countries.

If Australia is to comment with any moral authority on human rights abuses in other countries, we must first make sure that we are not guilty of human rights breaches in our own country. Many political, legal and human rights commentators have strongly argued that Western Australia's mandatory sentencing laws put Australia in breach of the international law to which it is a signatory. This is a serious matter that must be examined by this Parliament, and I intend to explore it further during the committee stage.

I have other concerns about this bill, centring on the significant negative impacts inherent in any mandatory sentencing scheme. We have heard members raise the issue of the lack of a right of appeal. Again, one of the articles provided in the International Covenant on Civil and Political Rights is that every person should have a right of appeal. With mandatory sentencing, there is no right of appeal on sentencing. This puts Western Australia in breach of that international covenant.

I am also concerned about doing away with judicial discretion in sentencing. Latitude is necessary to ensure that punishments are reasonably appropriate to the degree of seriousness, in terms of both harmful impacts and responsibility for criminal acts. This bill takes that discretion away from our independent judiciary, which has all the experience of the legal profession, and instead puts discretion in the hands of police officers—the very officers who are laying the charges. I do not understand why we think we will get a better result with that, and I seriously question what we are doing and the implications, further down the line, of that transfer of discretion.

Judicial discretion allows judges to take into account the circumstances of the case and the mitigating factors. This bill takes that discretion away. During the public debate on this bill we have all heard the huge number of examples of cases at the very minor end, for which people could end up going to prison as a result of these mandatory sentencing provisions. I do not think anybody thinks that such an outcome would be fair or just. It is really important to understand the sentencing regime we already have in place in Western Australia and the fact that it is important to continue to provide the judiciary and our justice system with the opportunity to assess the circumstances of each case. No two cases are the same and there should not be a situation in which a person will go to prison regardless of the circumstances of the case, the seriousness of the offence or any mitigating circumstances that might be in play. How is that just? How is that fair? How does that honour our international law obligations on human rights?

We have also heard that mandatory sentencing has a tendency to exacerbate, for no good reason, the disproportional impact of the criminal justice system on the Indigenous population. The shadow Attorney General has spoken very publicly about his concerns for the impact on Indigenous juveniles in particular. I will not say a lot more about that at this point, but I will address it more when we are in the committee stage. I invite the government to explain to the opposition whether it is of the view that the Criminal Code Amendment Bill

2008 has the potential to impact disproportionately on our Indigenous population generally, but particularly on our juvenile Indigenous population, and the measures this bill provides to give to some protection to those people.

The most concerning thing to me about the legislation is that there is substantial, clear and weighty evidence that the enactment of mandatory penalty laws has either no deterrent effect or a modest deterrent effect that soon wastes away, yet we persist in going down this path. Again, the government needs to explain to the opposition why it is pursuing this path and what the end goal is. Certainly, it will not protect our protectors; it will not prevent assaults on police officers.

It may also result in the possibility that the processes of the courts may happen behind closed doors. They will be happening at the time that the police officers decide on the charges to lay. They will be happening outside the court when there are negotiations about plea bargaining in cases where if somebody has been charged with five offences but they agree to plead guilty to a specific one, the other four will be dropped. It could actually be used as a way to ensure that that bargaining process results in some outcome. I have a real concern that that process could be taking place behind closed doors.

The other issue that we must be very careful with is that with mandatory sentencing the focus is in no way related to anything that could be termed as good sentencing practices. We actually have a sentencing act that sets out in great detail factors the judiciary should take into consideration in sentencing. In passing these laws, we are saying, "Forget about what Parliament said in relation to those sentencing provisions; Parliament got it wrong in this instance. We now know better, and that in only these circumstances in relation to assaults and bodily harm on police officers, we should deal with this group of offences very differently from how we deal with assaults and bodily harm to other members of the community."

As a fair and just community, which Australia always states that it is, it is hard to see how we can justify that different approach in terms of how we go about sentencing some offenders as opposed to other offenders, depending purely on the nature of who they offend, not on the seriousness of the offence or the circumstances of the offence.

The issue of the impact of mandatory sentencing on juveniles has been covered very broadly by a number of my colleagues, and so I do not intend to go into great detail about it. Both the Leader of the Opposition and the Greens (WA) have indicated their intention to move amendments to remove the application of this law to juvenile offenders. I ask members to again consider our international law obligations in relation to human rights, and particularly to how they apply to juveniles. If this law applies to juveniles, it will breach every single one of those articles of international conventions that we have adopted. We should not take that step lightly. It is serious and the international community will judge us accordingly. I trust that members on the government benches are listening; I am sure that a number of them have children to whom these laws could be applied at some point. They should not wait for it to be their son or daughter before they understand the seriousness of what we are potentially doing by allowing this law to pass in what is proposed to be its current application to juvenile offenders.

Do we really want to send a 14-year-old or a 10-year-old to jail? Is that really what we are on about in this place? It could be for a reasonably minor offence against a police officer. Do we really think that? It could be a simple act of carelessness; for example, a group of youths at a park, having drunk some cool drink, might decide to squash the tin cans, as they do, and have a competition to see who can hurl a can the farthest. If a can is hurled and it hits a police officer in the head and that results in a scratch that draws blood, the youth could potentially be charged under this law. I say "potentially" because I understand that some police guidelines are being drawn up. However, I have some concern about those and the fact that they are not in the bill, but I will address that in a moment. A small, careless act by a juvenile could result in that juvenile going to jail. Do we seriously want to contemplate that in this place? Let us stop and think, take a breath, take a day and sleep on it. Do we want to breach our obligations under international law while we sit here and preach about what happens in other countries?

Mandatory sentencing schemes are at their most acceptable, if this term can be used at all in the context of mandatory sentencing schemes, when they fit rationally with the rest of a judicial sentencing scheme and its basic penal philosophy and when they anticipate potential injustices by allowing for departure in exceptional cases. This bill fails to do this. In all the media coverage on this matter, as I have explained already, we have heard numerous examples in which this law could be harshly applied, resulting in unjust outcomes and where people for the most minor assaults could go to prison. I will not detail them again. As I indicated earlier, I understand the police have produced guidelines that will provide guidance to police officers in the application of these new laws, so in the most minor of assault circumstances police officers will be guided not to charge an

offender. What I do not understand is why the government prefers police guidelines to an exceptional circumstance discretion in the bill. I look forward to the government's explanation of why it has gone down the path of preferring police guidelines. Police guidelines do not provide the same protection as an exceptional circumstance discretion in a bill. They do not form part of the bill. They may be reviewed and changed at any time without the knowledge and scrutiny of Parliament. This would not occur if they were part of the bill. Also, we can have absolutely no certainty about the uniform application of those guidelines across the state or the consistency with which those guidelines will be adhered to. If we get to a position in which police guidelines say that in the most minor of situations an offender should not be charged, why do we not go that extra small step and insert in the bill an exceptional circumstance discretion? It would make this bill just, equitable and fair. It is the one thing that makes mandatory sentencing as palatable as it can possibly be. To date we have heard absolutely no comment from this government on why it will not introduce an exceptional circumstance clause in this bill.

Early in the debate I think the Attorney General made some comment that this is a mandatory sentencing bill and therefore there will be no exceptions, no ifs and no buts. However, the police guidelines that have been produced do provide an if and a but, so if there is an if and a but in guidelines, why not put that into the body of the bill? This Parliament can then scrutinise whether it does what it says it does and if there is going to be any review or any amendment to that discretion, it can come back to this Parliament for this Parliament's consideration. To suggest that an exceptional circumstance case could be dealt with by police guidelines is a joke. It really is a joke and government members should be ashamed of themselves for putting up such a proposition. We acknowledge that in a fair and just society circumstances differ from case to case. There will be situations in which the law, if imposed strictly, will be harsh and unreasonable. That is the whole point of exceptional circumstance clauses. This bill needs an exceptional circumstance discretion clause if it is to have any credibility and if this government is to be able to raise its head at any international forum. I strongly urge this government to explain very clearly and articulately why it thinks that it is acceptable not to have an exceptional circumstance discretion clause; why it believes that after all these years the judiciary is incapable of exercising discretion in exceptional circumstances; and why police guidelines will actually be more effective in delivering that result, because I do not see it and I do not believe that any member of the community will accept that argument either.

I have mentioned that members of my family and a number of my friends are police officers. I believe that we should protect our police officers, in fact, all public officers, from any sort of assault, be it the verbal assaults that they get at the Centrelink office and that some environment and fisheries officers get when they go about performing their duties, or physical assaults. I simply do not think that any of it is acceptable and should be tolerated in today's society. I wish that I could look police officers in the eye and tell them that by passing this bill we will have protected them. Sadly, I cannot because this bill does not live up to what it was planned to do. If we are really serious about protecting our police officers, let us get on with the job of doing that. Let us get on with the job of protecting all public officers from any form of assault or abuse. However, let us not kid ourselves that this bill delivers that. I will not be able to look one police officer in the eye and say, "Don't worry. We have passed this bill and you're now protected; there will be no further assaults on police officers." We all know that will not happen.

Hon Simon O'Brien: I do not think that is really what is being said though, is it?

Hon ADELE FARINA: That is exactly what is being said.

Hon Simon O'Brien: Nobody is saying that this will stop it; it will deal decisively with —

Hon ADELE FARINA: Yes, it will, according to the government. Read the second reading speech, in which the Attorney General says that as a result of this bill no person will go unpunished for assaulting a police officer.

Hon Simon O'Brien: Exactly.

Hon ADELE FARINA: That is wrong. The person needs to be convicted before this bill will have any application, and in the Butcher case there was no conviction.

Hon Simon O'Brien: The member is trying to split hairs rather than deal with the substantive issue.

Hon ADELE FARINA: I am not trying to split hairs; the member is trying to split hairs! We know from the wide body of evidence from research that has been done on mandatory sentencing laws and increased penalties that they do not prevent the crime from happening because the criminals are not thinking about the ramifications of what they are doing.

Hon Michael Mischin: Why punish them at all then?

Hon ADELE FARINA: If the member reads the sentencing act and the rest of our criminal laws, he will understand why we do it. I am not going to go into that now. The member can explain that to us later when he

gets a chance to speak. The member has a lot to address, so I look forward to hearing his address. I could talk at length about the inadequacies of this bill and the inadequacies of the government's response to the Butcher case. However, we on this side have given an undertaking not to take up too much time, so I will leave that for the committee stage.

In conclusion, the government says it wants to protect our police officers. It expressed its outrage at what happened to Constable Butcher, as we all have, and said that it would introduce a package of reforms to ensure that what happened to Constable Butcher would never happen again to another police officer; that people who assaulted police officers would not go unpunished. It has been months since the court decision on the Butcher case, and the only reform measure pursued by this government has been the introduction of this bill—a bill that does nothing to address the Constable Butcher scenario. The government is big on rhetoric, yet very small on delivery. The government has failed to deliver on its promise to police officers, other public officers and the community. It is time that this government got on with the job of governing and honestly delivering on its promise to protect all public officers.

If this government is sincere in its promise, it will get on with addressing the cause of the problems that result in assaults on police officers and other public officers. Those issues are alcohol; drugs; a review of the liquor licensing laws; licensed premises not adhering to licensing conditions; better and better funded public education programs on the consequences of abuse of alcohol and drugs; better and better funded care for those suffering from mental health problems; better and better funded education programs on better parenting; and better support to families that are fractured or struggling to deal with day-to-day challenges. The list goes on. The government's report card on addressing the root cause of the problem of assaults on public officers, and more generally is a big F—failed.

The bottom line is that this bill will not do what the government claims it will do; the community and public officers need to understand this. I would like to take whatever measures are necessary to protect our police officers and I look forward to the government actually delivering on its commitment to protect our police officers, to protect all our public officers and to introduce a package of reform—a package of reform that we have not yet seen. I look forward to that happening.

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [9.01 pm] — in reply: When I started as a prosecutor back in 1985—my memory may be growing a little dim here and I may be confusing the chronology of events—I recall that police officers as a rule were something like five feet ten inches tall and weighed a certain 100 or so kilograms; they wore uniforms that did not make them look like paramilitary plumbers; and they had a belt, of course, with their uniform, which contained some handcuffs and perhaps room for a nightstick. However, they were not routinely armed. In fact there was a great debate a few years after I joined as to whether police ought to be carrying firearms, and certainly there was a great debate as to whether it ought to be routine. Police officers also tended to patrol alone. They did not have to go in pairs through the streets and in public places. They wore uniforms that were more suited to a dress parade, rather than a uniform for fighting criminals hand-to-hand. A police officer was a figure of respect, even amongst the thug element of society. A police officer might enter into a difficult situation but his or her presence alone in those days tended to have a sobering and calming influence over what was happening. Now we find something completely different. When a police officer turns up at an incident, there is a culture in which he or she becomes the target of a criminal's attentions. Numerous instances are reported in the press about parties that run riot. When juveniles are invited to a party and start to cause a riot or disturbance, police officers are called and, courageously in their numbers, the juveniles turn on the police officers, target them and pelt them with bottles and cans and use weapons against them. How did all this come about? In the government's view, one of the reasons this has come about is the lax sentencing that has been imposed on criminals. We are not saying that every assault on a police officer will result in a mandatory sentence of imprisonment. We are focusing, in the case of the proposed amendment to section 318, on persons who cause bodily harm; and, in the case of the proposed amendment to section 297, on persons who cause grievous bodily harm. We are saying that we need to restore the position of police officers in our society. We need to tell people that an assault against a police officer is an assault against the community and the state. It has been argued that this bill, if passed in its present form, will not achieve that. It has been argued that this bill will do nothing to protect police officers. That is true. We cannot try to break up a brawl by holding up a copy of the Criminal Code and expecting people to suddenly have respect for it. However, what people will have respect for is the fact that a person who lays a finger on a police officer who is in uniform, and who causes bodily harm to that police officer, will go to jail. What people will have respect for is the fact that this Parliament, this state and this community will be standing behind the courts and will be telling the courts that they do not have a discretion in this area—a person who assaults a police officer and commits bodily harm or grievous bodily harm against that police officer, will go to jail. We can help police officers by

restoring their status in society and restoring to them the mantle of protection and support. That is what this bill sets out to do.

The position of the Australian Labor Party on this bill is extraordinary. The ALP is saying that it supports police officers. All the speakers on the opposition side of the house have said they support police officers and want to help. Yet members of the opposition are prepared to do everything short of actually helping. There has been a lot of large talk from opposition members about how they want to help, and about how they believe our police officers should be supported, but they have not come up with one concrete way of putting that into effect. They have not made one concrete suggestion. "Mandatory sentencing is not going to do it" is what they say.

Point of Order

Hon KATE DOUST: Mr Deputy President, when ministers or parliamentary secretaries are responding to bills, we would expect them not to engage in a political debate about the reasons for the bill, but to respond to the points raised and to comment on the matters in the bill. I would encourage the parliamentary secretary to respond just to the comments that were made in the second reading debate. If he wants to have a further debate, he can do that in committee.

Hon SIMON O'BRIEN: Mr Deputy President, I have no doubt that you do not require assistance from the floor to make a ruling. However, I think it would be unfair if someone from the government frontbench were not to point out that the parliamentary secretary is addressing the debate in substance. If he chooses to use analogies or make reference to his own experience, that is quite legitimate. The matters raised by members opposite were many and varied, and I submit, with respect, that the honourable member is not outside his remit in his response.

Hon SUE ELLERY: Mr Deputy President, I appreciate that this is the parliamentary secretary's first piece of legislation, so I was myself contemplating whether I would take the same point of order, but I decided that I would listen for a few more minutes. I remember well my first piece of legislation, so I did not want to throw the parliamentary secretary off his game, so to speak. But it is certainly the case that the parliamentary secretary began his response to the second reading debate with his recollection of police officers in years past. The purpose of the parliamentary secretary's response to the second reading debate—as opposed to a second reading speech that the parliamentary secretary might want to make in his own capacity as a member—is to represent the government in responding to matters that were raised during the course of the second reading debate. The parliamentary secretary is not supposed to be raising new matters in his response.

Hon Norman Moore: Rubbish.

Hon SUE ELLERY: He is not. I submit that the purpose of the second reading response on behalf of the government is not to introduce new matters but to respond specifically to those matters that were raised during the course of the second reading debate.

The DEPUTY PRESIDENT (Hon Matt Benson-Lidholm): I take on board the concerns of members who have risen on that point of order. I will give the parliamentary secretary some licence and suggest that in his first attempt at carrying through legislation, he is slowly but surely getting to the point, and I am sure that he is about to do just that.

Hon ADELE FARINA: The parliamentary secretary stated in his response that no members opposite put forward any suggestions about what the government should be doing to protect police officers and public officers. I take objection to that because I actually did.

Several members interjected.

Hon ADELE FARINA: It is inaccurate. Members opposite are not interested in the truth.

Several members interjected.

The DEPUTY PRESIDENT: Order members! The debate is getting somewhat out of hand. I have indicated that I wanted the parliamentary secretary to continue. After that brief discussion, I am sure that in due course he will discuss the concerns raised by the opposition. I call upon the parliamentary secretary.

Debate Resumed

Hon MICHAEL MISCHIN: Thank you, Deputy President. I was getting to the several points that have been raised. If because of my lack of experience I have transgressed the etiquette of the house, I apologise.

Several members interjected.

The DEPUTY PRESIDENT: Order members! I want to continue this debate in an organised fashion. I ask that members respect the position of the parliamentary secretary. It is his call.

Hon MICHAEL MISCHIN: As I was saying, at the commencement of Hon Sue Ellery's speech in this debate, she said that the opposition was not opposing this legislation, yet it appears to her that there is everything wrong with it and nothing right with it. It has been said by several opposition speakers that mandatory sentencing, even in the modest form provided by this bill, will not protect any police officers and that it will not succeed in its aim. That is a matter for debate. Only time will tell. It is noted that the bill contains a review clause that will permit the operation of the amendments to be examined in three years if the bill becomes law. However, in the same breath it is suggested that although mandatory sentencing will not achieve the end foreseen by this bill, something short of that, namely a presumption of imprisonment, will. No evidence has been supplied to support that. The government is not prepared to water down its commitment to police officers and public officers of a like profession by compromising the mandatory sentencing provisions in this bill.

Much has been made of the Butcher case. It is said that somehow this legislation is a reaction to the Butcher case. That is plainly not so. The Butcher case involves the manner in which the jury dealt with the issues then before it that led it to give the benefit of the doubt to the several accused, in a case in which the prosecution had to prove its case beyond reasonable doubt. It has nothing to do with sentencing. What this legislation, however, will achieve is this: if the accused in that case had been convicted, they would not have had the benefit of a suspended sentence, they would not have had the benefit of an intensive supervision order, and they would not have had the benefit of anything less than a minimum term of imprisonment.

It was said that the Attorney sat on this legislation because he did not introduce it within the first 100 days of this government's term in office. That was contradicted by Hon Ljiljanna Ravlich, who said that he was very quick to want to jail people for a mandatory minimum term, even though he is releasing dangerous sex offenders into the community. That is a mishmash of concepts if ever I heard one, but there we go. That is the level of argument that we have heard against this legislation.

It is said that this legislation will not achieve any protection of police officers. Yet the opposition wishes to extend its operation to others such as teachers and nurses. Why not also bus drivers and taxidrivers? Why not everyone in the community? The reason that the government has selected police officers, prison officers and the like is not hard to discern. These are the people whom we call upon for help. These are the people at the front line. Nurses and the like are not there directly dealing with criminals. Psychiatric nurses know, as part of their job, that people are likely to be irrational and violent and may cause them harm. However, they do not have to impose their presence and they do not have to impose authority on behalf of the state over people who are wayward or wish to cause harm. Police officers, prison officers and the like are at the very front line. They are the ones who, in this measured piece of legislation, are being acknowledged and supported and, by that acknowledgement and support, are being given the protection that Parliament can allow.

The legislation is far from perfect—I accept that—but it is a start to restore the status in the community of police officers, prison officers and like law enforcement officers and to show them that Parliament and the community are behind them. In doing so, hopefully, when the population, both law-abiding and criminal, both adult and juvenile, realises that if people assault police officers and prison officers they will go to jail, they will be more circumspect in their behaviour. There are no guarantees; there are only hopes, and at least the government is attempting to achieve something in that regard.

The question has been raised: what protection will be provided to the Indigenous population that may be affected by this bill? The answer is the same protection that is accorded to every other member of the Western Australian population. If they are criminals and they want to assault police officers and do police officers harm, they will suffer equally to every other member of the Western Australian community and every other criminal in the Western Australian community, unless, of course, it is proposed that certain exceptions be made based on race. If people are worried about things like international conventions, I would have thought it would be a classic example of how they would contravene.

There has been criticism of police guidelines. Hon Sue Ellery waxed lyrical on how somehow they would not be reviewed by Parliament and the like. Police guidelines on when they prosecute and how they exercise their discretion to prosecute have nothing to do with this legislation and nothing to do with Parliament. They are not subordinate legislation. There is no question of them being ultra vires; there is no question of them somehow exceeding the scope of the legislation under which they are made. They are simply guidelines to police officers promulgated by the Commissioner of Police outlining how they can use their discretion. In this case, the criticism is that many minor, trivial instances of bodily harm that may fall foul of the definition in the Criminal Code will somehow be captured if the police lay a charge—for example, for a scratch, a bruise or the like. The guidelines are there, promulgated by the Commissioner of Police, to tell police officers that he does not want them to charge for transitory or trivial items of bodily harm under section 318.

Hon Adele Farina: Why not put them in the bill?

Hon MICHAEL MISCHIN: There are a variety of reasons, one of which is that we would have to redefine the nature of bodily harm in the legislation.

Hon Adele Farina: Is that so hard?

Hon MICHAEL MISCHIN: Yes; it can be problematic.

Hon Adele Farina: You're a good lawyer; I have faith in you.

Hon MICHAEL MISCHIN: I thank the member very much. I am glad the member recognises that.

Hon Adele Farina interjected

Hon MICHAEL MISCHIN: The point of having guidelines is that they can be flexible and they can be changed in order to tighten them. What the guidelines say is that the Commissioner of Police does not want his officers to use their discretion to charge if they happen to suffer an injury that is of a trivial, transitory or temporary nature. He does not want officers to lay charges in those cases. He requires that any such charge be brought before the supervising sergeant in charge of that police officer and that a medical certificate be obtained and provided before a charge can be laid. What is wrong with that? The way the law stands at the moment, a police officer can charge for a case of assault causing bodily harm for a trivial injury. They do not do so as a rule. The guidelines are to constrain police discretion, not expand it beyond the scope of the act. The police will know full well that if they abuse the discretion invested in them in this case, they may very well lose the sympathy of the community. That is a matter for them. But there is nothing wrong with guidelines. In fact, guidelines have been used by the police for as long as I can remember. They are in existence for numerous other offences and are used by the police every day. There is nothing wrong with them. In fact, it is laudable that the Commissioner of Police has decided to take this particular course.

It has been said that somehow this legislation will bring down the ire of the international community on Western Australia because somehow it offends against the rights of children. The first point to be made is that that is, at best, arguable. The second point that needs to be made is that Western Australia, as a sovereign state, is not bound by them.

Hon Adele Farina interjected.

The DEPUTY PRESIDENT (**Hon Matt Benson-Lidholm**) Order!

Hon MICHAEL MISCHIN: Thirdly, it seems contrary to the arguments put only a few weeks ago in the sitting before the recess about a thing called the National Gas Access Bill, about which complaints were raised about how regulations under that might restrain the powers of this Parliament. Yet now the United Nations charter is being raised as some ground for objection to what is considered by this Parliament to be for the peace, order and good government of this state. It is a flimsy argument and one the government does not accept.

Argument has been made also about how somehow Parliament is assuming the position of the judiciary. Again, we heard a mishmash of concepts about separation of powers. It does no such thing. Parliament has the responsibility of deciding what laws are necessary for the peace, order and good government of this state; that is what the government is proposing Parliament do in this instance. It has nothing to do with the separation of powers. Parliament sets the parameters and sets the laws. The courts are there to administer justice in accordance with the law. There is nothing unusual about it. Every piece of legislation does that. The Dangerous Sexual Offenders Act 2006, which has been raised during the course of the argument, does that and leaves the discretion to a judge, yet we have heard criticism that somehow a judge has done something inappropriate under that legislation, and that the Attorney General should introduce legislation immediately to fix the problem. We cannot have it both ways.

Hon Adele Farina: Nor can you, by that argument. It's a pretty poor argument.

Hon MICHAEL MISCHIN: We did not introduce the legislation. As I recall, the Dangerous Sexual Offenders Act was passed by the previous government.

Hon Adele Farina: You did introduce this legislation.

Hon MICHAEL MISCHIN: The Dangerous Sexual Offenders Act?

Hon Adele Farina: I am arguing about your poor argument that you have presented.

Hon MICHAEL MISCHIN: It has been argued that —

Hon Jock Ferguson: Have you forgotten what you were arguing about?

Hon MICHAEL MISCHIN: No, I am just trying to work out, from the mishmash of stuff that was presented, which bits are worth responding to.

The Law Society and various other legal bodies, including certain high-profile defence lawyers, do not like the legislation, and predict all sorts of dire occurrences as a result of it. They are entitled to their opinion, but they do not have to worry about the responsibility for the security of our police officers or for the peace, order and good government of the state. That is the government's responsibility, and it is this Parliament's responsibility. They can say as they wish. Their views will be taken on board by the government, but the government has the responsibility of making the decisions, not Mr Percy, fortunately.

Hon Ljiljanna Ravlich: Has he rubbed you up the wrong way?

Hon MICHAEL MISCHIN: I think I have won every case I have had against him, actually.

Hon Ljiljanna Ravlich: The truth comes out. A bit of professional rivalry is going on here!

Hon MICHAEL MISCHIN: No, no rivalry.

Hon Ljiljanna Ravlich: Look—you are as red as red.

Hon MICHAEL MISCHIN: That is humility.

It is said that the legislation will somehow unfairly capture people who may be intoxicated by alcohol or drugs, and may be acting in an impulsive rather than a premeditated fashion. The law covers that anyway. Interestingly, there seems to be conflict between various submissions that have been made in that regard. Hon Jock Ferguson, for example, said that intoxication and drugs is no excuse; people who do harm to police officers deserve what they get. Other speakers from the opposition say that somehow it would be a terrible thing if they suffered the consequences of causing grievous bodily harm to a police officer. I do not understand what the problem is there. The question has been raised about why the views of the Commissioner for Children and Young People were not sought. The commissioner's views did not have to be sought. It was quite apparent what they were, and they have been taken into account. In short, no matters of substance have been raised against this legislation.

The one concern that is of merit is that of juveniles. The government has considered its position on that matter and has paid attention to the debate in the other place and here. It has taken the view that it is prepared to accept that juveniles under the age of 16 years should be excluded from the mandatory sentencing provisions provided for in this bill. During the committee stage, I propose to move an amendment to that effect.

Otherwise, the matters that have been raised are simply different opinions and different perspectives on the issue. The government has taken the responsibility, as part of its election manifesto, to offer the mantle of protection to police officers so far as it can, and to elevate their position. Hopefully, this bill will provide a deterrent to those who may be inclined to assault and harm police officers.

I thank members for their contributions in this regard. At the end of the day it is the government that has responsibility for this bill. We are gratified that, despite the rhetoric, the bill will not be opposed.

Question put and a division taken with the following result —

Ayes (27)

Hon Liz Behjat	Hon Kate Doust	Hon Jock Ferguson	Hon Norman Moore
Hon Matt Benson-Lidholm	Hon Wendy Duncan	Hon Philip Gardiner	Hon Helen Morton
Hon Helen Bullock	Hon Phil Edman	Hon Nick Goiran	Hon Simon O'Brien
Hon Jim Chown	Hon Sue Ellery	Hon Nigel Hallett	Hon Ljiljanna Ravlich
Hon Peter Collier	Hon Brian Ellis	Hon Col Holt	Hon Sally Talbot
Hon Mia Davies	Hon Donna Faragher	Hon Robyn McSweeney	Hon Ken Baston *(Teller)*
Hon Ed Dermer	Hon Adele Farina	Hon Michael Mischin	

Noes (4)

Hon Lynn MacLaren	Hon Giz Watson	Hon Alison Xamon	Hon Robin Chapple *(Teller)*

Question thus passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Michael Mischin (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon SUE ELLERY: I want to take the opportunity of the short title debate to canvass two issues that emerged from the second reading debate. I first want to refer to some of the proposed amendments standing in my name and in the names of other members. If it is at all helpful, those amendments could be categorised so that people understand the different effects of them. The second thing I want to do is canvass how police guidelines will be used to assist the interpretation of the bill.

I turn firstly to the amendments. I am canvassing, for the benefit of the chamber, my view of what the amendments will do; I am not asking the parliamentary secretary for a response. The bill as it stands before us amends two categories of assault at section 297 and section 318 of the Criminal Code to add, to put it in common parlance, mandatory sentencing. In each category it adds specific reference to the provisions of the Young Offenders Act. There are amendments that delete reference to the Young Offenders Act in respect of section 297 and section 318 of the Criminal Code. In the event that that set of amendments are not successful, members will be aware that there are other amendments on supplementary notice paper issue 3. Other members have further amendments; I have not seen an amendment in the name of the parliamentary secretary in the most recent supplementary notice paper. The opposition will seek to remove reference, for the reasons we have given, to the Young Offenders Act in section 297 and section 318. If that is not successful, there are other options in respect of some of the other amendments on the supplementary notice paper. I understand, as was flagged by the parliamentary secretary in his response to the second reading debate, that there will be another amendment; we have not yet seen what it will be.

For each assault category within the Criminal Code that this bill seeks to amend there are three packages of amendments. The first one on the notice paper relates to all offenders. It sets out what might be described as a manifest injustice clause—whether it be manifestly unjust to provide a mandated sentence. That is the set of amendments that applies to both, about which there will be an argument from this side of the house that we ought not to remove every single scrap of discretion from the judiciary, and that we ought to recognise that in prescribed circumstances, which is what our amendments seek to provide, there is reason why the judiciary should take into account a range of factors in determining whether or not in a particular set of circumstances it is right that a person should receive a mandatory jail term.

The second set of amendments are those that I talked about in respect to removing the application of the legislation to children. If those amendments fail, there are alternatives before the chamber.

The third set of amendments are in my name and come from the Labor Party. There are a certain category of public officers that we seek to add to the Criminal Code Amendment Bill 2008 that we say will give better effect to the promise that the government made to the electorate about the provisions of this being applied to all public officers. For section 297 and section 318 there are three categories of the same type of amendments. I have said that to make it clearer for members—maybe it did not!

The second point I make, and to which I would like a response from the parliamentary secretary, relates to the police guidelines. As I understand it, on the basis of the comments the parliamentary secretary made during his second reading response, those guidelines will be promulgated by the Commissioner of Police and will set some parameters within which the police will have some discretion about whether to charge someone with an offence that brings with it a mandatory sentence. I am asking the parliamentary secretary to formally table those guidelines. I am also asking him to provide us with some outline of how we can be assured that the guidelines that are tabled tonight will be the guidelines that will be in operation for however long it is envisaged they will be in operation. Is it envisaged that they will be reviewed at some point? The reason I ask is that some comment was made during the second reading response that somehow I was making some spurious claim that these were ultra vires or a form of regulation. I was actually trying to draw an analogy, or comparison, and make the point that this is a house of review and it takes very seriously instruments that go to the implementation of a piece of legislation that is beyond the scrutiny of the house. I was not suggesting that these were regulations or a disallowable instrument; I was saying that we take that view about things that are disallowable. One would think that our view about things that are not disallowable would be even more of a concern to us. We are wary of regulations being beyond our reach, and the point I was trying to make related to the advice that the efficacy of this bill will be achieved by relying on a set of guidelines that are beyond our scrutiny. I would like those guidelines to be formally tabled, and then to hear from the parliamentary secretary how they will apply and what commitments or undertakings he can give us so that we can be satisfied that what is tabled tonight is what will apply if this bill proceeds through Parliament.

Hon GIZ WATSON: I had expected the parliamentary secretary to respond.

The CHAIRMAN: So had I.

Hon SUE ELLERY: I do appreciate that it is the parliamentary secretary's first time at the table, but could he be so kind as to respond to the questions I asked on the guidelines? I have asked him to table them and then to provide some information about how the government sees their application and what the government's view might be about whether they might change. I hope that the parliamentary secretary will be able to provide that information. If he does not provide it, I will keep standing up and asking questions until he does.

Hon MICHAEL MISCHIN: The guidelines are, as I said, not regulations; they are issued, as far as I am aware, under no statutory instrument. They are not a statutory instrument or any sort of instrument themselves. They are simply guidelines for police officers on how the Commissioner of Police wants his officers to exercise their discretion in charging offences that involve assaults upon them. In that regard the guidelines set out some of the legal issues and point out that pain is not of itself, and without more, a bodily injury. They set out that officers are required to obtain a medical certificate before a charge is to be laid of assault upon them where the circumstance of aggravation to be alleged is one of bodily harm that will activate liability to be mandatorily imprisoned. The guidelines set out procedures for how police officers, assaulted and thinking it appropriate that an offender be charged under section 318, should do so.

I am happy to table a copy of the guidelines. The government can offer no undertakings as to whether they will change. It is a matter for the Commissioner of Police in his judgement to decide whether he ought to advise his police officers of any extra requirements before a charge ought to be laid under section 318 or whether the process ought to be loosened up. It is a matter for him. However, members will see that a process is provided. It requires, amongst other things, an injured officer to advise an officer of the rank of sergeant or above who will then give permission to lay a charge of an assault on a public officer with the circumstance of aggravation. The sergeant or above is to make a record of approval and advise the injured officer that he or she must seek a medical certificate for attachment to the first appearance notice in the police brief at the earliest possible time; otherwise, the suspect is to be dealt with under the Criminal Investigation Act. The police brief is to state who approved the charge, and whether a medical certificate has been obtained or, if it has not at that point, why not. The injured officer is required to be examined by a doctor or, in a case where a doctor is unavailable in a remote area, a remote area nurse. A copy of the medical certificate outlining the injuries is to be obtained and the medical certificate is to accompany the brief. If no medical certificate is available at that time, an adjournment is to be requested and no plea entered by an accused. Ultimately, the prosecuting division in Perth has the discretion to decide whether a charge of that nature is to proceed.

As I say, these things are fluid. The Commissioner of Police—I used the word "promulgates" not in its technical legal sense—issues them to his officers. It is at his discretion whether he requires any additional constraints upon the police discretion to charge or whether he thinks that in the circumstances they should be relaxed in any way. I am happy to provide a copy of the guidelines and to table them.

The CHAIRMAN: Does the parliamentary secretary intend to seek leave to table the document?

Hon MICHAEL MISCHIN: I seek leave to table the document. As I understand it, this is currently what is proposed as at 13 August 2009. As to its current effect, I am not sure.

Leave granted.

[See paper 1052.]

Hon SUE ELLERY: I might just clarify this because I am not sure whether I heard the parliamentary secretary correctly. Is the document a set of guidelines in respect to section 297 or only section 318?

Hon MICHAEL MISCHIN: Section 318. Section 297, of course, involves doing grievous bodily harm. If one can establish that the injury is so serious as to amount to grievous bodily harm, then the normal principles will apply. Generally, that would require some medical evidence in any event because it has to be an injury of such a nature as to endanger or be likely to endanger life, or be of such a nature as to cause or be likely to cause permanent injury to health, which generally requires some kind of medical evidence as a matter of proof anyway and that would be an injury that is so serious it goes beyond mere pain or being of a transitory nature.

Hon SUE ELLERY: I wonder whether the parliamentary secretary has advice available to him or whether he might seek advice that goes to the Commissioner of Police's thinking about how long this particular set of guidelines might be in place before he considers reviewing it. It was put to me by one of the groups that were lobbying, I suppose we could describe it, about this bill that the commissioner might already have formed a view that he wants to set certain boundaries—in my language it would be a "test case"—and he will then review the

application of the guidelines with a view, I guess, to tightening or loosening, depending on one's point of view, the application of the guidelines.

Hon MICHAEL MISCHIN: I do not have that information but I can make an inquiry about it and get back to the member at a later time. However, there seems to be a bit of misunderstanding about what these guidelines are. It is my understanding that they are simply instructions to his officers about what they have to do and the process they have to go through before the police will formally charge someone with an offence under section 318 that pleads the circumstance of aggravation of bodily harm and thereby makes the accused liable upon conviction to be sentenced for the minimum term prescribed by the bill. There is no question of test cases; it is simply a process of procedure—a standing order, as it were, although perhaps not quite to the level of formality—in the same way there are rules of etiquette in this house perhaps, or processes behind the scenes as to how things are done by the clerical assistants. It is not meant to be legislation. It is not legislation and it does not expand the circumstances of the act; it constrains the circumstances that police will charge.

Hon ADELE FARINA: I have looked at the document detailing the guidelines for the laying of charges that has just been tabled. The second to last paragraph on the first page states —

> Accordingly; the charging officers should pay particular attention to the injury sustained and note that any injury which lasts only a short time or any harm which is trivial or beneath notice should not be alleged to constitute bodily harm for the purpose of a charge under s 318.

Will the parliamentary secretary please tell me what sort of injuries are considered to be trivial or beneath notice?

Hon MICHAEL MISCHIN: That paragraph has to be read in context. Firstly the question that has been posed is hypothetical.

Hon Adele Farina: No, it's not. Police officers have to understand what this is.

The CHAIRMAN: Order, members! Can I just have in committee one person at a time? The parliamentary secretary has the call.

Hon MICHAEL MISCHIN: The page referred to commences "Considerations for laying of charges:" I do not want to read it out in length, as it is before the chamber. However, the third paragraph states —

> In determining whether bodily harm (being any bodily injury which interferes with health or comfort) —

That is the Criminal Code definition of bodily harm —

> has been sustained, Police should have regard to the following considerations.

Bear in mind that "bodily harm" can embrace a variety of injuries, including anything from bruising through to lacerations and wounds and indeed grievous bodily harm. Because of the wide variety of potential injuries that are involved, the police need guidance on the circumstances they should take into account in deciding whether to plead the circumstance of aggravation under section 318 of the code. Remember that section 318 deals with the offence of assaulting a public officer in the execution of his or her duty. The only circumstances that give rise to mandatory imprisonment are those in which bodily harm has been caused. Because there is such a wide variety of injuries that can be embraced by that term, the commissioner is simply offering guidelines and telling police that they should have regard to a variety of considerations in deciding whether bodily injury has been caused and, if so, whether it is serious enough to warrant justifying pleading the circumstance of aggravation. I therefore do not propose to speculate on the range of injuries concerned that would trigger a charge of bodily injury, but it would be plainly an injury that a police officer of the rank of sergeant or above and the Perth prosecuting division would regard as significant and supported by a medical certificate.

Progress reported and leave granted to sit again, pursuant to standing orders.

House adjourned at 9.59 pm
