CRIMINAL CODE AMENDMENT BILL 2008

Third Reading

MR C.C. PORTER (Bateman — Attorney General) [4.38 pm]: I move —

That the bill be now read a third time.

MS M.M. QUIRK (Girrawheen) [4.38 pm]: I am pleased that the government brought the Criminal Code Amendment Bill 2008 back into the house. It is not quite clear to me why there was a delay attached to it. However, it is good that the government is honouring its election commitment.

I will briefly comment on the debate to date on the Criminal Code Amendment Bill, which deals with assaults against some public officers. It is conceded by the opposition that this was an election commitment by this government and it is arguable that there was a mandate to introduce this legislation to mandate imprisonment for assaults on public officers. However, as has been pointed out already in this place, the scope of the legislation has changed and now not all front-line public officers are included. The opposition believes that is highly regrettable. A shift has occurred from what was promised for the legislation.

The opposition is of the view that this legislation will have unintended consequences, and many of these have been outlined by my colleagues in the course of the second reading debate. Even the Premier, in a radio interview cited the example of an offender who was mentally ill who might assault a public officer, said that of course there would be exceptions, such as this example. The bill, as it stands, does not have those exceptions. The amendments that we moved were certainly an attempt to make this a better piece of legislation and to ensure—to use the oft quoted saying—that hard cases do not make bad law. I think the rejection of the opposition's amendments will mean that some problems will arise that, frankly, the opposition believes are foreseeable. We think that rejection is very unfortunate. However, I am pleased to say that the Attorney General graciously accepted an amendment to review the legislation, and although ideally it would be reviewed after two years, it will, I think, now be reviewed after three years. I hope that that review will be comprehensive and that the information before the reviewing body—whether it be a parliamentary committee or a person especially appointed—will include adequate statistics because I think that a lack of access to statistics certainly hampered debate in this place. Many of the collected statistics presented related to a broader class of public officer and it was very hard to quantify the numbers and cases that were discussed in the course of the debate.

The opposition has also expressed some doubts about the deterrent value of this legislation. It is arguable, for example, that this legislation will not address the conduct of the many offenders who may well be under the influence of alcohol or drugs prior to their offending, but that it will automatically result in a custodial sentence.

Be that as it may, and as imperfect as the legislation is, the opposition does not intend to oppose this legislation. However, it is probably too soon to judge what impact the increasing penalties that were brought in by the previous Labor government have had and whether this legislation is somewhat redundant in light of the impact of those penalties. In any event, we believe that police officers, other public officers—albeit a limited range of other public officers are covered by this legislation—and their families need some assurances that they will have the full protection of the law when performing their public duties. Similarly, I believe that the community also wants the same assurances.

I signal that we value our police and that we value our other front-line public officers. No-one should interpret the opposition's robust scrutiny of this legislation, and the very legitimate concerns that the opposition has expressed about the effectiveness of these laws, as a sign that it does not fully support our police men and women. No-one should interpret from our taking seriously our role as opposition that we are aiding and abetting or in any way condoning thugs who set upon our police and assault them.

One of the privileges of my current job is to attend police graduations and to meet some of the young graduates who are hopeful, optimistic and very enthusiastic about the role they are assuming, and also their families—something that I regard as a privilege. We need to give those families and the young graduates starting their careers as police officers some level of assurance that they will get the full protection of the law. At these graduation ceremonies, the police chaplain reads a prayer for police, penned by a constituent of the member for Mindarie—Joan Abnett. Joan is from New South Wales but moved to Western Australia some years ago. I met her recently. It is our fervent hope that we are proved wrong and that there is not a rash of assaults on public officers; that the escalating events of the last few years prove to be an aberration; and that it is not necessary to employ these or other laws to bring the offenders to justice. The prayer penned by Mrs Abnett is something we should be mindful of, and with the indulgence of the house I will read it —

In these days of increased violence
Let us remember in prayer
Police
As they go about their
daily work, often
difficult and dangerous:-
We pray for the
Men and women of character
who form our
Police Service — that
God may guide their lives
As they serve and
protect our community

I am pleased that I have been able to speak on this bill. As I have said, the opposition fervently believes that this legislation is imperfect, but that is now a matter for the government. Hopefully, the review conducted in three year's time will accommodate some of the opposition's concerns.

MR M. McGOWAN (Rockingham) [4.45 pm]: I will start my remarks on the third reading stage by making it quite clear that I support our police force and that any commentary by any member to the contrary, in relation to any member of this house, is wrong. Irrespective of which side a member sits in Parliament—be it the new Greens member or a Labor, Liberal, National or Independent member—I am sure every member supports our police force. We all know police officers. We know the good job that they do. We know the tough circumstances that they sometimes have to operate in. I have spent many hours, in fact many evenings, with the police in my electorate of Rockingham. I have seen the circumstances they confront out in the community. On a Friday and Saturday night it is indeed a difficult job. Our police officers have to confront so many circumstances and so many different things that their tasks cannot be explained in any speech in this house. But they do a good job in difficult circumstances.

The second point I make is that when someone assaults a police officer in a serious manner there should be very few exceptions to that person going to jail. There should be very few circumstances indeed. Thanks to the efforts of the member for Mindarie, we discovered that the government can produce no evidence to demonstrate that someone who deserved to go to prison has not gone to prison in the period since these laws were amended last year. Because there are no circumstances in which the government can demonstrate that someone who deserved to go to prison did not go to prison, we are therefore amending these laws on the basis of no evidence. People are going to prison when they deserve to go to prison. I note that in his second reading speech the Attorney General quoted a famous case that appeared in the media—a case in which the people charged were not convicted of an offence. Quoting that case says something about the Attorney General. These laws would not apply to such a case because the individuals were not convicted. Including that case in his speech rendered the Attorney General's particular point meaningless. In any event —

Mr C.C. Porter: Sorry, member; what case was that?

Mr M. McGOWAN: The Butcher case. In any event, the Attorney General could not produce any cases in which people have not gone to prison when they should have. That is my second point.

The third point that I will make is about the guidelines produced by the Attorney General that indicate that it is up to the prosecuting sergeant, as he puts it—I have read the committee stages of the debate, including page 70—to determine whether someone is prosecuted for an offence of common assault or of assault occasioning bodily harm. In effect, the discretion as to whether someone is imprisoned is removed from the court and put into the hands of the prosecuting sergeant. I know that the Attorney General has said that happens every day of the week. The Attorney General has indicated that the police often decide which offence to charge someone with—that is, the police decide whether to charge the person with a serious offence or lesser offence. That is true. The prosecuting sergeant at a local courthouse or, if it is a serious matter, someone further up the line, will decide what offence someone is charged with—whether the offence warrants a serious charge or a lesser charge. The difference is that in virtually every other offence, it is not pre-determined that the individual will be imprisoned. In effect, the police officer will have the discretion of determining who will go to prison. If the facts are beyond dispute, it then sits with the police officer to determine whether that person is charged with common assault or assault occasioning bodily harm. As we know, assault occasioning bodily harm is a more serious offence and a more serious imposition on the body of the police officer. The discretion on whether the person is imprisoned is therefore put in the hands of the police officer, not the court. That is what the government is doing. It is not

saying that everyone who commits an offence will go to prison; I acknowledge that because if a person commits common assault, that person is not necessarily imprisoned. The government is saying that the police officer will determine whether that person is charged with the more serious offence. If the facts are beyond dispute, the police officer is determining whether the accused is imprisoned. That is what this argument turns upon—whether we allow a court or a police officer to determine whether someone goes to prison.

I refer to remarks made in consideration in detail. Many were instructive. The member for Bassendean asked the Attorney General a question that demonstrated that the Attorney General could see some injustice in the laws that he is putting forward because his answer was very instructive in that regard. The answer he gave showed the speciousness of some of his arguments. The member for Bassendean provided a hypothetical example of an individual whose son or daughter was involved in an accident in which a police officer's vehicle collided with the vehicle of that person's son or daughter, causing that child to suffer an injury. It was not the fault of the police officer; we understand that accidents happen. The parent of that child then reacted, which gave the police officer involved a black eye. The member for Bassendean had an immediacy about the situation that he raised but it may occur weeks later. If someone's son or daughter has been crippled by a police car driven by a police officer and then some weeks later the person sees the police officer in the course of his or her duties and that person reacts and causes that police officer an injury—as the Attorney General acknowledged in his speech, it could be a scratch or a bruise—there is no discretion; that person will go to jail for six months. That is one hypothetical situation that the member for Bassendean of all people came up with. He is not a practising lawyer who has had experience in these matters but an ordinary person. I will come up with a couple of other hypothetical examples.

In my electorate of Rockingham I have thousands of people who have spent more than six months in the Middle East on a warship or who have gone to Afghanistan or Iraq for six to 12 months. They are not allowed to have a drink, they work 16-hour days, often in conditions of extreme danger, often in conditions of extreme heat and stress and sleep in a room with 12 other people. They go away and experience those conditions and then they come back. Naturally, being 19 years of age, on their first night they go out and have a few drinks. They might be a little traumatised, not to the degree that they are insane or cannot control their emotions or their actions, by what they have seen or done or experienced. If in the course of that night one of these men causes someone, as the Attorney General says, a scratch or a bruise and that person happens to be a police officer, there is no discretion. After six to 12 months serving one's country overseas, that young sailor, naval officer, Army private or Army officer will go to jail for six months. That is a hypothetical example but it is entirely feasible. That was what this argument turned on. These are examples where there could be a manifest injustice.

The Attorney General indicated in his commentary on the member for Bassendean's example—I think he was a little caught out by the member for Bassendean, who came up with a very good example—that there could be a range of defences including involuntarism, accident, lack of intent, insanity or temporary insanity. I have a copy of the Criminal Code and have highlighted the various sections that relate to this. Section 27 refers to insanity, section 23A refers to unwilled acts and omissions and section 23B refers to an accident. I read these sections and I thought back to my time in the law. These hypothetical examples that we have come up with do not come within those provisions. A person is not insane if he has gone overseas for six to 12 months and spent time in a warship or in a tent in the middle of the desert in Afghanistan, comes home and, being mildly affected by the event, goes out, has way too many drinks and does something silly that results in a bruise or a scratch on a police officer. That person is not insane; he knew what he was doing. It was not an accident. He does not come within any of these defences. I am sure the Attorney General recognises that in these cases his law will enforce an injustice on an individual. That is why he came up with these examples of defences. He knows that the laws he is proposing to be implemented are unjust on those hypothetical examples. He came up with these defences because he needed an answer, even though the most out-of-date lawyer in the Parliament, with the exception of the member for Armadale, could provide him with advice on any of these provisions that they do not cover. They do not cover the situation that we came up with. They are just two examples.

The member for Mindarie has even better examples of young people of the age of 10 who might cause, in the Attorney General's own words, a scratch or a bruise on a police officer. I am referring to the debate in consideration in detail on page 70 of the *Hansard*. There is no discretion; that 10-year-old would be up for three months' jail. That person is 10. Honestly! I am sure that the member for Mindarie will talk about that example. Those examples are entirely feasible. They might only be one in a thousand or one in 500, to be more realistic. They are unusual. The nature of this legislation is such that there is no discretion if a scratch or a bruise, a serious bruise perhaps, meets that threshold of bodily harm.

As I said, I have gone through the Criminal Code; I am sure the Attorney General is familiar with it. Section 320(1) relates to sexual offences against a child under 13 while section 321 relates to sexual offences or penetration of a child between the ages of 13 and 16. There is no mandatory sentencing there. If the Attorney General truly believes that there should be mandatory sentencing, why is he not addressing provisions —

Mr M.J. Cowper interjected.

Mr M. McGOWAN: I am not advocating it. I realise that sometimes there are extraordinary circumstances that may not warrant a jail sentence—circumstances such as mental incapacity, low IQ and effects of foetal alcohol syndrome, which is beyond the offender's control. A term of imprisonment might not be warranted in some extreme, extraordinary and exceptional cases. The Attorney General also agrees with that because he has not proposed mandatory sentencing for offences involving penetration of a child under the age of 13; yet he proposed it in this particular case. Why is that, Attorney General? Why has he only proposed it in this particular case? I think it is because of his ambition. The Attorney General is an ambitious fellow; and quite rightly. He is the Attorney General of the state, at age 35 or whatever he is.

Mr C.C. Porter: Thirty-nine.

Mr R.F. Johnson: He looks younger!

Mr M. McGOWAN: Quite rightly, he should be an ambitious fellow. That is an entirely reasonable thing. The Attorney General uses his office to promote his ambitions about things that he does not necessarily agree with. I know that from his commentary. That is what he does—he uses his office for that purpose. I think it is his ambition, as set out by his fellow traveller Peter van Onselen, to become the Premier of the state one day. I have got the article here. The article indicates —

> Porter is leadership material if he hasn't left the game before his turn presents itself.

Mr van Onselen goes on further —

> How many people complete four separate degrees?
>
> He has a penchant —

Point of Order

Mr R.F. JOHNSON: The third reading of any bill, as the manager of opposition business well knows, is not an opportunity to do a second reading speech again; it is to reflect on the consideration in detail stage. The member is now quoting things and introducing new material, which is not allowed under the standing orders. He should know that; if he does not, then I ask that you tell him.

The DEPUTY SPEAKER: Member for Rockingham, come back to the content of the bill.

Debate Resumed

Mr M. McGOWAN: I appreciate the Deputy Speaker's guidance. I am highlighting the consideration in detail stage of the bill. I am referring to the commentary of the Attorney General that indicates that he has some doubts about this legislation. I am trying to get to the motives behind this legislation. I have some concerns about the Attorney General's motivations. I think the Leader of the House is being a little bit uppity in trying to stop me. We can play this game all day with his contributions to this debate. I think people should have a little bit of freedom to elucidate their arguments. I have concerns about the motivations of the Attorney General and I have concerns about Mr van Onselen's role in this. Mr van Onselen's history as a Liberal Party operative means that he should not be involved in public commentary in circumstances where he is regarded as an independent commentator. He is an ex-Liberal Party operator, a close friend of the Attorney General, a very bright guy, a great writer and an intelligent fellow. I once sat with him at lunch. He has quite a significant political brain, but he is a partisan political brain. I do not think that he should be seen as an independent commentator. It would be like getting Geoff Gallop or Kim Beazley, as professors at university, and saying that they are independent—they are not. Peter van Onselen's commentary has been, over a period of time, anti-Labor. That needs to be acknowledged. He played a role in the state election as an anti-Labor commentator. If he wants to be a player, he should join the Liberal Party, get into Parliament and be a player. He should not portray himself as an independent commentator when he is an acknowledged ex-Liberal Party staffer and Liberal Party member. That is the point I want to make about him. To be honest with members, when I sat with him at lunch I found him quite likeable. If he is a partisan, he cannot portray himself as anything else.

I go back to the points I was making. We moved the amendments because of the arguments I have just outlined relating to 10-year-olds and people who have been through traumatic experiences. When someone is put in a

position in which none of the defences in the Criminal Code will operate, it is clearly unjust that he or she should go to jail. That is why we moved the amendment. I think the Attorney General agreed with that. I would be surprised to hear him argue against any of those examples that we gave, but what he will do is brush over the top with the rhetoric. There is a deeper motivation here, which I think reflects badly upon the Attorney General, because we tried to civilise this legislation to deal with the sorts of situations that I outlined to the house. They are just the ones I can think of off the top of my head. There will be numerous others. As I said, one in one thousand they might be, when a person who has served his country, in arduous conditions and has gone through all sorts of trauma, will arrive back in this place and, as a consequence of one indiscretion of a not particularly serious nature, under the influence of alcohol, will find himself imprisoned for six months and therefore will lose his job. There will be cases like that—it might not be this year, next year or the year after. This country will be in Afghanistan and Iraq, or at least in the vicinity, for a long time. There will be cases when that will happen and we will all agree that it is unjust. That is why we tried to amend the legislation the way we did.

MR B.S. WYATT (Victoria Park) [5.06 pm]: I, too, rise to make a short contribution to the third reading stage of the Criminal Code Amendment Bill 2008. I think most people appreciate this legislation has been particularly difficult for me and it has caused me to think back to my first encounter with a police officer. Ironically enough, in light of the coroner's recent findings in respect of the death of Mr Ward, that time was when I was living in Laverton. It was the late 1970s. At the time my father was working with the commonwealth Department of Aboriginal Affairs. I was in year 1 at school, from memory. I started school just after Hon Norman Moore left that school to enter this place, which I guess shows how long he has been around. There were a number of police officers at Laverton then. I do recall one in particular, but I will not name that police officer. I had to ask my father who it was; he barely remembered. I apologise to the member for Fremantle and the Greens (WA)—the police officer, my father and I went roo shooting on a number of occasions. This was in the late 1970s. My father makes a very good kangaroo tail stew. Living in Laverton back then, the police did not have the sort of understanding of Aboriginal people as they do now. I think the relationship between police and Aboriginal people now is a thousand times better than it was back in the late 1970s. However, this particular police officer I remember quite clearly because he was a man who had a very impressive relationship with the people of Laverton, particularly the traditional Aboriginal people who came in from the lands. The member for Southern River has a particular interest in the Ngaanyatjarra people and the people who come in to Laverton and Kalgoorlie from the lands —

Mr J.J.M. Bowler interjected.

Mr B.S. WYATT: It was not; no. I indicated that I will not mention names simply because I do not know whether the police officer was following standard protocols at the time. The member for Kalgoorlie will appreciate, as many people who have spent time in the regions do, that justices of the peace, and police in particular, have a more significant role to play in communities than they do in my electorate of Victoria Park where people do not get to know their police officer on a first-name basis. They do not see them every day at the store, the pub or wherever they may come across them, on a regular basis. It is something I have a great appreciation for, and that is why I made the point in my contribution to the second reading debate that I resented the fact that the debate on this issue had become a debate on who supported police officers and who did not. I thought it was demeaning of the government to lead it that way. I have made the point on a number of occasions in both my second reading contribution and a number of radio interviews. I thought it was demeaning of the Parliament to structure the debate in that way. I note the letter the Commissioner of Police has written to the shadow Attorney General on that point; that is, he certainly does not consider the shadow Attorney General's opposition to this legislation to have any relevance to his relationships with his local police officers, which are very strong. The current President of the WA Police Union of Workers, Mike Dean, is a constituent of mine so I see him perhaps a little more regularly than some members do. We have had this discussion and he certainly does not consider there is any linkage. However, I have made the point on radio that it was my preference to abstain from voting on this issue, and that is now a matter of public record. I have taken that argument to my party, but I did not win that argument. I am a member of the Labor Party and therefore I will take my party's position of not opposing this legislation.

Early 2008 or late 2007—I cannot remember the exact time—I provided a submission to the then Attorney General's committee, chaired by Hon Fred Chaney, looking into the possibility of introducing a human rights bill. My submission was critical of a possible human rights act at the state level. I made that submission because it was my view, both as a lawyer and a member of Parliament, that a human rights act necessarily creates a higher law, for want of a better expression, that involves consideration of areas that I think are best left in the hands of this place and of the other place. Although that is still my view, this sort of legislation will take us down

the path of having to seriously consider a human rights bill in the future. The shadow Attorney General will make some points about our international commitments as Western Australians and Australians.

What is clear—the member for Rockingham has already gone through this in some detail—is that the government simply has not made its case on this piece of legislation. When we are looking at legislation that mandatorily puts people in jail, the government must make its case. It must provide the evidence that can convince its own side of its validity. As I said, the member for Southern River has a close relationship with the people on the Ngaanyatjarra lands, as does the member for Kalgoorlie. I will come back to why I think they have a particular interest in this legislation. It is striking that the letters written by the shadow Attorney General to the Director of Public Prosecutions, the Commissioner of Police and the Attorney General resulted in only one reply when this was raised last year. I will come to the subsequent reply. That initial reply from the DPP, my former boss, indicated that there had been only two cases since the Carpenter government amended the legislation to effectively double the penalties on this point. Both cases were heard in the Magistrates Court and neither decision was appealed by the police, which indicated to me that the police did not consider them serious enough to appeal. It is clear that this legislation we are debating today will have absolutely no impact whatsoever on the sort of serious assault that occurred on Matt Butcher. I have no doubt that had the McLeods been found guilty, they would have been sent inside for six to eight years. I have no doubt they would have been given a serious prison sentence. However, they were not. This legislation will have no impact on those cases. People who are convicted of those assaults on police officers are already sent to jail. We know that. The fact is that the DPP has pointed that out. The Attorney General replied to the shadow Attorney General in a most unsatisfactory way, but I will leave that to the shadow Attorney General to address in his contribution to this third reading debate.

Where this legislation will have the most impact, member for Southern River, is on people living in remote areas. I will tell members why. One thing we have learnt from the Ward case on which the Coroner, Alistair Hope, handed down his decision, is that the current administration of justice in remote areas is unsatisfactory, as is borne out in a horribly tragic example. I do not say that to condemn anyone. That is clear in the decision he handed down last week. Justices of the peace, who have a larger role to play in regional and remote areas, are woefully unprepared. The justice of the peace who ruled on Mr Ward's case had no idea of his rights and responsibilities and had barely even heard of the Bail Act, yet he was making decisions on whether Mr Ward should be transported to Kalgoorlie. People in remote areas, stuck out in the middle of nowhere, faced with the triumvirate of charges of drunk and disorderly, resisting arrest and assaulting a public officer, will be told by a police officer, "Plead guilty to the first two and we'll remove the one that involves mandatory jail time." More and more, Aboriginal people in particular will plead guilty to an offence simply to avoid the third offence, the assault of a public officer, and the prospect of going to jail. That will distort the power balance between justice and the police prosecutor in a way that I am simply not comfortable with. The best example—again I do not want to delve too deeply; I have had discussions with the shadow Attorney General, so I have a vague idea of what he is going to say—is the young boy from Groote Eylandt in the Northern Territory, which brought that government unstuck as a result of its mandatory sentencing regime for property crimes. That that young fellow from Groote Eylandt was imprisoned and subsequently took his own life again proves to me why mandatory sentencing is not a fair administration of justice. We cannot in this place tonight or during a second reading debate consider all those unknowns that occur in our large state that judges must on a day-to-day basis take into consideration when they decide to put someone in jail.

The member for Rockingham outlined a scenario of someone who has served his country for a long time overseas. There will be countless examples. As I said, it will not impact on the sort of cases we see on TV such as those terrible assaults on our police officers, because those offenders go to jail anyway. The people at the margins will spend a lot more time in jail. The Labor Party has attempted to civilise this legislation, to use the words of the member for Rockingham. However, we did not have the numbers and were unable to convince the government to at least ensure that a manifest injustice would not result from this legislation. We do not want children, whether they live in Esperance, Jigalong or Kununurra, to be captured by this legislation and find themselves in the same situation as the young boy from Groote Eylandt and sent down here to a juvenile detention centre on what would otherwise be considered a minor offence. We have removed that discretion from the hands of the judiciary. Politically, it is very easy to attack the judiciary for the very small number of cases that raise the ire of Western Australians. The number is small, as indicated in the article by Supreme Court Chief Justice Wayne Martin recently in *The West Australian* on the number of cases the courts hear compared to those that make it to the newspapers and cause such consternation. However, as I said, this legislation will not impact on those people; they go to jail anyway.

I want to make one more point. The last time mandatory sentencing came to this place I was not here; I was still at school. A former Labor government was dealing with this issue in very trying political circumstances that

were much more charged than they are now due to the issue of high speed car chases. I recall at that time what people like Howard Sattler did to Rob Riley, in particular, who led that argument in support of Aboriginal people in the face of unbelievable opposition, the vast majority of public opinion against him, and of friends and family who were caught up in that process. Now, my father currently works for the Aboriginal Legal Service in Laverton. It seems that the beginning of my contribution was in Laverton and I will conclude it in Laverton. My father spends not every day but most days in court in Laverton or Leonora dealing with the tide of Aboriginal people who make up 98 per cent of the people who come before those courts; the tide of Aboriginal people who in this place, Victoria Park and in Perth are really an unnamed mass of people without identity. That is why what happened to Mr Ward happened. That is why when I think of mandatory sentencing it sticks in my throat. That is why I would love to oppose this legislation; I have made that point clear in my second reading contribution, I have made it clear in a number of radio interviews and I make it clear now. This is not a piece of legislation that I can in my heart of hearts support; however, I am a member of a team and I support that team very, very strongly. I will have to deal with the consequences of my father for a long time to come, but when I entered this place and when I joined the party that I love, that was a commitment that I took on and it is a commitment that I will take for the duration of my parliamentary career.

MR T.G. STEPHENS (Pilbara) [5.22 pm]: If the third reading stage of the Criminal Code Amendment Bill 2008 is passed, it should occur only after members have at least paid some due regard to some additional argument that has been put around these issues by the Chief Justice of Western Australia to us all as legislators and members of the community. The Chief Justice's contribution has been referred to in a debate in reference to other matters before this house, but it is important that the viewpoint of the Chief Justice on some of these questions be included in this debate as we consider the bill's third reading. I refer to the article by Chief Justice Wayne Martin published in *The West Australian* on 4 June 2009. He started the article by stating —

> A general impression seems to exist that WA is drowning under a crime wave of tsunami proportions that is being encouraged by pathetic sentences imposed by the judiciary. Nothing could be further from the truth.

The Chief Justice then goes on to refer to sentencing in Western Australia and to document to all of us that the extraordinarily high rates of imprisonment in Western Australia are comparable to only one other jurisdiction, which has even higher rates of imprisonment than we do—namely, the American example.

Alongside the article published on Thursday, 4 June 2009, the Chief Justice produced a table of rates of offending from 1998 to 2008, and the 2008 imprisonment rates based on the number of prisoners per 100 000 adult population. The source of this table is the Chief Justice of Western Australia and the Australian Bureau of Statistics. I seek leave to have the table incorporated into *Hansard*.

Leave granted.

The following material was incorporated —

RATES OF OFFENDING 1998-2008

	Homicide	Assault	Sexual Assault	Armed Robbery	Burglary	Motor Vehicle Theft	Other Theft
1998	147.0	97.7	93.6	144.8	100.0	1482.2	88.8
2007	88.2	128.7	106.8	60.6	54.9	58.1	76.8
% change	-40%	+32%	+14%	-58%	-45%	-61%	-13.5%

IMPRISONMENT RATES 2008 (PRISONERS PER 100,000 ADULT POPULATION)

Indigenous		Non-Indigenous		Total	
WA	3556	NSW	153	NT	610
NSW	2491	WA	139	WA	230
SA	2345	NT	135	NSW	195
NT	2092	Qld	127	Qld	169
Qld	1759	SA	124	SA	156
Vic	1283	Tas	122	Tas	136
ACT	983	Vic	98	Vic	104
Tas	599	ACT	85	ACT	94

Mr T.G. STEPHENS: Members can see from the table the extraordinarily high rates of imprisonment and in particular the high rates of imprisonment of Aboriginal people in Western Australia, and when that is compared with any other state, it is an utterly extraordinary and depressing statistic. As a member of Parliament who has represented the bush areas of Western Australia for in excess of 25 years, for me the whole question of imprisonment is completely caught up in my knowledge and experience as a representative of the Aboriginal community. It is a distressing experience indeed to find that so many members of the Aboriginal community are too often away from their families and their communities in circumstances of imprisonment.

Recently, one of the driving forces behind the move of the women's leadership in Fitzroy Crossing was the recognition that alcohol was the cause of so many members of their community, in particular their menfolk, finding their way into the criminal justice system who were often times involved, because of the abuse of alcohol, in assaults upon not only their own family members, but also too often police officers. The women of that community share respect for the police force and ask of the police what we all ask of the police—namely, that they uphold the rule of law and support good order within their community. These women did not want the situation to continue whereby so many people, in particular their menfolk, were away from their communities. They wanted to have communities in which men took their proper place as leaders in their community, playing the roles of men and not being so long and constantly away in prison, leaving the women having to, effectively, do absolutely everything. Therefore, they called for a restriction on the flow of alcohol into their community in Fitzroy Crossing, which has had a dramatic and profound impact upon the good order of that community. That opportunity will be replicated in Halls Creek through the leadership in this case of only a very strong woman, Doreen Green, and she will and she has produced the opportunity for the Halls Creek community almost single-handedly. She has led the way, with the support of a silent majority in that community, to see similar restrictions on alcohol in that town. However, the opportunity for that type of response to the high rates of imprisonment that flow from assaults on many people, including assaults on officers, will not be before every community across Western Australia. This legislation will effectively cause the flow of many more Aboriginal people and others into the prison system of Western Australia. The Chief Justice went on in his article in *The West Australian* to state —

> The reality is that most of the crime that we see in our courts is spontaneous and irrational. Much of our crime is associated with drugs and alcohol. Many crimes are committed by those who are intoxicated or driven by their drug addiction. Rational processes of reasoning, of the kind that we might employ, are irrelevant to these offenders.
>
> The perceived risk of apprehension is much more likely to deter offending than an increase in punishment. Put simply, good policing is more effective in deterring crime than prisons.
>
> Even better still, though, are policies that address the causes of crime and not just the symptoms.

I will not quote further from the article, because the colleague who loaned it to me has highlighted parts of it to draw on some quotes later.

Good policing in some of the remote communities of Western Australia is beginning to deliver peace and tranquillity where there was none before. During the Labor Party's time in government, the Gordon inquiry recommended the positioning of police stations and police officers in the remote communities of Western Australia. We were able to deliver nine police stations to remote communities, and they have had an absolutely profound impact on those communities. Peace, tranquillity, law and order and the government of Western Australia have arrived in those communities to effect a partnership between good policing and members of the communities. There are good police officers in those communities who have the support of Parliament, the government and, particularly, the communities of which they are part. It took me a long time to recognise that pleas from the communities for police officers needed to be actioned. Nonetheless, when the Gordon inquiry recommendations were made, the previous government had an opportunity to respond favourably, and we delivered police stations to remote communities. The police stations have turned around to an enormous degree the prevailing circumstances in those communities. That example points to a solution to the challenges with which we are faced, and the current government is walking away from it; instead, it is looking for simplistic solutions. This simplistic solution suggests that tougher legislation, such as mandatory sentencing, will somehow act as a deterrent to the people in these communities who are involved in assaults on police officers. The government has got it wrong, and Parliament should not be hoodwinked for one minute into thinking that this legislation will result in anything other than delivering increased numbers of people to the prisons of Western Australia.

Governments have a right to legislate, and Parliaments have an obligation to respond to a government's legislative agenda. The passage of this legislation seems almost guaranteed by virtue of the numbers, but it will deliver increased prison populations and higher rates of Aboriginal imprisonment. It represents a failure of government to tackle the root causes of crime. This government is not tough on the causes of crime or the issues of poverty, and it fails to support police officers with adequate resources. Good policing requires the presence of adequate numbers of police officers in circumstances in which police officers might be placed at risk. Well resourced and well trained police officers are delivering law and order to the parts of Western Australia that I know well—the remote communities. They are delivering good policing and are creating a deterrent effect in these communities that legislation such as this cannot. The fear of being detected and caught is what scares most would-be criminals; that fear is lost in those communities in which there is an insufficient police presence and where there is inadequate government support for the few police officers who are there.

The police commissioner has had the good sense to produce draft guidelines for the prosecution of assaults occasioning bodily harm, in cases in which such charges will result in mandatory penalties as set out in the Criminal Code Amendment Bill 2008. I thank the Attorney General for making available to me and the opposition a copy of the draft prescribed guidelines governing the future operation of this bill, if it becomes law. It occurs to me that the draft guidelines have not yet been tabled in the house; I ask the Attorney General whether I am right in saying that.

Mr C.C. Porter: I actually can't recall. They were certainly mailed to the former Attorney General.

Mr T.G. STEPHENS: That is correct, and copied to Hon Margaret Quirk.

Mr C.C. Porter: They may not have been tabled, but they are widely available.

Mr T.G. STEPHENS: I seek leave to table these guidelines so that they can be made available to interested members.

The ACTING SPEAKER (Mr V.A. Catania): They can be placed on the table for the rest of this day's sitting.

Mr T.G. STEPHENS: I am seeking leave to table the guidelines in the hope that they can in future be sought by members of the community who are interested in accessing the guidelines that persuaded the Parliament to allow this legislation to pass. I am not sure, under this arrangement, whether the guidelines will be accessible in future to members of the public. Is there some other way I can table them with a view to making them available to the wider community?

The ACTING SPEAKER: Member for Pilbara, there is no other way, apart from perhaps reading the guidelines.

Mr T.G. STEPHENS: Perhaps I could seek leave to have the guidelines incorporated into *Hansard*.

The ACTING SPEAKER: The member cannot seek leave to have the guidelines incorporated into *Hansard*.

Mr T.G. STEPHENS: The house is master of itself; if it wants to incorporate something into *Hansard*, it can do so.

Ms A.J.G. MacTiernan: We could suspend standing orders to allow it to be.

The ACTING SPEAKER: The guidelines cannot be incorporated into *Hansard*, but the member is more than welcome to read the guidelines into *Hansard*.

Mr T.G. STEPHENS: I will not do that, because it is a three-page document. I had hoped there would be a mechanism to do so. I say to the Acting Speaker with all respect—I will not pursue this matter—that the house is master of itself. If the house wants to have something incorporated into *Hansard*, it can and should be able to. Having been given leave to do so by the government, I would have thought it was a reasonable thing to do. However, I will not delay the house any further.

I do not support mandatory sentencing for the reason that it will not do for the community what its advocates suggest it will. It will not act as an adequate deterrent and it will not support the police. Anyone who studies the prosecuting guidelines relating to the provision that will be inserted into the Criminal Code by this bill will see that the police commissioner has very carefully crafted a document that, if followed by the police officers of Western Australia, will limit the damage that might otherwise have been done by the passage of this bill. However they are, after all, only draft guidelines, and they could be changed by a less enlightened police commissioner. They do not necessarily remain in place with the force of law. The intent of these guidelines may not always have the impact of reducing the damage done by the passage of this legislation.

This is legislation that I think will go down in the black book of this government. It will be faced with huge problems that will flow from it, the cost of the prison system being one. It will also run the risk of eventually causing outrage in the community, which will then demand other protections for the community. Parliaments will rush to do things, driven by political opportunism or shock jocks in the media. This will cause further problems for the community and result in the community seeking other methods of protection. Bills of rights will be among those protections that will be explored, whether wisely or unwisely, by the community. Nonetheless I detect that an appetite will build up among people for protection from the excesses of a Parliament that has been stampeded and steamrolled.

Governments have the opportunity of being judged on their agenda and I believe that this bill, when enacted, will be one reason why many people in this community will vote against this government at the next election. That is a strong enticement for letting the government have its way. I hope in the meantime that not too much damage is done to the people for whom I care deeply across regional Western Australia, where prisons are already too full, or to people whose only crime is to have been born into the sets of circumstances which they have been born and who face false choices that lead them too easily into prison. That does not excuse them, but it is a set of circumstances that produces almost an inevitable propulsion towards the experience of prison.

Finally, for parliamentarians there is as well a huge disgrace about mandatory sentencing; that is, we have lost our role of leadership in the debate in the community. We have lost it to people who are occupying that space and causing damage to the wider community. There is an exercise in political leadership for all political parties and for all members of Parliament. That exercise is to put up a mirror to the community and show an image of themselves so that they can see for themselves what they are doing and to compare the jurisdiction in Western Australia with other jurisdictions. We need to compare ourselves with jurisdictions such as those in the United States that have draconian provisions that have not acted as deterrents but have done enormous damage to the fabric of that nation. Western Australia is lucky to have had communities that have by and large delivered to the Parliament members who reflect upon the issues with which they are faced and who protect the community from the excesses of the moment. On this occasion the community in my view is not well served by the debate that has surrounded this initiative and is moving in a direction that will not ultimately either support the police or support the community.

MS A.S. CARLES (Fremantle) [5.43 pm]: I say at the outset that the Greens (WA) do support the very important work being done by our police in very difficult circumstances. We have been witnessing a quite bizarre conscience-clearing exercise this evening from my Labor colleagues in this place. They have been eloquently explaining the human rights abuses that this legislation will create, yet ultimately saying that they will not oppose it. I do not understand why Labor members say they will not stand up for the notions of justice, Indigenous rights and human rights when they vote on this bill. There seems to be something missing in this puzzle: it is called integrity.

The Greens are fundamentally opposed to mandatory sentencing. I will be voting against this legislation. We have only one voice in this house of Parliament and we have to vote with integrity and along our party lines. That is how I see it. This bill will result in our Parliament encroaching into the territory of the judiciary. It will be an infringement on the separation of powers between the executive, the Parliament and the judiciary, which is enshrined in our Constitution—our founding document. The separation of powers forms the foundation of our democracy. When Parliaments interfere with the functions of the judiciary—we have seen examples of this with our less stable neighbours—democracy is destabilised. It is therefore absolutely essential to our democratic process that we uphold judicial discretion in sentencing.

We know that this bill is in part a reaction to the very unfortunate case of Constable Matthew Butcher, a recent case which sparked outrage. The problem with this case was that the jury found the accused not guilty. The issue of sentencing did not arise because there was no guilty verdict and therefore no conviction. To proffer this bill as a solution to this kind of scenario is simply misleading the public; it is tricking them. The truth is that if this bill were law and this exact Constable Butcher scenario occurred today, the outcome would be exactly the same. That needs to be said to the public of Western Australia. I repeat: the outcome would be exactly the same.

The bill applies to assaults that cause grievous bodily harm to police officers. Grievous bodily harm means bodily injury of such a nature as to endanger or be likely to endanger life, or to cause or be likely to cause permanent injury to health. It is a very serious injury. The WA Criminal Lawyers' Association has advised us that such assaults inevitably attract a sentence of immediate imprisonment. Therefore in respect of these injuries, this bill is unnecessary. Bodily harm means any bodily injury that interferes with health or comfort. The WA Criminal Lawyers' Association has confirmed that this is a very broad category and at its lowest level could well

include minor scratches, bruises or pain. In respect of these injuries, this bill is disproportionate and inappropriate.

I note the publication of police guidelines to the effect that minor assaults occasioning bodily harm should not be prosecuted. However, if the police guidelines are not followed or if they are cancelled, this proposed act will apply and the court will have to impose the mandatory prison sentence. If we as parliamentarians do not consider that the bill should apply to that sort of case, we should not be passing it.

There are major problems with mandatory sentencing. My Labor colleagues have espoused them beautifully. The most pressing aspect of the bill is that it does not solve the problem; there is a large volume of international research that tells us this. As stated by the Chief Justice of Western Australia, Wayne Martin, in *The West Australian* article of 4 June 2009, which has been tabled, there is a false assumption that increased sentences reduce crime. I quote directly —

> Historical figures do not show a correlation between increasing punishment and reducing crime. If anything, they suggest the opposite.

I will not go on and quote further. I was intending to but it has already been done. The figures are very clear. One matter I will comment on, though, is the crime rates in this state, which are actually reducing. In the past 10 years homicide has come down by 40 per cent, armed robbery by 58 per cent, burglary by 45 per cent and motor vehicle theft by 61 per cent.

Mr C.C. Porter: Which ones went up?

Ms A.S. CARLES: There are some that went up, but most of them went down, and they are the ones I have quoted.

This raises the question of why there is a perception that we in the community need to get tougher on crime. The answer is simple. It is called a media beat-up. The photographs that are plastered on the front page of *The West Australian* and the videos that are replayed over and over again on people's television screens are fuelling this sense of false impression in the community. That does not mean that we in this chamber should be legislating on this basis. We should not be contributing to the misinformation. We should be acting on facts and not on hysteria. We should be talking about the real statistics, which indicate that when offenders are convicted of assaulting police, they are sent to prison by our judges. Our strict criminal laws prescribe this and our judges act in accordance with these laws. This bill seeks to exploit for political advantage the community's fears about crime. If we pass this bill in this chamber today, we will all be contributing to this deception. We will be demonstrating that we have no confidence in our judiciary. This I find alarming. I say to the Attorney General that his bill places him at odds with our legal profession and with our judiciary. The members of our judiciary are held in great esteem. I would say that the members of our judiciary do the hardest intellectual work in our society. Many members have read their judgements, and I am sure they are aware of the difficult exercise that takes place in balancing competing factors and laws to reach a judgement. This bill dismisses this difficult judicial work and replaces it with a blunt sledgehammer. Prominent members of the legal profession and peak representative bodies from the legal profession do not support mandatory sentencing. I refer to the Law Society of Western Australia, the Criminal Lawyers Association of Western Australia, the Australian Lawyers Alliance, Chief Justice Wayne Martin, the Director of Public Prosecutions, the Youth Legal Service Inc Western Australia, John Quigley, MLA and the Aboriginal Legal Service of Western Australia. Members might find that funny, but these are the esteemed people in the legal profession.

I urge the Attorney General to withdraw his bill to allow a cooling off period to closely consider what the legal profession is saying; that is, consider the long-term impacts of this legislation. The impacts will be grave. This bill will adversely impact on our court system. There will be no incentive for guilty pleas. The already stretched resources of the courts, prosecutors, legal aid services, police and medical witnesses will be pushed to the limit. Our prisons cannot cope with more prisoners. Our prisons have long been overcrowded, putting both staff and offenders at risk.

Guess who will bear the brunt of this sledgehammer? I think members know. It will be our Indigenous population. Today we have been considering the shocking case of Mr Ward, the plight of Aboriginal people and our criminal justice system, yet here we are set to pass this bill, which all members admit will adversely impact on Aboriginal people. I find that absolutely horrifying.

In our state already we have by far the greatest rate of Indigenous imprisonment. Aboriginal people, including children, are way over-represented in our prisons. How can we tolerate exacerbating this shocking over-representation tonight by passing this draconian measure?

Aboriginal people will not be the only people adversely affected by this legislation. Other innocent or less culpable members of our society will also be inadvertently caught by this legislation. As an example I refer to the case of 22-year-old Kylie Higgs, which was reported in *The West Australian* on 2 May this year. This young woman got into an altercation with police at a nightclub in Northbridge at 1.30 in the morning. She had been drinking. I will briefly go through the facts because how the judge resolved the facts is important. Her boyfriend was getting into a fight with the police and she intervened. The court was told that she was pushed by an officer and lost her footing. She fell to the ground and rose up and hit the officer in the eye. She pleaded guilty—there was no doubt about that. She admitted that she had been drinking and that was wrong. She was a BHP geologist, earning $92 000 a year. She was charged and fined $3 000. The prosecuting sergeant did not oppose a spent conviction. To me, that is a classic case of our system working. She made a mistake that night. We are not perfect. She admitted her error, paid the price and now moves on with her life. She kept her job and was not thrown into prison. However, under this legislation she goes to prison.

Ms A.J.G. MacTiernan: What was she actually charged with?

Ms A.S. CARLES: She was charged with assaulting a public officer. She had hit the officer in the eye.

Ms A.J.G. MacTiernan: I know the case well. Would the Attorney clarify whether that is a charge that would come under this legislation?

Mr C.C. Porter: What is her name?

Ms A.S. CARLES: Her name is Kylie Higgs. The headline of the article is "Cop basher escapes with $3000 fine".

Mr C.C. Porter: What date was that?

Ms A.S. CARLES: It was reported in *The West Australian* on 2 May 2009. I will move on. It is another example of what could happen with the passing of this legislation. It could be the daughter of any member who goes out and gets drunk one night and does something stupid. I hope that in those circumstances the offender would be fined and would not go to prison.

This bill will see innocent people inevitably sentenced to serve time in our overstretched prisons. Aboriginal incarceration will skyrocket beyond what it is already. The bill is not workable and if it becomes law, it will take years for it to be brought before this chamber to be repealed. I urge members to stop this legislation in its tracks right now. Let us do our job as parliamentarians and let the judiciary get on with their important work as judges.

MR C.J. TALLENTIRE (Gosnells) [5.55 pm]: There is no doubt that the Criminal Code Amendment Bill 2008 poses a real quandary for many members in this Parliament. The aim of this bill is that when a person assaults a police officer and causes that officer bodily harm, that person must be sentenced to a term of imprisonment. The bill is very severe in its aim. Before I address that and address some of the issues around the amendments that this side of the house put forward—amendments that do not appear to have been successful—I will recount an experience I had in preparing for this part of the debate. It occurred on Friday, 5 June. I was fortunate enough to be offered the opportunity to go out on patrol with the local police in my electorate. This was arranged thanks to the organisation of Superintendent Paul Zanetti of the South East Metropolitan District.

I was, on a busy Friday night, fortunate to go out on patrol from the Cannington Police Station. I was in a car with Inspector Tony Hill and Constable Mark Walker. I was very impressed with the attitude of, and approach by, those two officers to their duties. There is no doubt in my mind that anybody in the public service who has that level of commitment to the community deserves to be able to go out on patrol and have the best of protection afforded to them. The sorts of circumstances that they find themselves in as they carry out their duties should not put them in a situation where they are likely to be physically harmed. It is a very difficult job that they do. While the calibre of people such as Inspector Tony Hill and Constable Mark Walker is very high, there are times when they find themselves in awkward situations.

I will recount some of the situations we witnessed on Friday, 5 June. A standard thing that happened a number of times involved the use of the wonderful Tardis technology that is in police cars. It is an excellent piece of technology that enables police officers to quickly check a vehicle registration number to see who the driver is likely to be and then pull the car over if there is a problem. All sorts of red flag systems are in place. A couple of times we found the registered owner was a person who had a suspended driver's licence and we were able to pull them over. Each time we pulled somebody over, it was apparent that there was an element of tension about the situation. The officer has to go to the driver's side of the vehicle and ask the person to wind down their window. They obligingly stopped their vehicle and pulled over, but nevertheless there is a concern that there could be an

adverse reaction. That is what I mean when I said it is totally unreasonable to expect anyone to go about their job upholding the law of the land without feeling that they have the very best form of protection.

The other situations we encountered, some of which were fairly benign but typical of a Friday night, included street drinking. The law requires police officers to ask the people street drinking to pour their alcohol out onto the street. I am pleased to say that in the Gosnells electorate the people who were breaking the law obligingly carried out the direction that the police officers gave them, but potentially that was another awkward situation—a simple straightforward one, but one that could have flared up at any moment.

Another situation we encountered were reports about a potential clandestine drug laboratory in the area. Local residents were reporting strange odours and an explosion. We investigated that. The risks that go with a task like that, which involves knocking on the door of the house that seemed to have been the source of the explosion and from where the odour was being emitted, are great. They are the sorts of situations in which police officers are constantly likely to encounter difficult people—people who are angry, people who will react in an aggressive manner and, quite often, people who are under the influence of alcohol and drugs. These are frightening situations that can occur quite often. Another situation involved a young woman who was parked in a very dark part of a car park.

Sitting suspended from 6.00 to 7.00 pm

Mr C.J. TALLENTIRE: Before the dinner break I was recounting my experience on Friday, 5 June when I went out on patrol with police officers in the Cannington district. I have to say that that opportunity of seeing the normal course of events for police officers on a Friday night confirmed a conviction that I have had for a long time—that is, that we need to afford our police officers the very best of protection. Our police officers do a tremendous job, and they need all the support we can give them.

I am concerned that this legislation will not deliver the outcome that the government is hoping it will deliver. However, I recognise that the Liberal Party and its allies were elected to office on a promise that greater protection would be afforded to front-line officers. "Officers" is a fairly broad term. We need to acknowledge that despite some amendments that have been moved to this legislation previously, we do not see in this legislation now any additional protection for teaches, nurses and firefighters. These are people who would normally be defined as "front-line officers". These people are sometimes in situations that are dangerous and may encounter people who are angry, argumentative and violent. All our officers should be protected from those people.

I am also disappointed that this legislation does not include any provision for cases of manifest injustice. However, that said, I will be supporting the legislation. A review is scheduled in two years. We all know that Constable Matthew Butcher's situation would not have been remedied by this legislation. It is most unfortunate that the circumstances in which Constable Butcher finds himself have somehow become part of this debate. That suggests that there are some elements of the broader public who want to push a particular view without doing so honestly. As I have said, I will be supporting the legislation, but with grave concerns.

MR J.R. QUIGLEY (Mindarie) [7.03 pm]: I wish to speak on the third reading of the Criminal Code Amendment Bill 2008. I have only 30 minutes to deal with this bill. I remind members that I have on two previous occasions spoken against the shortcomings of this bill. I did that first at the second reading stage, when I challenged the Attorney General—in a professional way, not a personal way—for not making out his case that the judiciary is not adequately sentencing people who have been convicted of occasioning serious bodily harm or serious assault. I have already made the point, and I will not labour it for longer than about two minutes now, that the two examples advanced publicly by the WA Police Union to make this point were flawed, because in those cases the charge of an assault causing injury was actually withdrawn. In both those cases—the case of Sergeant Fleskens, and another case—the offenders were sentenced by Magistrate Jones. Although the Attorney General said there were a number of cases, that has not been made out. I made my second speech on this matter during the budget debate about a week ago. I said at that stage—I am very troubled in making this speech—that I had written to the Attorney General, the Commissioner of Police and the Director of Public Prosecutions and had asked them to stipulate the cases in which the judiciary had not adequately sentenced people who have occasioned serious bodily harm or serious assault. I said in that speech that the Director of Public Prosecutions said that he could find no cases in the District Court in which the judges had failed to sentence a person to prison for assaulting a police officer with intent to cause injury, and he could find only two such cases in the Magistrates Court. I pointed out also in that speech that I had not received a reply from the Attorney General at that stage. On 9 June, the Attorney did reply to me. The Attorney said in his response that he did know of such cases, but he would not tell me what they were in his letter; if I wanted to know what those cases were, I could

ask him a question in question time. I am a bit disappointed about that, because with the budget debate being on I have not been able to get a question up, so I still do not know. I anticipate that at the end of this third reading debate, the Attorney will refer to a number of cases that I have not had the opportunity of studying. That is all very unsatisfactory.

I note that the Attorney General's former employer, the Director of Public Prosecutions, has spoken out strongly against mandatory sentencing. Mr Cock, QC, has said that when the criticism was made that there was a shortcoming in the legislation, Labor came into Parliament and doubled the penalties. Those penalties became operative from 27 April 2008. I then asked the government to give me examples of cases after 27 April 2008 in which the legislation has failed, and no examples have so far come forward. The Attorney would say, "Forget the new legislation. I want to take you back in history—to antiquity—to before Labor fixed up the law and show you that there were errors." I say to the Attorney that that is not to the point. The Attorney and his party are the ones who are criticising Labor's position, yet they have not put forward one case in support of their argument. While I am on that point, I refer to an article in *The Sunday Times* of 24 February 2008. The article states —

> WA's top prosecutor has joined the state's lawyers association in rejecting calls for the mandatory jailing of people who assault police, saying there were no laws of that type in Australia.
>
> Robert Cock, the Director of Public Prosecutions, said he opposed mandatory sentencing.
>
> Mr Cock said he believed the Government's strengthening of legislation, which allowed for harsher penalties for cop bashers, was enough to restore the public's faith in justice.
>
> "No jurisdiction in Australia has mandatory penalties for any type of assault," Mr Cock said.
>
> "The recent Bill will go a long way to restoring the public's confidence in the judicial system."

The Commissioner of Police was quoted in *The West Australian* in May 2006 as saying that mandatory sentencing was a catch-all, and he would revisit the concept if he felt the proposed option was failing. As I have said, Mr Cock came out in 2008 and completely rejected mandatory sentencing.

This bill is a deeply flawed piece of legislation. This legislation has been brought forward on the basis that those who do not support it are failing to support the police. I have already laid on the table in two previous speeches—and it is recorded in *Hansard*, so I will not read it out again—a letter from the Commissioner of Police. The Commissioner of Police says in that letter that he understands my conscientious objection to this piece of legislation, and he does not regard my opposition to it as in any way reflecting a lack of support for the police. Nor should he, because the legislation is so deeply flawed that it does not even do what the government has said it sets out to do. It will not punish any person who assaults and injures a police officer. When I say that, I want members to remember the McLeod case. That case was the fountain from which this most recent debate has sprung. That was the precipitating factor that brought the police to the steps of Parliament to demand mandatory sentencing. While I am on that topic, I need to apologise to the chamber. The President of the WA Police Union did not say on the steps of Parliament that if we do not support this legislation, he would make our lives hell. Someone was recording what was said. His actual words were that he would become our worst nightmare. I do not know that there is a great difference between those two statements. I certainly feel intimidated by someone saying that he would become my worst nightmare. However, for the sake of accuracy, he did not say he would make our lives hell. He said he would become our worst nightmare unless we support this legislation—the Criminal Code Amendment Bill—because this legislation will protect police.

We know that the McLeods were put on trial on an indictment in the District Court and that the younger McLeod stood on the indictment charged with grievous bodily harm with intent. I think it was count number five on the indictment; I am going off the top of my head because I do not have the indictment in front of me. This legislation would not have covered that charge or count, because he was charged under section 294 of the Criminal Code. Let me read section 294 of the Criminal Code to members —

> **294. Acts intended to cause grievous bodily harm or prevent arrest**
>
> Any person who, with intent to maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, or to resist or prevent the lawful arrest or detention of any person —
>
> (1) unlawfully wounds or does any grievous bodily harm to any person by any means whatever;

And it prescribes a penalty. This is the section McLeod was charged under. This is what precipitated the legislation. This section is not covered by the bill. If the Liberal government says tomorrow that it passed legislation today that protects police officers, that is eyewash—absolute eyewash! This is the fact: if in the course of an interaction with the police a person punches a policeman and causes a black or bleeding eye, it is deemed a serious assault under section 318 of the Criminal Code and in aggravated circumstances it will attract, under this bill, mandatory sentencing. If a person, who is a bit of a stick figure, such as I am, or is a bit elderly, such as I am, and who does not fancy using his fists tries to resist arrest by pulling out a flick-knife and slashing the policeman and wounding him—not that I would ever have this intention; I am only hypothesising—he would not be subject to mandatory imprisonment. Do the members for Southern River and Ocean Reef appreciate that? Has the Attorney General explained this to Liberal members in the party room? Has he explained that this legislation does not cover the more serious injuries done to police? Has he explained that section 294 injuries are not covered by mandatory sentencing because this bill only covers injuries under sections 297 and 318 of the Criminal Code? The members for Southern River and Murray-Wellington should not go back to their communities and say that last night they voted to protect and secure the safety of police officers because they have not. We could drive a D9 through this legislation. We could drive a D9 through the proposition that this legislation was necessary to prevent injury to police. We can already charge the Northbridge spiv who cuts a police officer with a flick-knife with grievous bodily harm and sentence him under the lesser provisions of grievous bodily harm, which attracts a 14-year sentence —

Mr M.J. Cowper: Why wouldn't you charge him with unlawful wounding?

Mr J.R. QUIGLEY: Why would we not charge him with unlawful wounding? Of course we would charge him with unlawful wounding, but that is not mandatory sentencing. Surely the member appreciates that that is not mandatory sentencing.

Mr M.J. Cowper: But you appreciate that it is likely to incur a jail term.

Mr J.R. QUIGLEY: They are jail terms. However, the member is saying —

Mr M.J. Cowper: What is the maximum penalty under the act?

Mr J.R. QUIGLEY: I am not going to take interjections. The member can deal with this on his feet. I am saying all the perpetrators of serious assaults occasioning bodily harm are sent to prison, just as they would be for serious cases of unlawful wounding. The Criminal Code states —

> Any person who, with intent to maim, disfigure, or disable any person, …

"Disable" includes stopping someone walking—that is, belting someone in the knee so hard that they are momentarily disabled; it does not say disabled for life. If someone disables a police officer by whacking him on the knee with a star picket to prevent the officer arresting a mate, that does not attract a mandatory sentence.

Let us get this right. This is a flawed bill. This bill is flawed for another reason that I have already gone through and I add that to the reasons outlined in my two earlier speeches. Now I am going to slow down, calm down and make a humble plea. I am going to make a humble plea, not as a question of political vanity or bombast or power, but to stand up for the families of Mindarie, who would be appalled at the prospect that this Parliament meets tonight to impose mandatory prison on young children and to expose them to these harsh laws. Young children in the north of the state, children of God, have just as much right to the world as do my children. I have four and a half children, five if God blesses us in September. Having raised my eldest to the age of 26—a boy who has presented us with a few challenges along the way—I know that young adults, children of 14 and 15 and even younger are subject to bursts of impetuosity. Sometimes they labour under mental illness, which is not their fault. They do not ask to become victims; they do not ask to become orphans; they do not ask to become children of neglect—neglected children. Labouring under their own disabilities, these children might, at the age of 14, see a ruckus taking place, which the police are attending, and impetuously, from the sidelines and at a distance and perhaps in the dark, throw a rock at the group, if not at the police. If the rock hits and cuts the leg of a policeman, that is assault occasioning bodily harm. Think about if that happened in Derby. The child's mother may be a schoolteacher and the father working for the shire. They may have two other children in school, yet the offending child is immediately taken the distance of London to Moscow to be imprisoned in Perth, because we all know there are no juvenile detention centres outside the metropolitan area. A young child of God is in a jail in Perth without so much as a visit from a parent, an uncle, an auntie or anybody whom that child knows. I congratulate and plead with the Attorney General out of humility, not out of bombast or to be able to say I won. The Attorney General has the numbers in Parliament to get this bill through. I plead with the Attorney General for mercy for families and children. I am not saying that children who badly injure policemen should not on

occasion be imprisoned. I know of 16 and 17-year-olds out there whom I would not have liked to front up to as a 25-year-old. There are some big boys out there! However, sentencing is a discretionary matter for the court. We could take as an example the young child from a township who has impetuously thrown a rock or—this example may be a bit close to the bone in terms of jailing the perpetrator; I could go on forever—the young kid who has gone to leavers week and from the sidelines urged someone to hit a policeman saying, "Yeah, go on; hit him mate!" and who is therefore arrested as a co-offender or as a party to the offence under section 4 or 7 —

Mr C.C. Porter: Section 7.

Mr J.R. QUIGLEY: Section 7(b)—I have told members that he is more learned than I am, although I could have got there in the end. If he is arrested under that section, he becomes as liable as the principal offender. It is a young child who might have just turned 17 and is at leavers week and who has said something stupid, not hit someone on the head with a beer can, and is arrested. He comes back to Perth, collects a tertiary entrance exam result of 98.3 per cent and starts his first term at medical school. His parents decide he will plead not guilty to the charge in the Magistrates Court, and he is convicted. He is out of medical school and into jail—sunshine. That is the end of his career. He is a child! I am not saying that an adult who has reached maturity, a person we expect to exercise a modicum of judgement, should not feel the full weight of the law when he injures or assaults a police officer. I have spent most of my life acting for and protecting police officers; I still do. I spoke to my friends in the Police Union this week. I asked them about the children. They said they had not thought about them and that surely it was too late to do so now. They said it was too late for the union council to meet before the Parliament met to vote.

Members should just think about this: the development of our civil society, from before Christ walked this earth, has been a progression. He came along and tried to teach us to be gentle with each other. Criminals are not; they take away our civil rights. The biggest victim in the world is anyone who gets hit by a criminal; I accept that. It is terrible when police get hit while protecting us, and people who injure police should go to jail. However, in the exercise of all judgement, there is this concept that the penalty must fit the crime.

I am very proud to be an Australian. I am very proud to be a fourth-generation Western Australian. I am very proud to have come from the trucking yard of Brambles and to have stood before the Full Court, the High Court and now the Legislative Assembly pleading people's cases. Part of my pride in Australia is in our democracy. In 1990 Australia entered into an international legally binding treaty for children called the Convention on the Rights of the Child. I ask members to read articles 37 to 40 of that convention. They state that there will be no arbitrary jail for a child; that before a child is jailed, the child's interests in rehabilitation should be looked at first; that the child's circumstances will be looked at; and that the jail term will be as short as it needs to be to fit the crime. All these individual matters should be considered. In this Parliament, in the room in which we now stand, our predecessors passed the young offenders sentencing legislation. The purpose of passing the young offenders sentencing legislation was to give an exact reflection of the international treaty that Australia entered into. If members read the Young Offenders Act and articles 37 to 40 of the Convention on the Rights of the Child, they will find that the Young Offenders Act reflects our international obligation.

I remind this chamber that, yes, I went to the Coroner's Court on Friday when the coroner handed down his decision in the Ward matter and I spent a bit of time with Mr Ward's young son Tyrone and his Aunty Daisy. I will just divert here for a moment. I was privileged to spend some time with Sergeant Neil Gordon, who has taken on the personal responsibility of looking after Tyrone. I saw the affection between the late Mr Ward's son and the sergeant. It was quite remarkable. I think the member for Southern River goes out to Warburton, so he would know Sergeant Gordon and would know what a really nice man he is and what he does for the Indigenous people out there. What did the coroner say? He said that the way Mr Ward was treated was in direct violation and contravention of the articles—I have forgotten the numbers—of the International Covenant on Civil and Political Rights; that is, that we do not torture people.

Mr B.S. Wyatt: Articles 7 and 10.

Mr J.R. QUIGLEY: Articles 7 and 10; I thank the member for Victoria Park. The courts recognise the legality of all this. This jurisdiction is about to tear up and act in total disregard of this country's international treaties, and will be the only jurisdiction in Australia to flout those international treaties. This is a very serious step for this Parliament to be taking. This bill is flawed because it does not even cover the more serious offence involving police—that is, section 294, under which Mr McLeod was charged. Clause 4 of the bill, which seeks to amend section 297, states —

(5) If the offence is committed by a young person (as defined in the *Young Offenders Act 1994* section 3) in prescribed circumstances, then, notwithstanding that Act and in particular section 46(5a) of it, the court sentencing the offender —

(a) must …

This is in direct abrogation or derogation of our international treaty obligations.

Who am I? I am addressed in this place as the member for Mindarie. First of all, I am John Quigley, a Christian. Secondly, I am the husband of my lovely Michelle and the father of five children. That is who I am first in the world. The rest is incidental. John Quigley, father and Christian, makes a humble and sincere plea in this chamber: it is not too late; this matter has not gone through the Legislative Council. We have gone past the amendment stage in this chamber, Mr Speaker, as you know. I have never made a more sincere and humble plea on behalf of the children and families of Western Australia that we honour our international covenants. I would be a hypocrite to do otherwise than speak in the manner that I am now.

Over the Anzac Day long weekend a whole lot of children and young people—the Clerk of the Assembly's daughter Jillian McHugh was there—attended an all-night vigil in the Supreme Court Gardens to demonstrate against the rights of children being oppressed on the continent of Africa. I was very proud to be invited along by the headmaster, the head boy and the head girl of the Quinns Baptist College to join all those students while, as I have pointed out, other children were in Northbridge on this night drinking, gassing and taking amphetamines. This beautiful cohort of 200 or 300 people, mainly from the Quinns Baptist College, but also from other congregations and communities in my electorate, gave up their Saturday night to sit in the cold in solidarity with the children being oppressed by governments on the African continent. I was ever so proud to be invited along to speak to them about Australia's Convention on the Rights of the Child. I made a promise to them over the microphone in the presence of the Baptist congregation. I am not a Baptist; I am a poorly practising Catholic—a sinner—but I try. On behalf of those congregations and my own congregation, which try to love and nurture children, I say: let us not in one foul blow tear up what Australia has promised to the rest of the world. Let us not do this as one jurisdiction. Let our foreign minister, when he goes to Pakistan, Bangladesh or Uganda pleading for the rights of the child, be able to hold up his head and not have to say that he knows that that rump Western Australia has completely flouted the convention and takes 12-year-old children from one end of the state to the other and imprisons them without any emotional support. What will happen at the end of this mandatory imprisonment when they are turfed out of the institution in Perth? Do members think that the government agency will then fly them home or give them the standard prisoner's bus ticket to their nearest place of residence? That would mean that a 14-year-old kid would be given a bus ticket outside the kiddies' prison and told to find his own way home to Halls Creek. We are a Parliament that says that we have to protect the children. A bill is being presented in the upper house today to deal with protecting children and the exposure of children to demeaning publications, videos and games.

I have only mentioned the Bible twice since I have been in this place. Mr Speaker will remember the first occasion I spoke about the Bible; it was when I was sitting in the member for Southern River's seat. It was just after my cancer diagnosis, when I had been told that I had terminal cancer and had only two years to live—well, bad luck, fellas; I have lived a bit longer! As I sought sick leave to withdraw from this place, I reminded Parliament that each sitting day we say the Lord's Prayer and I said that I would accept my fate and that God's will would be done. I accepted my fate and was hopeful that I would not choke and get scared on the way through what turned out to be an awful journey.

I do not come into this place wearing my faith on my sleeve, but tonight I make an exception. I was elected by Muslims and I was elected by atheists; this is the house of the state, not the house of the Lord, but I am guided by those principles. As I stand in this place tonight, I am reminded of that passage from the Bible that I can only paraphrase: anyone who damages the little children has to deal with a millstone and wear it like a necktie. I am not making a judgement on any member who may decide that the mandatory imprisonment of children is necessary—it is not necessary. But I remind everyone that the Son of my God came here to say that for anyone who damages the little children, it would be better that they had a millstone tied around their neck and be cast into the sea. I also remind myself of another of Christ's teachings—that come the day, people will be judged measure for measure by the measure they have chosen. I do not want to stand in this place being harsh on the children whom God has told me I have to protect and not damage. I do not want that to be the measure of my judgement, come the day, which I expect will be a lot closer for me than the member for Ocean Reef or the member for Southern River, because I am nearly a pensioner! This is only the second occasion on which I have introduced the teachings of the Bible into this place. This is a matter of conscience.

Dr K.D. Hames: This is your Attorney General of the future!

Mr J.R. QUIGLEY: The member for Dawesville can rag me and say, "This is your Attorney General of the future"—maybe I will be; maybe I will not be.

Dr K.D. Hames: I did not necessarily mean it in a negative way.

Mr J.R. QUIGLEY: Today, someone in this Parliament has to stand up for the Convention on the Rights of the Child.

Dr K.D. Hames: I'm not criticising you for that at all.

Mr J.R. QUIGLEY: I thank the member.

How will I vote on the Criminal Code Amendment Bill 2008? I am going to follow the example of the now Premier of Western Australia. I was in this place when he made an impassioned plea against the disaggregation of Western Power. He said that disaggregation was wrong, but that he was not going to die in a ditch—that is exactly what the now Premier said during the third reading debate on the disaggregation of Western Power. He said his party room had decided the other way and he was not going to die in a ditch because he had more fights to win. Weak people like Andrew Mallard look to me to speak up on these issues, and I do not want to have my head cut off because I have gone against the views of my party room, so members will understand that I am torn. I am absolutely torn when I stand up to defend the rights of the child. I thank members.

MR E.S. RIPPER (Belmont — Leader of the Opposition) [7.33 pm]: The member for Mindarie, the shadow Attorney General, has outlined very eloquently the serious reservations that many Labor Party members have about this legislation. Nevertheless, Labor has determined that if a division is called, we will vote for this legislation despite those reservations.

Why has the Labor Party decided to do that? I want to turn to the issue of assaults on police officers. I find it particularly disturbing that in our society so many young people apparently think it is okay for police to be called to a rowdy party and for the people at that rowdy party to then throw full bottles of alcohol and bricks at police officers. I find that behaviour repugnant and disgraceful. I am disturbed at the lack of respect for public officers enforcing the law that that sort of behaviour embodies. I am concerned about the decline in the value of respect in our society. The contribution that seniors have made to our community is not sufficiently respected, and sufficient respect is not shown for the wisdom that they can still contribute by virtue of their experience.

I am concerned at the lack of respect demonstrated on occasion for people's different points of view. We are now a very diverse society; people hold very different sets of values and views. In many cases, each set of values, each set of views, has wisdom to it and we need to accommodate, insofar as we can, those different points of view, and we certainly need to respect the rights of people to have those different views. I am concerned about the lack of respect that people have for each other. How can it be that we have so many incidents of violent rage in our entertainment areas? We appear to have a growing culture amongst young people of not having enough respect for each other's safety.

To me, assaults on police officers are part of a general pattern of decline in the value of respect in our society. Occasions arise when Parliament has to send a message that certain types of behaviour will not be tolerated and will be severely punished. I regard assaults on police officers and assaults on other public officers as reasons for Parliament to send a message. I have had experience in dealing with law and order issues in the past in a ministerial capacity. It was a long time ago, but I know from that experience that when Parliament sends a message, it can actually work. Leave aside the detail, leave aside the question of whether the law has been properly constructed, or whether the law has dealt with the right offences or the right sections; if people in the community generally form a view that there will be a tougher response from the authorities to a particular type of behaviour, they can be deterred from engaging in that behaviour.

Regrettably, the deterrent effect is not generally sustainable. The send-a-message approach can produce an effect for six months, for a year, for some longer period of time, but if we want a long-term effect, the social issues underlying the objectionable behaviour must be addressed. If we do not address those social issues, we will not have the sustained impact of producing peace and good order. It is a pragmatic, practical approach to say that if we send a message, we will get a response if the community thinks there will be tougher punishment, at least for a short period. But if we do not combine that with crime prevention policies and social policies dealing with the causes of crime, then we will not have a sustained effect.

The shadow Attorney General, the member for Mindarie, has outlined serious reservations about this legislation; I will refer to some of those reservations shortly. I want to say this: there is a mandate theory about democratic

politics. The theory holds that if a political party puts a proposal to the electorate and that political party wins the election, it has a mandate to introduce that particular policy. I think the mandate theory is significantly overrated, because people vote on many different bases. People take all sorts of issues into account when they vote, so it is a bit hard to say that every voter has signed up to every promise made. The mandate theory is further complicated by this government, when in opposition, having taken so many policy positions to the election that essentially mirrored policies that the then Labor government had in place. I think it is fair enough to argue that of all the policies that the previous opposition took to the election this was one that had prominence. Quite frankly, the coalition parties won the election, and Labor must take into account, along with other things, that particular fact and the mandate theory, flawed as it might be.

I also want to point out to the government that it took to the election a policy that had a broader mandate than the one that it is implementing. The Liberal Party promised before the election that all public officers would have this protection made available to them. The legislation does not provide protection to all public officers. In that respect it represents a broken promise. The government has compromised and undermined its mandate claim by not implementing the protection for all public officers. I do not know what explanation the government has for that and whether it will say to the public that it got it wrong, that it made bad policy and that it should not have made that promise, or whether it has some more convincing explanation to give to the public. Although the government can claim that it has a mandate, it has not fully honoured the mandate that it sought when it went to the election.

Another issue we need to take into account is one that we have debated on so many occasions with this legislation. There are flaws in this legislation and it is poor law. Labor sought to ameliorate the roughest edges of this law by moving an amendment to preserve a small amount of judicial discretion should there be a case in which a mandatory sentence would represent manifest injustice. That amendment was rejected. I ask coalition members to reflect on that. In essence, they voted for a legal scheme that would allow manifest injustice to occur. They did not take the opportunity to provide last-resort discretion to a judicial officer to prevent the occurrence of manifest injustice. I do not see why they found that necessary, unless they were acting purely on the basis of seeking to drive a political wedge into the Labor Party and its constituency. They could have had protection for police officers and all public officers while preventing manifest injustice. Labor's amendment was not radical; it was a moderate amendment. The government could have accepted Labor's amendment while still honouring its commitment to provide additional protection to public officers. I am not a lawyer, so I am sure the Attorney General will have some comments to make on this, but I regard Labor's amendment as not providing for full judicial discretion. I regard it as providing for enough judicial discretion to prevent a really serious case of injustice. Why would the government provide protection for public officers at the cost of allowing a very serious injustice to occur when it had a viable amendment that would have allowed it to achieve a different result?

The government also rejected a Labor amendment to provide protection for teachers, nurses and firefighters. Why should a teacher who disciplines a child or who awards an assessment a child does not like face the risk of assault at the classroom door? It does happen. This is the type of society that we live in, where there is a lack of respect and where teachers doing a very important job for society can walk out of their classroom and be assaulted by a parent who is aggrieved at the way his or her child has been treated. Is that acceptable? I do not think so. Should we not send a message that those teachers will be protected? We are not sending that message. The government broke its promise and refused to make that amendment to the legislation.

Let us take the case of nurses. Why should nurses in emergency departments face the serious risk of assault from drunks, and people strung out on ice? They are doing a very hard job that requires skill, sensitivity and care. They should not have to fear for their own safety in an emergency department because people come in and abuse the service provided free by the state in those emergency departments when they need medical attention. That is the sort of circumstance that we face. The government made a promise to protect all public officers. Nurses are public officers. The opposition offered the government the opportunity to extend that protection to nurses and to honour its promise. The government did not take up that opportunity.

Let us take the case of firefighters. They do not only attend fires; they also attend serious vehicle accidents and chemical spills. They use the jaws-of-life to extricate people from mangled wrecks of vehicles following traffic accidents. I do not think it happens to firefighters as often as it does to nurses and police officers, but there have been occasions when firefighters have been attacked as they have gone about their duty. That is wrong. They do a very important, dangerous job. There is no reason they should face the additional threat of assault. They should also be provided with the protection of this legislation. The government had a mandate for that because it made a

promise for it. The government has broken its promise despite Labor offering it the opportunity to provide protection to those people.

Let me come back to the question of manifest injustice. Unless it is for political reasons, I do not understand why the government did not take up Labor's offer to include that moderating amendment. It would have dealt with the issue raised by the shadow Attorney General, the member for Mindarie, about the question of children. The member for Mindarie is quite rightly worried about the prospect of a young Indigenous teenager being caught up in a sequence of events and ending up being sentenced to imprisonment in Perth, hundreds and hundreds of kilometres away from family support, with all the risks that there would be to that child's livelihood and prospects of success in the future, and to that child's very existence, given what we know about the record of deaths in custody in this state. Why would the government not accept our amendment and put into the legislation a provision that would allow a judge to deal with that circumstance? Had the government accepted our amendment, it would not have the impassioned argument from the member for Mindarie and it would not have to do what I hope it will do, which is to re-examine the impact of this legislation on children and young people.

If a division is called, we will vote for this legislation. It will then go to the upper house. The government will have the opportunity to revisit these issues in a calmer atmosphere with proper consideration. We will move our amendments again in the upper house. We will again take up the fight to have the government moderate this legislation so that it has a more reasonable approach. The upper house has new members, including many new members of the National Party. We will be asking those members to look again at the evidence that the Attorney General has presented in support of this legislation. We will be asking them to look again at whether it is absolutely necessary to completely eradicate any skerrick of judicial discretion in this legal scheme and whether the government absolutely has to do it in order to provide protection for public officers. My view is that the government does not have to do that. It can send the message, but it can do it in a way that does not cause serious injustice to other people. Why would the government want that on its conscience? Why would it want that as a potential difficulty in the future? I can tell members opposite how the opposition will take up the issue if the government's legislation does not provide protection for teachers, nurses and firefighters. Every time a teacher is subject to one of these assaults and the assailant is not properly punished, the opposition will be there taking up that issue. Every time a nurse is assaulted and the assailant is not properly punished, we will be there taking up that issue. Every time a firefighter is assaulted and the assailant is not properly punished, we will be there taking up that issue.

On the question of manifest injustice, if we find a circumstance in which a young person is caught up in the sort of affray talked about by the member for Mindarie, put into a prisoner transport vehicle and transported by a private security operator to Perth and something goes wrong, we will be taking up the issue of manifest injustice. We will be saying that if the government had accepted Labor's amendment this might not have happened. The government can avoid that sort of issue in the future if it will think about accepting Labor's amendments, or some version of its own that would achieve the same end. The government might come up with a set of words—not our set of words, but a set of words that could win our support in the upper house—with legal resources available to it.

The government should understand that the pendulum swings. Right now, people are concerned about assaults on public officers and they want a legal scheme to provide better protection for those public officers, and members on this side of politics support better protection for those public officers. Once the scheme is in place, people will then look, as they always do, at the potential negatives. They will look at any cases of injustice that arise. It will not so much be the assaults on public officers that will be the matter of public debate and controversy; it will be any cases of manifest injustice that result from this legislation. The government will not be well placed, if there are those cases of manifest injustice, because it has been offered the opportunity to accept Labor's amendments. The government has been warned by Labor speaker after Labor speaker about the potential for this legislation to go wrong. Be it on government members' own heads if they go ahead willy-nilly and do not listen to the sensible, moderate advice that has come from this side of the house!

If the government fails to protect the other public officers that it said it would protect, there will be retribution in a political sense should bad things happen to those public officers. If the government's legislation results in real harm to a young person in a case of serious injustice, government members will be answering for that. They will be answering for it because they would have been offered the opportunity for judicial officers to make a judgement on those circumstances and produce a better result, and they would have refused that opportunity.

I am not sure what political strategy the government has adopted here. I believe that the government has sought to use this legislation politically to the disadvantage of the Labor opposition. We are not going to fall for that. We too believe that public officers need better protection. We too believe that a message needs to be sent to

people who assault public officers in our community that there will be tough punishment. We do not believe that the government has fully honoured its mandate or taken the action it could have taken to prevent serious injustice.

MS A.J.G. MacTIERNAN (Armadale) [7.53 pm]: This has been a very, very difficult piece of legislation for many of us in this place and, in one sense, possibly even for the Attorney General. As so many members have said, the opposition is very concerned about situations in which police find themselves and about the seeming lack of boundaries that, unfortunately, so many of our citizens appear to have around their behaviour. I think my colleagues on the Community Development and Justice Standing Committee are beginning to understand a bit more how this situation arises in which so many people are emerging without having gone through that process of having boundaries set and that being incorporated into their social development and into their whole physiology. We understand that police so often find themselves in immensely difficult situations, and we absolutely understand that there have to be very clear statements about the need to protect police officers who have to, by the very nature of their job, put themselves at risk physically.

However, we also know that human beings can be very volatile and also very frail. There may be people who are deeply good people for most of their lives, but they go through a period of vulnerability, or even a single incident, in which they can make an unfortunate mistake. The member for Fremantle quoted an example from the newspapers recent regarding a Ms Higgs. Interestingly, as she pointed out, in that particular instance the prosecuting sergeant was quite prepared, notwithstanding this was an assault on a police officer, to recognise the disproportionate impact it would have on her to have a conviction registered, and so did not oppose a spent conviction being applied in that instance.

All of us here represent many thousands of people. We understand the variability of human experience. We understand the huge variety of circumstances that may arise that are impossible to capture in law. We recognised—I am sure the Attorney General recognised—that this whole concept has been at the heart of the legal tradition that we have inherited from the British: that we have a system of laws that are always there to be moderated by principles of equity, and that principles of equity—at least in their purest form—go to something that is more profound than just the law. We recognise there need to be laws, frameworks, and boundaries around human action, but we also recognise that there must be that quality of mercy and that we must take into account particular circumstances. This is at the heart of the debate and the conflict that we have here in this Parliament.

The member for Rockingham put some examples forward of war heroes coming back from Iraq or Afghanistan. We can all think of other, less prosaic circumstances that can impact on the lives of the people we represent. Someone may have lost a friend, a sibling or a parent in problematic circumstances that puts them in a situation in which they are not thinking straight and their normal reactions are distorted by the particular personal circumstances they are going through. In some way they may attribute their personal circumstances to a police officer. That might be misguided. It may be as a result of the predicament of a family member or a death in custody. There could be thousands of circumstances in which perfectly reasonable human beings are unhinged by a particular event that happens in their life and their reaction in a particular circumstance is inappropriate and they behave in such a way that leads to an injury—and it can be fairly minor injury as we know—to a police officer, and they go to jail. Under this legislation, the discretion that we saw the prosecuting sergeant exercise in his submission to the judge would not be available for the judge to take into account. The judge will not be able to hear submissions either from the prosecution or the defence, or consider all the circumstances of the person's behaviour. The judge will be unable to consider the uneven, unfair and potentially horrific circumstances that apply, or the disproportionate penalty that the person would receive. The member for Mindarie has quite rightly pointed out that this legislation will apply to children and that it could apply to very young children. We know that teenage boys in particular go through an immensely volatile time hormonally. They are risk-takers. They suffer from all sorts of craziness. My friends from the Community Development and Justice Standing Committee heard the extraordinary submissions made by the Australian Institute of Family Studies about the sort of brain craziness that goes on, particularly with 15 and 16-year-old males. We know that they are risk-takers and are very much in the cohort that could be very vulnerable because of this legislation. That does not mean to say that we should give them carte blanche to behave badly. However, it means that we must always leave available the possibility for an element of mercy and consideration of the individual case if we are not only to apply the law, but also to deliver justice. Justice is a bigger concept than simply the law. It contains within it, as I said, the notion of equity. Law plus equity equals justice. We will not get justice unless we are prepared to consider the individual cases and individual circumstances that have led to a particular course of action.

I will not repeat my next point at length, because it has been said time and again. It is ironic that the Butcher case has become the catalyst for this legislative response. All members know that the Butcher case would not have raised the issue of mandatory sentencing because no conviction was recorded against the offender. The member for Pilbara quoted at length an article by Chief Justice Wayne Martin that scotches the theory that there is a real problem with the judiciary. I acknowledge, Attorney General, that some decisions at the Magistrates Court level have been very odd and should have been appealed. If there is a problem with them being appealed, that is what we should fix. We should allow those cases to move beyond the Magistrates Court to a superior court. That is the way to deal with it, not to put in place a system that completely and utterly lacks any equity.

I direct a comment to the member for Fremantle. I say this very genuinely because I remember getting this advice from a member on the other side of the house after I had made my maiden speech. I acknowledge that there is a little bit of arrogance about some of the things I said and that I had some contempt for those members on the other side.

Mr C.C. Porter: No!

Ms A.J.G. MacTIERNAN: It is true. I was presuming just a bit too much. The point was made to me—the fact that I remember this —

Mr P. Papalia: How long ago was that?

Ms A.J.G. MacTIERNAN: Some 16 years ago. I remember taking the advice seriously. That advice was to not make a presumption about members on the other side. The member for Fremantle talked about our lack of integrity. Many of us on this side of the house find ourselves in an immensely difficult situation because we fundamentally disagree with moving towards this totally inflexible system. By the same token, we are a group of people who have made a decision that we want to change society. That is why we got involved in politics. We decided that we could do that only if we engaged in collective action. We could not raise the school age to 17 or build a desalination plant or a railway unless we acted collectively and made a group decision. Believe me, member for Fremantle, it is not a matter of a lack of integrity. We try to garner the support of 50 per cent plus one of the population so that we can achieve good things for the community. Part of the price of doing that is that we do not have the same autonomy or luxury as the member for Fremantle. Please do not believe that this is a matter of us having a lack of integrity. We have made the decision, as a group, that on balance we want to support this legislation because we want to support our police, notwithstanding the many, many concerns that members on this side have about it. I am prepared to say that I will vote in favour of the legislation for those reasons. I have signed up to the Labor Party and Labor members have agreed to come together to make joint decisions. However, I will say that I would not be part of a party that in government would not include a provision that protects children and provides a manifest injustice exclusion. I would not be a member of this party if that were not our principle. I would have to leave the party if that were not the case. I would not go to an election with the Labor Party unless we were, as a group, prepared to make that our principle and our commitment. That is why we have done what we have done tonight. We have signed up to an agenda because this is how we believe we can most effectively make changes to our society.

MR M.P. WHITELY (Bassendean) [8.07 pm]: This is a difficult debate. I will echo the thoughts of many members on our side, notably the members for Victoria Park, Armadale, Mindarie and Pilbara, all of whom have expressed their personal opposition to this legislation but have indicated that they are bound by the decision of caucus. They are part of the collective, and it is that commitment to the collective that gives us our power and strength. Our commitment to those collective decisions has enabled us to achieve the great things that we have achieved. However, I am grateful that, at least in our collective, there is an opportunity to express our personal opposition to the Criminal Code Amendment Bill 2008.

I oppose the legislation because it is basically a populist response to a problem that it will do nothing to address. The Attorney General has not built a case for this legislation. To my knowledge, he has not outlined a single case in which an offender who had assaulted a police officer had not been imprisoned where this was an unjust outcome. He has also disingenuously allowed the entirely false connection to be made between the tragic circumstances of Constable Butcher and this legislation. There was considerable anger about the circumstances involving Constable Butcher. Other members have said before, and I will say again, that the situation of his personal circumstances and the failure to secure a conviction and subsequent penalty was the result of the failure to secure a conviction; it was not a result of a failure to imprison the offender. I got all the information I know about Constable Butcher from the media. I have seen the couple of seconds of mobile phone footage of the incident that led to him being severely injured. It was damning. I reached the same sorts of conclusions that most members of the public did in those circumstances. However, I make the point that I was not on the jury. I did not

sit in the court and hear all the evidence. Therefore, I am not qualified to make an assessment of the guilt or innocence of those who faced trial. I did not see all the evidence. Frankly, I do not know whether the jury got it right or wrong. However, I do know that this legislation has absolutely nothing to do with the circumstances that Constable Butcher faces.

The Attorney General has been happy to exploit concerns about the validity of the verdict. He has failed to address those concerns. He has failed to make a clear distinction and say that this legislation will make no impact on the circumstances of Constable Butcher. He has used a populist approach to promote this legislation as a solution to a problem that is completely unconnected to it. As I said, Constable Butcher's circumstances and the judicial outcome of that were a result of a failure to convict, not a failure to imprison.

Mr J.R. Quigley: And Constable Butcher's assailants were charged under a different section from what is before the Parliament tonight. That is why the legislation will not have any effect.

Mr M.P. WHITELY: Absolutely. I am not suggesting that the Attorney General went out and spruiked it in those circumstances, but he is a leader in our community. He is a senior person in the government, and he had a responsibility to not be disingenuous and to not allow that connection to be made in the mind of the public. He thought, "I can exploit this for cheap, populist political outcomes. Here's an opportunity to wedge the Labor Party. I don't really care about those circumstances and I don't care about the negative outcomes that come out of this legislation. I care more about the opportunity to score some political mileage." As I said, the Attorney General and the government have failed to show integrity. They needed to deal honestly with this issue, but they have allowed the exploitation and the misconceptions to further their own political agenda.

If the Attorney General had concerns about the validity of the verdict in the case of Constable Butcher, he should have outlined them and developed a legislative response that was targeted to deal with those concerns. However, as I have said, this legislation has absolutely nothing to do with it. The Attorney General needed to show why a conviction should have been made and how it could have been achieved. However, as I said, the Attorney General has allowed spurious connections between Constable Butcher's circumstances and this legislation to go ahead. In doing that, he has failed to make the case for mandatory sentencing by failing to outline a weight of cases in which there have been injustices resulting from a failure to produce a custodial sentence for an assault on a police officer. The Attorney General has simply not made the case for this legislation. Instead, he has used this legislation as a cynical opportunity for a populist approach.

The Attorney General and this government are basically taking the discretion away from judges without establishing the case that judges have abused that discretion. Currently, the system works because we have two guiding principles in the way that judges exercise that discretion. Firstly, we realise that judges sit through the full trial and they know the circumstances of every case. Secondly, and most importantly in this circumstance, we trust their professional judgement. They have been selected for that high office because of personal qualities, and we are prepared to trust their professional judgement when they have full access to the facts of a particular case. This legislation does not change the first element. It does not change the fact that judges still sit through a trial, assess all the evidence and know all the circumstances. The only difference that this legislation makes is that it means we no longer trust their professional judgement. However, the Attorney General did not offer, to my knowledge, a single case and he certainly did not build a pattern of evidence in which judges have failed in that exercise of professional judgement.

I am going to do something that the former member for Nedlands used to do and quote myself in my second reading contribution, but it is just because I want to be absolutely clear about my thoughts on the fact that I have absolutely no sympathy for those who assault police. I think far too often we make excuses. If in fact we had been raising the bar in this legislation but leaving some discretion in it, I would have been much happier with the outcome. In fact, I would have supported the outcome. In my second reading contribution I said —

> I have absolutely no sympathy whatsoever for yobbos who get full of grog, amphetamines or both, lose control and assault police. As far as I am concerned, they can be locked up for a very long time. I also have no sympathy for excuses. Far too often, drugs, alcohol or even a hard life or mental health issues are used as excuses for unacceptable behaviour. We need to have an approach that accepts very few excuses. However, I can imagine instances in which we could see people jailed, whom none of us, if we understood the circumstances, would want to see jailed.

The member for Rockingham gave an example of the circumstances that I raised in the consideration in detail debate when I talked about perhaps a parent of a child who had been injured or even killed in an accident with police. I can imagine those circumstances in which a father, in his anger and grief, strikes a police officer and causes injury to a police officer. Do we really want to see the potential for a parent in those circumstances to be

charged and imprisoned—not so much to be charged, because I can understand that the parent could possibly be charged, but do we want to take away the discretion of the judge who considers the circumstances of the case and enshrine at least six months' imprisonment for a parent under those circumstances? Having reflected on what the member for Mindarie said, let us take the example of a 14 or 15-year-old boy who was with his 12-year-old brother when his 12-year-old brother was killed or injured as a result of an accident involving police, and that young boy, that 14 or 15-year-old brother, struck out at police in a violent manner and caused some physical injury. Do we want to see circumstances in which the discretion that judges currently have is taken away from them?

I know that we can talk about prosecuting guidelines and all the rest of it, but to rely on the discretion that police have in charging is an abrogation of the responsibility of this Parliament. It is also dependent upon the reasonableness and the goodwill of the Commissioner of Police and senior police officers. We should not abrogate our responsibility in those circumstances. We should say that there are circumstances in which it would be grossly unjust to imprison particularly children, but also adults. We should leave that discretion in the hands of judges because they are professional people and because they sit through and understand the full circumstances of the case at every trial.

As was pointed out by the member for Rockingham, I do not have the legal background of others such as the member for Victoria Park, the member for Mindarie or the member for Armadale, but I understand enough about the process to know that there is a potential for gross injustice as a result of this legislation. I am extremely concerned that we are saying here and now that we know better the circumstances of every potential case in the future than will the judges who will sit in judgement of those cases. Again, to quote my own second reading contribution, I said —

> Do we really want to remove all the discretion of a presiding judge? Make no mistake, here and now we are saying that in all circumstances we have perfect foresight; we know better, here and now, than the judges who will be presiding on cases in the future, sitting through the entire case and learning the full circumstances.

I have heard nothing in the second reading debate or the subsequent debate that has caused me to change my view. In this legislation the government is saying that this Parliament right here and now knows better than judges who will be sitting on cases in the future. If the government were genuine in that belief, it would be the height of arrogance. But I think something more sinister than that is going on here. I think the government is being completely disingenuous in that belief. I think this is the height of populism. As I have said, I am bound by the decision of my caucus, and I accept that. However, I am extremely uncomfortable with this legislation.

Another argument that has been put by members opposite is that this legislation will act as a deterrent. I remember the contribution of the member for Forrestfield in the second reading debate. He asked: do we really think there is not a sufficient deterrent at the moment? Do we really think that people who are acting in a rage consider these things in a rational manner? I think that is the point the member for Forrestfield made; I am sure that if I am wrong he will get up and correct me. Reasonable people would expect that if they belt or assault a police officer, they will be sent to jail. That is certainly what I would expect, and that is certainly what I have brought up my children to expect. I know I have brought them up to understand that it is wrong and immoral to belt a police officer. However, I do not think this legislation will act as a deterrent, because even people who are not bothered by morality and who do not have a concern for the welfare of other human beings understand, if they are acting rationally, that if they belt a police officer, they will be given a custodial sentence. If we were narrowing the range of excuses that people can use, or if we were raising the bar for acceptable behaviour, I could understand that. However, to completely remove the discretion of a judge to take into account the personal circumstances of a person who has committed an assault on a police officer goes to the very heart of our justice system. I agree with the member for Fremantle that our justice system relies on the discretion of judges to consider the particular circumstances of the case. As the member for Mindarie has also said, this is very, very bad legislation. It may well result in the imprisonment of people whom none of us would like to see imprisoned. Even more disturbing than that, it may result in the imprisonment of children. Certainly none of us like to see children imprisoned.

However, the reality of the situation is that my vote will change nothing. As I have said, I am a member of a caucus that makes collective decisions, and I accept that responsibility. I will simply finish by saying that I am not comfortable with this legislation. In fact, given that I will be voting in the way that I will be voting, I will have to accept some responsibility for the circumstances that could arise as a result of this legislation. My vote will not be a determining vote. In fact, none of the Labor votes will be determining votes—if they were, this

legislation would not be going ahead. However, because of my commitment to the collective, and because of the fact that the Labor Party operates under these principles and we have an opportunity to thrash out these issues and reach a collective decision, I accept that I am bound by that decision, and for that reason I will be voting in the affirmative.

MR P. PAPALIA (Warnbro) [8.24 pm]: I am aware that we are constrained a little by time. A large number of members have spoken ahead of me, and I do not wish to merely echo all their sentiments. Nevertheless, I want to place on the record my views on the Criminal Code Amendment Bill 2008. During the second reading debate I put on the record my dislike for, and concern about, this legislation, and that was acknowledged by the Attorney General in his response to the second reading.

Dr K.D. Hames: It must have been a close vote in your caucus because so many of you are speaking against it!

Mr P. PAPALIA: I wish! I resent this legislation. I want to place clearly on the record that I resent the duplicitous, manipulative and dishonest manner in which this legislation was introduced into this place. This legislation was introduced on a day on which thousands of Western Australian police officers and their supporters were protesting at the front of this Parliament, not in favour of this legislation, but —

Mr R.F. Johnson: Yes, they were!

Mr P. PAPALIA: No, they were not, because when the minister and other people called for a chant to be taken up, it was ignored!

Mr R.F. Johnson: I did not call for a chant at all! How can you say that?

Mr P. PAPALIA: It was ignored!

Mr R.F. Johnson: Tell the truth in this place! They were outside this place because they were supporting this!

Mr P. PAPALIA: They were outside this place calling for support for police. I resent this legislation, because I have to come into this place and defend myself and pre-empt whatever I say with the obvious statement—the undeniable statement—that I support Western Australian police officers. Of course I support Western Australian police officers. I have a brother who is a Western Australian police officer. He has served for a lot longer than the minister has ever been telling us that we have to support this ridiculous legislation.

Mr R.F. Johnson: So are you going to vote for the bill? Are you going to support this bill or are you going to vote against it?

Mr P. PAPALIA: Therein lies the duplicitous, manipulative and dishonest manner in which this legislation has been introduced into this Parliament. All members opposite, who have reduced this debate down to whether we support mandatory sentencing, and, therefore, whether we support Western Australian police officers, are doing a disservice to this place and to themselves. They are being dishonest, they are being manipulative and they are being duplicitous, and they should acknowledge it.

Like the member for Armadale, I would like to respond to the comments made by the member for Fremantle earlier tonight. I commend the member. I must apologise, because I have spoken before now, and at the time I forgot to acknowledge and congratulate the member for Fremantle on her election to this place—well done, and well done in the speech this evening. I must also support the comments of the member for Armadale. We on this side of the house joined the great Australian Labor Party because we believe that is the best way of guiding the development of our state and our nation towards the ideals that we aspire to. We know that we have to be prepared to stand up and face the people and form government one day in the future.

Mr R.F. Johnson: It will be a long time, my friend!

Mr P. PAPALIA: The minister should not keep calling me that. As part of that commitment, we acknowledge that there is a discipline in our party. We have a debate in our caucus room, and, when a decision is reached, we follow that decision, in much the same way as members on the other side do. However, we do not hear members opposite criticise their own party very much. We do not hear them having a debate in public very often. We have not heard any of their backbenchers, who profess to have honourable ideals and aspirations, stand up on this occasion when they know in their heart of hearts that this legislation will have a disproportionate impact on the Indigenous people of this state, as they are the ones who are disproportionately represented in the corrective services system of this state. As indicated by the member for Armadale, we will be removing from the judicial system the discretion to deal in a fair way with these people who will be disproportionately impacted upon by this legislation. Members opposite are not speaking up about that. They are happy to go into the community and

portray themselves as having these ideals and aspirations. However, I do not hear them profess them now, and I did not hear them profess them on the day that 5 000 people stood out the front of the Parliament and called for support for police. I will tell members now that I was out there and I clapped when they called for support for police. But I did not join in the chant and I did not clap when they called for support for mandatory sentencing.

And none of the coppers did either. They tried to get a chant going, and no-one joined in because coppers are not chanters. I believe that a large number of Western Australian police officers are a little more sophisticated than they are given credit for by that buffoon over there who claims to represent them.

Mr R.F. Johnson interjected.

Mr P. PAPALIA: That man opposite is part of the reason why a good man, the Attorney General, has been compelled to introduce this legislation. The Minister for Police backed the Liberal Party into a corner when he was in opposition. When he was in opposition, he compelled the Attorney General to introduce this legislation when the Liberal Party got into government. This legislation will do no good for the police officers of Western Australia, it will not result in any better defence for police officers in Western Australia and it will not result in any more people going to prison who would not otherwise have gone to prison under current legislation. It is largely down to that man opposite; that is why he is interrupting me. That is why he is trying to disturb my train of thought and interrupt what I am saying.

Mr R.F. Johnson interjected.

Mr P. PAPALIA: The Minister for Police has single-handedly debased the debate in Western Australia over the past few years. I accept that the Labor Party must take some responsibility for responding in the way that it did when it was in government to the then opposition's arguments. The minister has lowered the debate. This is a retrograde step. We were making some progress. We were progressing towards a measured debate. One thing a member can do as opposition spokesperson on corrective services is refrain from making populist statements and attacking the minister on occasions just so that his attack can be on the front page of the newspaper, which is what the now minister did weekly. He lowered the debate in Western Australia. The Chief Justice of Western Australia painted the minister for what he is. The minister has lowered the tone of the debate in Western Australia. Shame on him! I do not support this legislation. I will not oppose it because that is our party's position. The minister and all of us will share the shame of this legislation.

MR M.P. MURRAY (Collie-Preston) [8.31 pm]: I will start my few words on the Criminal Code Amendment Bill by saying that I totally support every police officer in this state. I do not think anyone else in this place would have anything different to say. We know that in every walk of life there will be those who cross the line. That is one of the concerns that I have with this legislation. This is a one-size-fits-all model, and I do not think we can apply that to all walks of life. I have some doubts about the reasons that this legislation has been introduced, and I think that was well portrayed by a previous speaker, who said very loudly that the legislation is being used as a political football.

If this legislation is used wrongly to convict someone, I will certainly stand in this place and try to correct that wrong. If that happens, there will be egg on the face of members opposite. I believe that it will happen in time. People who should not go to jail will go to jail. It is my view that a person who does a stretch in jail often does not come out for the better. A few years ago a young fellow in Sydney was locked up for not paying a traffic fine and he was beaten to death. He went to jail and was beaten to death because he was 18 years old, he was a new inmate and he was full of himself and decided that he would take on a few people in a hard-core jail. He came out in a box. That is the last thing I want to happen in Western Australia under this legislation. I believe that it will happen if we are not careful. It will be incumbent on police officers to be tolerant of the absolutely rotten drunk who takes a swing, misses with three, falls over and does some damage to a police officer. It will be up to that copper to say that there was some reasonable doubt about the intent and thought processes of the person at the time. I do not believe a person should go to jail in those circumstances, even though, legally, he could be sent to jail. I have major concerns with the legislation.

There has been an issue about who will vote for this legislation. Members opposite have the numbers. They have put forward this legislation; it is their legislation. They should not try to belittle people on this side of the house. People on this side of the house have opinions and they are allowed to express those opinions. Members opposite should not try to rub the other side up the wrong way and ask where we are going on this. It is the government's legislation and members opposite need to remember that.

Mr R.F. Johnson: Can I just say something to you?

Mr M.P. MURRAY: No. It is not very often that the minister allows other people to comment. He tends to go on and on without saying anything of substance.

In this case, we have to be very vigilant about the way this will go. I believe that some time in the next four years amendments to this legislation will be brought into this house because of the misuse of this legislation. I hope that the member opposite, who is sitting there very quietly and listening—unlike others—will, if need be, bring amendments into this house to try to correct the one-size-fits-all model that has been put forward. I do not know what those amendments might be. That is certainly not my area of expertise; I am not across the legal side of things, as most members will know. The Attorney General should be very much on his toes if the legislation does not work. I hope he will be man enough to introduce legislation into this place to correct the wrongs, and maybe in that way someone who is in jail and should not be will be let out.

I will sit here and allow the bill to pass without a great deal of noise because my electorate has asked me to do that. It is my duty to represent my electorate to the best of my ability. I can show members emails and letters that have been written mostly because of the public hysteria that has been whipped up by some television programs showing the same images over and again. It horrified me to see some of that stuff. We saw images of coppers in Karratha and the copper who was paralysed. Those sorts of things should never happen. The cases went through the system. A lot of people do not cop that; they say that the system failed. The cases went through the system and the offenders were found not guilty. That is our system. But we should not impose mandatory sentencing on a person who is found guilty without giving any thought to whether that person had a reason for behaving in that way, such as a mental health problem. I have been approached by many people asking me to vote for the legislation. I do not feel comfortable with the legislation. I will take an interjection now.

Mr R.F. Johnson: I appreciate your comments tonight. I think they are genuine and from the heart. I appreciate the honesty with which you are delivering them. You are making a very valuable contribution. I understand your personal feelings and the feelings of your electorate about this matter. It is a pity that the member before you did not deliver his speech in the same way. There is no need to personally attack me. I am genuinely saying that I think your comments are genuine and from the heart.

The DEPUTY SPEAKER: Order, Leader of the House!

Mr M.P. MURRAY: I will finish by saying again that the police deserve the utmost respect from the community. Once that respect breaks down, we are headed to hell and back. We must support them. Will this legislation support the police? I do not think so.

MRS M.H. ROBERTS (Midland) [8.38 pm]: I, too, want to comment on the Criminal Code Amendment Bill 2008. I consider myself to be in a rather unique position in this house, having been opposition spokesperson for police for some four years and then, subsequently, Minister for Police and Emergency Services for five years. It was not a portfolio area that I chose for myself in the first instance; it was one that was allocated to me by our former leader, Dr Geoff Gallop. Over that time, though, I came to learn an awful lot about policing and police officers and the job that they do.

Over my time as Minister for Police and Emergency Services I learnt that the vast majority of police officers in this state do a remarkable job in exceedingly challenging circumstances. The vast majority of police officers in this state exercise the highest level of integrity and genuinely undertake their job as a community service to support the rest of us in what are often incredibly difficult circumstances—circumstances which many people in this house will never be exposed to.

Over that period of time I also learnt that there were a number of police officers that did not do the right thing—who were crooked, who were the bad apples—and they were dealt with. Under the provisions of section 8 of the Police Act 1892, the Commissioner of Police can exercise his loss-of-confidence powers and move to terminate the employment of a police officer. This current Commissioner of Police and commissioners before him, and no doubt police commissioners in the future, will make the very appropriate decision to initiate the termination of employment of some police officers if necessary. When I was minister, I was made aware of some awful incidents that police officers had been involved in, but they were a very, very minute proportion of people engaged in that occupation. In every occupation, whether politics, the law or in a trade—any profession—we will always find that there are people who are crooked, who are the bad apples, who do things that are corrupt. We need to have proper processes in place to deal with those people. Policing is a job like no other, and that is why special powers and special laws are in place in the Police Act to enable the commissioner to deal with the termination of the employment of officers so that we do not have police officers who do not have appropriately

high standards continuing in that role, and so that they can be dealt with outside the usual employee termination procedures.

During my time as minister, I attempted to visit every seriously injured police officer who was injured. I visited many of them in hospital and I visited some of them at their homes. That was certainly a chastening experience for me. I spoke not only to the officers but in many cases to their families who were either at home with them or who were visiting them in hospital. I spoke to a female police officer at the Mount Hospital who had been injured outside a hotel in Kalgoorlie; those injuries included having her head stomped on. As part of her surgery, she had to have her whole face peeled back and was in excruciating pain. I do not recall her age, but I recall she was in about her early 20s and had been looking forward to getting married in the immediate future. Her wedding, I think, had to be deferred because of her injuries. When she signed up to serve the rest of us by joining the police service, and on her graduation day, I am sure that is not something that she would have anticipated happening to her, nor would her brothers or sisters or parents or fiancé. But police officers put themselves in some potentially vulnerable situations and they need our full support and protection to uphold the law in those circumstances.

It is all very well to talk about other public officers, and of course I think, like everyone else in this house, that other public officers need support and protection. Of course teachers should be able to go to school and teach without threats or intimidation or violence. Of course nurses should be able to go about their duties without fear of being punched or hit or assaulted in any way. I acknowledge that nurses in particular, and any medical personnel working in our emergency wards, are often subjected to violence because of people who are perhaps affected by drugs or alcohol or mental illness, and they suffer the consequences of that. But on a daily basis, particularly on Friday and Saturday nights in some sections of our community and at some nightspots, police are routinely putting themselves in harm's way. Whether it is at a pub or a club or whether it is at another type of incident, when a dangerous incident occurs the community expect the police to step in and break up the brawl, to do the hard job, and to actually get involved in a dangerous situation.

If we expect police to do that, we have to provide police with commensurate support and protection. Some of my colleagues in this house have spoken of the imbalance that has occurred, whereby police are very often not afforded respect in the community. Examples of this are people who do not consider it to be any big deal to swear at a police officer or to assault a police officer. The rest of the community, the vast majority of law-abiding citizens in the community, want to see those people who behave in that manner dealt with. Yes, there may be special circumstances that are unavoidable in which an injustice could arise through the operation of this legislation when it is in place, but it is my view that the community expectation is that we show some solidarity with the police officers of this state by telling them that we will stand shoulder to shoulder with them and support them whilst they are doing the really hard work that we expect them to do when we ask them to go into situations of violence on a daily basis to protect the innocent. What choice does a police officer have when he turns up at a domestic violence situation when children's safety is at stake, for example, and someone is perhaps wielding a weapon? They have to intervene, but in doing so it is not reasonable to expect them to put their own lives in danger. The community expectation is that there is some deterrent and some penalty for people who determine to tackle or assault a police officer in those circumstances.

Like lots of new legislation, this legislation may not be perfect, but it is what the government has offered up. What I do know is that community sentiment is that we need to show greater support for our police officers and afford them greater protection. I believe we should be providing greater protection to our police officers, and that we do need to put in place measures that are a greater deterrent to those in the community who offend against police officers. I am well aware of the concerns expressed by some of my colleagues, who have said that injustice may result from this legislation, and some have claimed, in the course of this debate, that it could be reliant upon a particular police sergeant to determine whether charges are proceeded with or not. It is my view, though, that in circumstances in which a party felt aggrieved with the preferring of charges against a particular individual, it would be open to those involved to seek to have the matter reviewed by the Commissioner of Police, who would make a determination as to how reasonable it was to pursue the charges, knowing that there would be a mandatory jail term if convicted.

I have confidence in the Commissioner of Police being able to make that call. I know it is not routinely the case with most other laws but the police are an exceptional circumstance. Any Commissioner of Police, be it this one or one in the future, would use that power very wisely because nothing is surer than if that power were to be abused, the Parliament would withdraw the power. That is what will ensure that every Commissioner of Police will exercise these powers wisely. If they do not use the powers wisely, the powers will surely be withdrawn.

Western Australians, and indeed all Australians, have a very good sense of what is fair. What we have witnessed in the community in recent years is the way in which police officers have been treated and the lack of respect that they have been afforded. Given the job that they do and the way that they have to turn out day after day and night after night relentlessly to incidents that could endanger their lives, when they are having to risk injury on a daily basis, it is not reasonable for those of us in the Parliament not to afford them better protection than we afford others in the community. I know some in the community who say that they should not be afforded any better protection and some who say that they should not be a special case. That is not my view, and I do not believe it is the view of most of my constituents. My strong belief is that they should be afforded better protection and that there should be higher penalties for those who choose to assault police.

MR C.C. PORTER (Bateman — Attorney General) [8.51 pm] — in reply: I thank all members for their contribution to the debate, which has been going for some time, not merely tonight, but also at the second reading stage. If I might summarise the objections to or the lack of comfort with this legislation, it seems to me they fall into one of three categories. The first is that somehow this legislation will cause a significant or radical increase in the prison population, and particularly that significant increase will disproportionately affect Indigenous prisoners. The second is the argument put forward, not exclusively by the member for Mindarie but most strongly, that there are no examples of individuals who have assaulted a police officer under section 318, done the officer bodily harm and not been imprisoned when there are expectations that the community sentiment might be that they should be imprisoned. The third argument that has been raised is in effect, if I might summarise it in this way, that any mandatory sentencing is wrong in principle and that as a matter of philosophy it is wrong. The member for Fremantle mentioned the separation of powers as one idea that might buttress an argument that mandatory sentencing is simply philosophically wrong. There are other arguments that somehow it encroaches upon or shows a lack of trust in the judiciary, which is fundamentally wrong for this Parliament to do when enacting legislation.

I want to deal with those three arguments as I go through my response to the third reading debate. I particularly want to address some of the comments made by the member for Mindarie, the member for Victoria Park, the member for Midland and the member for Fremantle. The reason I seek to focus on their contributions is that they have been by and large completely consistent. Each of them takes a view which is slightly different from the others but which appears to me to be entirely consistent. I do not necessarily agree with the views that they have put, but I think that they have been intelligent and consistent views. It is interesting that many members have said, as is appropriate, that they are a member of a party and of a caucus and that they do not like, have great discomfort with or flat-out hate this legislation, but because of caucus's vote and approval of the legislation, they are willing to vote for it as a matter of party solidarity. As I listened to all those members, I wondered who in caucus actually voted for it.

Mrs M.H. Roberts: Did you work it out?

Mr C.C. PORTER: I did, but I am wondering who else. I take the point that the member for Armadale made about the member for Fremantle, which was that one should be careful with the use of the word "integrity". However, there is, if I might say so very gently, some degree of piousness about coming into this place and expressing a massive discomfort, but saying one is bound by caucus. Obviously, a majority of members in caucus felt at least comfortable enough to support legislation.

Mr W.J. Johnston interjected.

Mr C.C. PORTER: There is either support or there is not.

Ms M.M. Quirk: Qualified support.

Mr C.C. PORTER: Okay, qualified support, but nevertheless support.

Let me deal with the three arguments. First, a radical increase in the prison population is one reason that people might not embark upon this path; second, there are no examples; third, mandatory sentencing being wrong in principle, such as by virtue of the principle of the separation of powers. My view is that this legislation simply does not breach the doctrine of separation of powers, as it is known legally, or even in a broad political, philosophical sense. If it were the case, the minimum mandatory penalties for homicide, which exist in most jurisdictions and until recently existed in this jurisdiction, would breach the doctrine of separation of powers. They clearly do not in my view, and I think historically that has been shown. Minimum mandatory penalties are a move that is now being made in the United Kingdom Parliament for the carrying of edged weapons. They are imminent and are likely to be successful. If they occur, they likely will also not breach the separation of powers, in the same way that presumptions in favour of imprisonment, which operate in New South Wales and other

jurisdictions, do not breach the separation of powers. Drug trafficker declarations and the consorting, antibikie laws, which federal Labor is now imploring that all states adopt, again do not breach the separation of powers. Members might not like the legislation, but it does not breach the separation of powers. Indeed, a court sentencing for mandatory imprisonment does not breach what is known as the Kable principle; that is to say, it does not use executive power and is still acting as a judiciary in mandatorily sentencing someone. Let me stop at this point on this idea of separation of powers and what mandatory sentencing does, the criticism of it and have a little regard to what happened in 1991 in this Parliament. The member for Mindarie made some comments about his contention that mandatory sentencing of this type, insofar as it may affect juveniles —

Mr J.R. Quigley: I was appalled by 1991. That is why I came here to try to correct it.

Mr C.C. PORTER: I consider that it is important to think about that history just a bit. The point the member for Mindarie made was that potentially this is in breach of international obligations. I disagree with him in that respect. He read out proposed section 297(5), which states that if a young person is convicted of an offence against prescribed circumstances, notwithstanding the act, and in particular section 46(5a) of it, the court sentencing the offender must —

> … sentence the offender either —
>
> (i) to a term of imprisonment of at least 3 months, notwithstanding the *Sentencing Act 1995* section 86; or
>
> (ii) to a term of detention (as defined in the *Young Offenders Act 1994* section 3) of at least 3 months,
>
> as the court thinks fit …

The member's objection to the clause is noted, but the clause is a direct copy, almost word for word, of section 401 of the Criminal Code. That was the section that instituted mandatory penalties of 12 months' imprisonment for adults and juveniles following three-strike home burglaries. The Labor side of politics brought that mandatory sentencing into this house.

Mr J.R. Quigley: Shame!

Mr C.C. PORTER: I would say that it was a necessary and intelligent move at the time. There is no real enthusiasm on either side of the house to remove that from the statute books. I will refer to a transcript from *The 7.30 Report* shortly after the last time the Labor Party took government in 2001. The former member for Fremantle said —

> So-called mandatory sentencing in WA works this way—it only applies to the very serious crime of home burglary, breaking into someone's house and stealing their goods.

The presenter then went on to say —

> It was the previous Labor government, 10 years ago, which buckled to community pressure over home invasions by young indigenous offenders and introduced the law.

The last time that this jurisdiction considered and voted in mandatory sentencing, it came from the other side of the house, and it was a policy directly targeted at Indigenous youth.

Mr J.R. Quigley: And failed, because we have the highest rates in Australia!

Mr C.C. PORTER: Home invasions were a matter in which sentencing practice and principle was not meeting community expectations. I come from a position that there are instances in sentencing practice in which the practice does not meet community expectations. On this point, it is interesting to think about a recent appellate court case considering the matter in which a young baby, Grace Moorby, was killed by a drunk driver. During the course of considering that matter Justice Wheeler—I think it was—talked about the fact that there may have developed an inappropriate pattern of sentencing as it applied to motor vehicle manslaughter, dangerous driving and reckless driving causing death. These patterns of sentencing can and do occur. Member for Armadale, our ability to appeal them is limited by years and years of precedent; therefore, there is no quick fix along these lines.

Ms A.J.G. MacTiernan: Can I add something by way of interjection?

Mr C.C. PORTER: Yes, of course.

Ms A.J.G. MacTiernan: It would be possible—those cases the Attorney General referred to were all in Magistrate Courts—to have a provision that the decision could be reviewed. It would not just be appealed; the higher jurisdiction could consider the matter de novo. It would not just be dependent on whether the judge had supposedly gone outside the four corners of what was possible.

Mr C.C. PORTER: That is not impossible. However, the Sentencing Act 1995 has a sentencing guideline provision; therefore, it exists to an extent at the moment. It exists to a greater extent in a jurisdiction like South Australia, where the number of decisions that could be appealed under a sentencing guideline provision is greater.

Ms A.J.G. MacTiernan: But you could have a separate provision that related to situations in which a police officer had been harmed and a superior court would have an automatic right to consider that position de novo, not just an appeal.

Mr C.C. PORTER: It is not inconceivable by any stretch, and at the moment I am looking at sentencing guideline practices and how they work in South Australia. However, the fact is that it has not applied in this jurisdiction. I do not think we can have such legislation applying only to one category of offence. However, I take the member's point.

Ms A.J.G. MacTiernan: You can. This provision applies to one category of offence, so you could have this other category.

Mr C.C. PORTER: This is not a sentencing provision for the appellate process. I take the member's point; however, I am saying that sometimes practices of sentencing can go out of kilter. It is important to consider the fact that mandatory sentencing is a legal vehicle that already exists in this jurisdiction. Members opposite might agree or disagree with that.

Mr T.G. Stephens: That is a disingenuous argument in this area because the Attorney General knows from what has been put to him that there is no evidence of that.

Mr C.C. PORTER: Member for Pilbara, I intend to address that in a moment.

Before I move on to that, which basically is the argument put by the member for Mindarie and the member for Victoria Park, I say to the Leader of the Opposition that I am spending my time responding to the members on his left because I cannot see consistency in what he has proposed to the government. The Leader of the Opposition says that whilst he has some scepticism about the existence of political mandates, if ever there could be made a case for a mandate, this is one of those cases. However, the Leader of the Opposition then criticises the government for contracting the mandate away from "all public officers" but equally criticises us for not adopting his amendment, which would be totally contrary to the mandate! I understand that the point made by the Leader of the Opposition might be that this needs only a bit of discretion. However, when the government's mandate is for mandatory sentencing, it is difficult for members opposite to criticise us, on the one hand, for contracting from a mandate, but on the other hand implore us, effectively, to ignore it totally.

Mr E.S. Ripper: Once you have contracted the mandate and once you agree that some contraction of the mandate is legitimate, why would you not accept a small contraction in another area?

Mr C.C. PORTER: Because I see a difference between contraction and destruction of a mandate!

Mr E.S. Ripper: I do not see it that way. I see it as judicial discretion of last resort.

Mr C.C. PORTER: We disagree. The first two arguments that I will address from this debate are, firstly, that this legislation will result in a radical increase in the prison population, particularly the Indigenous prison population, and, secondly, that there is no evidence and no examples of it and therefore no need for it. Both those arguments cannot be simultaneously right. If there are no examples, no-one will be affected and there will be no increase in the prison population. Logically, it cannot be the case that both those arguments are correct. I hope to demonstrate in a moment that it was always the case that this legislation would affect some offenders, but it was never going to be hundreds of individuals. It is difficult to calculate and to assess with any precision—I will demonstrate why in a moment—the number of people this might pick up in a year. I would image it would be somewhere between 15 and 30, if that. It may well be fewer than 15, but I would have serious doubts that it would be anything like more than 30.

Mr T.G. Stephens: Have you ever tried to calculate how many people want to go to prison? If they want to do a crime that will guarantee they get there, you have created one!

Mr C.C. PORTER: That is a very different issue.

Before I move on to those two ideas that the legislation will do too much or nothing, I will return to this idea of Indigenous incarceration. As I said today in question time, when members opposite came into government in 2001, the Indigenous percentage of the prison population was 33.25 per cent; when they left government on 6 September 2008 it was 41.37 per cent. It is now 40.68 per cent. I do not dispute that the Labor government did a great deal to try to reduce that incarceration rate.

Mrs M.H. Roberts: How much did the raw number go up by?

Mr C.C. PORTER: The raw number increased from 3 112 on 16 February 2001 to 3 904 in 2008. It appears that what happened, based on what the experts in my department say occurred during that period—and at the moment—was increased activity in the criminal justice and policing sector, most notably due to radical improvements in policing techniques, CrimTrac, fingerprints, DNA capture and databases. This was a period of growth in the prison population. I know that the Labor government made great efforts to try to reduce that overall percentage, but it did not succeed. We need to look at this problem with some degree of realism.

The member for Pilbara said that we needed to get tough on the causes of crime—a great Blairite slogan!—and to look at the social causes, the social issues. We all agree with that —

Mr T.G. Stephens: No, you do not! You do not do anything about it!

Mr C.C. PORTER: Let me finish! The member for Pilbara said that we need a well-resourced and well-trained police force. The one thing that I can say, statistically, that will absolutely guarantee more prisoners—and likely a greater number of Indigenous prisoners—is more police.

Mr T.G. Stephens: That is nonsense.

Mr C.C. PORTER: It is a statistical fact.

Mr T.G. Stephens: I can tell the minister that good policing will be a good deterrent.

Mr C.C. PORTER: What I can tell the member is that all the statistics show that my department —

Mr E.S. Ripper: The more police, the more crime? Is that what the Attorney General is saying?

Mr C.C. PORTER: No. Crime exists in the community; it is simply that more of it is detected, prosecuted and convicted. That is a fact that everyone in this house must wake up to eventually. We cannot design policy around some kind of imaginary, arbitrary or perfect rate of imprisonment and work back from that. It does not work that way! In any event, that is probably tangential to this bill.

The two arguments are that either there will be a radical increase in the prison population or it simply will not affect anyone. The member for Mindarie set the challenge and asked for examples of individuals who under this legislation may likely be imprisoned, when under the previous system, in the absence of mandatory sentencing, that was unlikely. The member for Mindarie specifically asked me to look at examples post-27 April 2008.

Mr J.R. Quigley: I think that was fair because Labor had not done the job.

Mr C.C. PORTER: I understand that. Equally, the member supported amendments in this place that were designed to strengthen the provisions of section 318 of the Criminal Code, and that recognised there was something wrong at the time those amendments were moved and the legislation had not quite done its job.

Mr J.R. Quigley: It was because of politics at the time.

Mr C.C. PORTER: I understand that is the member's view. This is also about a pattern of sentencing. I will take a moment to explain why it is that the request to find the cases in which people would have gone under the new system is not necessarily the easiest thing in the world to achieve. There are several reasons for that: first of all, we are substantially amending section 318, "Serious assaults", and what makes the assault serious is that it is an assault on a public officer. In April 2008, the definition of "public officer" was amended. However, all the data that the Department of the Attorney General keeps on this offence does not go into the detail of specifying whether the public officer was a police officer, ambulance officer, fireman or a teacher; that is just the way the data has been collated over five or six years.

Mr P. Papalia: Would you not go to the Police Union?

Mr C.C. PORTER: I am getting there. We have some evidence from the Police Union that suggests which percentage of all assaults on public officers are assaults on police officers. That is because the union keeps its own record of assaults on police officers. That data tells us that 80 per cent of assaults under section 318—that is, serious assaults against a public officer—are on police officers.

Mr J.R. Quigley: Is that the union's data or your data?

Mr C.C. PORTER: That is the union's data.

Mr J.R. Quigley: The union wrote to me and said it had lost it all from the computer.

Mr C.C. PORTER: The police keep their own records of assault when the victim is a police officer. The police have provided this information to the department in the years 2005-06 and 2006-07. The police information reveals 2 903 cases when a police officer was the victim of an assault. The data from the courts over the same period shows that 3 583 charges were lodged under section 318(1)(d)—an offence against a public officer. This would indicate that some 80 per cent of assaults against public officers were in fact against police officers. We know that 80 per cent of the assaults under this section—give or take—are against police officers. This is an overview of the matter and is close to providing an answer to the question asked by the member for Mindarie. We can look at 2004-05, 2005-06, 2006-07, and 2007-08 in complete financial years and see how many serious assaults against an officer occurred for which the result was imprisonment. These results are interesting. In 2004-05, for all assaults of a public officer under section 318, of which we can assume 80 per cent are police, immediate imprisonment was the result in only 16.7 per cent of occasions. In 2005-06, it was 16.9 per cent; in 2006-07 it was 13.8; and in 2007-08, it was 14.5 per cent. Over that same time, the number of assaults attracting upwards, which is interesting when cross-referencing the article of the Chief Justice —

Mr J.R. Quigley: Do those results you are referring to involve the element of bodily harm?

Mr C.C. PORTER: I will get to that in a moment. When looking at the Chief Justice's views, it is interesting to note that the data shows that some of the significant increases have been in crimes of violent assaults, which is a great concern to the community. They were section 318 offences that were dealt with in the Magistrates Court. As we go to the higher courts—the District Court—there is a higher rate of immediate imprisonment. They are 65 per cent, 42 per cent, 46 per cent and 56 per cent for each of the years between 2004-05 and 2007-08. That is what one might expect. One would intuitively think that cases in which there was an element of bodily harm or significant bodily harm would be sent to the District Court. What the data shows is contrary to what I had expected. There is a relatively low imprisonment rate for assaults under section 318, being a serious assault against a public officer.

I now refer to grievous bodily harm. The problem is that it is only very recently that this section has had the public officer component in it, so the data does not go to public officers. The rates of imprisonment for grievous bodily harm, which is one of the highest offences on the statute books, in 2004-05, 2005-06, 2007-08 and 2008-09 were 67 per cent, 59 per cent, 68 per cent and 65 per cent. I thought that was quite low. Maybe other people have different sentencing tastes in these matters. I was amazed at that. In answer to the member for Mindarie's question, we went through all the cases we could find by virtue of statements of material facts and charges in the Magistrates Court and District Court that resulted in suspended imprisonment on ISOs and tried to work out which ones indicated bodily harm in circumstances when there was no immediate term of imprisonment. We became aware of 190 offenders since 27 April 2008 who have been sentenced to either an intensive supervision order or a suspended term of imprisonment in the Magistrates Court for a section 318 serious assault. That is, since the most recent Labor amendment. Of those, 51 received ISOs and 139 a suspended term of imprisonment. Thirteen of those statements of material facts appear to disclose bodily harm. I will go to them in a moment. We were also able to find—there are probably more cases, but these are the ones we were able to find—22 statements of material facts that would appear to have disclosed bodily harm during 2007-08—the financial year beforehand. These lists are not necessarily exhaustive. Of the 51 offenders who received ISOs since the Labor amendments, we are aware of six statements of material facts that resulted in convictions and appeared to disclose bodily harm. Again, that is not an exhaustive list. Prior to that time we are aware of eight statements of material facts pre the Labor Party amendments that appear to disclose bodily harm for charges that resulted in ISOs. Again, for suspended terms of imprisonment, eight were found to be post the Labor amendments and 13 were pre the Labor amendments. The reason this is a difficult exercise is that, because of the way section 318 is structured, the argument in court will not necessarily, or even likely or usually, be about bodily harm. Currently that is not of much significance in section 318, but it will be of great significance now, just as it will be at the charging stage.

In respect of the guidelines, for members who do not have a great degree of comfort in this legislation, I assisted the police in developing the guidelines to provide a safety net for us. Members can either accept or reject that. That is what it properly does in guiding police discretion on charge.

I will go to some examples of cases and some of the things that the member for Mindarie has asked for. As I said, there may well be more, but these are the examples that we have uncovered of an assault on a public officer. Generally speaking, they are police officers. It appears that there was bodily harm in many instances where immediate imprisonment was not the result. However, because bodily harm was not argued in each instance—it likely was not an issue on sentencing—I cannot tell members with precision whether it meets the Scatchard standard of bodily harm. I will go through a few of them. Offender Chinnery lunged at officers, threw several punches and kicks and was wrestled to the ground. There were deep grazes and bruising to the officer. Offender Christie was arrested for an outstanding warrant and began to struggle violently —

Mr J.R. Quigley: What was the outcome of the grazing?

Mr C.C. PORTER: An intensive supervision order was issued. Offender Christie, who was arrested for outstanding warrants, began to struggle violently and struck the officer in the face. There was a blood nose and a cut to the bridge of the nose. I will not read all the cases, but I will provide them to the member for Mindarie. I am giving members an example of some of the cases that I think are indicative.

In the case of offender Hunter, a female police officer requested the offender to drop a broken drinking glass. The offender threw the broken glass at the officer and punched her in the face with considerable force. The female officer received a chipped front tooth, swollen nose and bruising. I will rest on that before continuing. The member for Midland raised the interesting point of imbalance. The reason I think there is a need for this legislation, but nevertheless not such a need that it means hundreds of people will go to jail who would not otherwise have gone to jail previously, is that that female officer goes home, looks at her face and chipped tooth in the mirror and wonders what happened to that offender. She knows what happened to the offender and the community knows what happened to the offender. There is a disjoint between the community's expectation and the sentencing outcome. That is why there is a necessity for the legislation.

Offender Redmond, while being arrested for disorderly conduct, struck the police officer in the face, causing pain and discomfort. In the subsequent struggle to arrest the offender, the police officer received a cut. The police officer experienced pain and discomfort, and received a two-centimetre cut. Again, I think it would probably meet the different definition, although it is hard with the statement of material facts —

Mr J.R. Quigley: Was it pleaded as bodily harm?

Mr C.C. PORTER: There is no pleading of bodily harm in these matters.

Mr J.R. Quigley: We have to say to the magistrate that we are relying upon the aggravating circumstances.

Mr C.C. PORTER: But it is not an aggravating circumstance in the section, member for Mindarie. It will become an aggravating circumstance in effect because of the fact that it is now what will trigger the mandatory penalty.

Mr J.R. Quigley: They could have charged assault occasioning bodily harm.

Mr C.C. PORTER: They could have, but did not. This is under section 318. It is a good point. Currently, all assaults against a public officer, whether they are simple or bodily harm, are generally not charged as an assault simple or an assault bodily harm; they are all charged as section 318 offences whether there is bodily harm or not. The bodily harm argument is not a live argument at present in section 318. That is why I cannot tell the member specifically whether or not there was an actual determination by a magistrate about whether the magistrate found that there was bodily harm. I am reading examples of cases where it is more likely than not—highly likely—that bodily harm would be established, based on the statement of material facts that I have gathered for each of these offences.

Mr T.G. Stephens: Were any of these cases appealed upwards?

Mr C.C. PORTER: They were not. The reason why a determination would have been made—if I were giving advice on these cases, I would have given this advice also—is that as the precedents for sentencing presently stand, it could not be argued that the intensive supervision order or the terms of suspended imprisonment were manifestly inadequate, which is what would have to be argued to be successful.

Mr J.R. Quigley: Is it not a fact that if the person pleads guilty to assault simplicita, not bodily harm, and then contests the statement of material facts, the sentencing judge has to give him the benefit of the doubt unless the prosecutor pushes on to prove the contested fact?

Mr C.C. PORTER: Of course, but practically speaking, it is highly unlikely that an offender would ever do that because within the context of section 318, it just does not substantially matter as things stand presently.

Mr J.R. Quigley: These ones might not have admitted that they caused that injury.

Mr C.C. PORTER: I agree with the member. This is the best that can be done. An assault occasioning a chipped tooth or a bloodied nose is likely going to be bodily harm. While I am on my feet, I will read a few more cases. The member for Mindarie referred to the case of Dylan Craig Stevens. The offender was arrested for disorderly conduct and while the arrest was underway, he struck the police officer on the back of the head with a beer stubbie and then kicked the same police officer repeatedly as his partner attempted to restrain the offender. There was pain and swelling to the back of the head. That may or not be considered bodily harm, if it were argued in the courts, although it appears to me on the statement of material facts that it probably was. My argument is that the community has an expectation that if a police officer gets smashed in the back of the head with a stubbie and that causes the police officer pain and swelling, the offender should receive a term of imprisonment. That is the crux of the argument.

Mr J.R. Quigley: What if he's raising three kids?

Mr C.C. PORTER: As the member points out, that is the disagreement that he and I have. That is a disagreement about community expectations and about sentencing, but it is simply a difference of views. However, what the member asked me to do was to go to him and say, "Can I show that these things occur?" and they do occur.

Mr J.R. Quigley: I do a Danton to your Robespierre.

Mr C.C. PORTER: Excellent.

Mr J.R. Quigley: I'm the man of moderation and Robespierre is the man of —

Mr C.C. PORTER: I do not know what that means, but it scares me.

Mr J.R. Quigley: Robespierre was the prosecutor of the court of Versailles.

Mr C.C. PORTER: I will give the house some more examples. I refer to the case of Edgar. Police attended a domestic dispute. As police attempted to enter premises, the offender swore at police, and swung the door violently and directly at the officer's face. The door slammed on the officer's hand. There was a cut requiring medical attention. In the case of Fermaner, the offender became violent towards police after her uncle was arrested. She punched an officer in the mouth. There was a cut lip and bleeding. In the case of Marsh, the police attended a domestic dispute. The offender was arrested. The offender kicked the arm of the officer, and the impact knocked the officer to the metal door cage, and there were lacerations and bleeding. In the case of McDonald, the offender exited a bus and was involved in an altercation with the bus driver—this is a bus driver case. The transit officer intervened. The offender grabbed the transit officer's jacket and punched the officer in the face. A scuffle ensued. The offender repeatedly punched the transit officer in the face until another officer approached and assisted the first officer. There were cuts and bleeding to the nose, and bruises, bleeding and soreness within the mouth. That would meet the standard required for bodily harm. The result of that was a suspended sentence. It goes on.

This was not an easy exercise. I thank the member for Mindarie for asking the right questions. I can say to the member that there are probably between —

Mr J.R. Quigley: Can you table —

Mr C.C. PORTER: I will not table it. It is in a form in which I will give the member the statements and the material facts that back that up.

Mr J.R. Quigley: I call upon the member to table it.

Mr C.C. PORTER: They are notes. I will give them to the member for Mindarie. However, let me say this also: the member has mentioned children at some length.

Mr J.R. Quigley: I have. That's my Custer's last stand.

Mr C.C. PORTER: I have not been able to do the same exercise with juvenile offenders, and there are reasons for that. Because of the way in which the information is given out, even to the office of the Attorney General, it is not the easiest thing in the world to do. I undertake to do that exercise. I have spoken to the Premier about that exercise. In answer to the member's questions, I have given myself, and I hope my side of the house, some comfort that we are addressing a need by virtue of this legislation. The member will note that there are not any grandmas pushing prams in this lot. These are serious offenders. I undertake that if the information is not

sufficient for juveniles, as I believe it is for adults, I will speak with the Premier about the possibility of constricting the legislation's application to juveniles by amendment in the upper house.

The ACTING SPEAKER (Mr P.B. Watson): The question is that the bill be read a third time. All those in favour say aye; against. I think the ayes have it.

Ms A.S. Carles: Divide.

The ACTING SPEAKER: It is too late.

Question put and passed.

Bill read a third time and transmitted to the Council.

Several members interjected.

The ACTING SPEAKER: The vote was carried. There was no dissention, so there was no division.

Point of Order

Dr K.D. HAMES: On a point of order —

Mr T.G. Stephens: Don't you want your legislation to go through?

Dr K.D. HAMES: Yes, but I think the member needs to be given a reasonable go.

Mr R.F. Johnson: She did say "no" apparently.

Dr K.D. HAMES: I had difficulty hearing, but the members on my right said that she definitely said "no" and called "divide". To be fair —

Ms A.J.G. MacTiernan: We didn't say "no". There was not a contest—not a single voice.

Mr J.M. FRANCIS: I am perhaps sitting a little closer to the member, and I clearly heard her say "no", and I clearly heard her call "divide".

The ACTING SPEAKER: I clearly said, "All those in favour say aye", and "Against". I did not hear a nay. Therefore, I made the decision and the decision stands.

Ms A.S. Carles: Just for the record, I say no to this legislation.

The ACTING SPEAKER: Excuse me. The member cannot stand and just talk if she wants to; I am sorry.

House adjourned at 9.25 pm