

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

ACTS AMENDMENT (ASSAULTS ON POLICE OFFICERS) BILL 2008

Second Reading

Resumed from 19 March.

MR G.M. CASTRILLI (Bunbury) [4.06 pm]: I support the member for Hillarys' private member's bill. This bill will ensure minimum mandatory sentences are introduced for offences involving serious assaults on police officers and other public officers and, if a person is then found guilty, he will not be able to have the offence recorded as a spent conviction. I support that and I fully endorse what the member for Hillarys is doing.

I have a great deal of respect for our police, the very dangerous job that they have and the very important work they do. I believe to be a police officer requires a very special person. I certainly would not be able to do their work. I certainly do not want to do their job, nor would I ever contemplate doing their job. The police are our agents in the field. We expect everything from our police. We want their protection, we demand their protection, and we expect our police to put their lives on the line every day as part of their job. We expect them to respond immediately; however, they are not afforded protection in return. That protection is what they deserve and need.

In September 2006, as we all know in this house, I supported the member for Murray when he introduced the Police (Compensation for Injured Officers) Amendment Bill. This bill has not been advanced by this government since it was debated. That was in 2006. Police officers in Western Australia are not eligible for the usual workers' compensation if they leave the police force with residual illnesses or injuries that arise from carrying out their duties.

We have to ask the question: does this government support our police? I would have to say the answer is clearly no. We are all aware of the totally inadequate amount of compensation awarded to Sergeant Shane Gray through the Criminal Injuries Compensation Act. Sergeant Gray was carrying out his duties in January 2006 when he was severely injured and was lucky to survive an attack from a very dangerous man who was wanted for the double rape and murder of two young women.

We need to support all our police officers right across our state. We need to demonstrate to them that we actually care and support them. We need to show them and demonstrate to them that by passing this bill we are sending a clear message to the community that if a police officer or a public officer is seriously injured the offender will go to jail. Assaulting a police officer is happening all too frequently these days. It is just not on; it has got to stop. We need to get serious about this whole issue. If somebody is duly convicted of seriously injuring a police officer or a public officer, after going through due process, then he should go to jail. It is as simple as that and there should not be any question about it.

In the south west in the past financial year there were 50 assaults on police, and 16 assaults have already been committed this year. However, the running sheet for the perpetrators who are being dealt with by the courts shows fines and suspended sentences that do not reflect the crimes. This sends the wrong message to the police. When one person is fined \$500 for not wearing a seatbelt while another person is fined \$400—this was the decision handed down by the court in July last year—for poking a police officer in the eye with a lit cigarette, the situation is totally ridiculous. The old saying must come into play: "When you do the crime, you must serve the time." We need to bring some commonsense back into our so-called justice system. Instead of being called a justice system, it should be called a legal system.

I understand that there are mass complexities in the legal process, but members in this place have the power to stem the surge in police assaults by passing this bill. There is a shortage of police across Western Australia and more pressure is being put on those serving now. We are recruiting police officers from other countries. In addition, we are trying to recruit new officers locally. If we do not protect or support them, they will be wondering what they are doing in the job.

I will mention some of the instances that have occurred in the south west. On Christmas Eve last year two police officers in Harvey had to face the real threat that they had been infected with hepatitis C after being spat on by an offender who knew that he had a highly infectious disease. He knew he was putting the lives of those officers at risk. The social and emotional implications for officers put in that situation are huge. The two officers had to live with that threat hanging over their head for three months. However, the threat hanging over the head of the perpetrator was much less. He was not sent to jail; instead, he received an eight-month suspended sentence.

On 28 November last year an offender punched an officer in the face and shoulder and he received a \$100 fine and a good behaviour bond. In Bunbury in September an officer was punched in the chest and the offender received a \$300 fine. In Margaret River in October an officer was punched in the face and scratched in the eyes and the neck and the offender was allowed to go free with a 12-month suspended sentence.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

In another instance, while police were in the process of restraining the accused on the ground, she proceeded to bite a sergeant on his lower left leg. The police had to resort to physical force to make the accused release her grip on the sergeant's leg. The accused actions caused the skin to break on the sergeant's leg. He was caused considerable discomfort and marks were left on his leg from the accused's teeth. The sergeant sort medical attention from a general practitioner. Blood tests were taken and immunisation boosters were given. By her admission, the accused had hepatitis C. The accused was conveyed to the police rail unit, where she was processed and the present charge was preferred. She appeared in the court 11 times before eventually being sentenced on 26 July last year in the Perth Magistrates Court and receiving a \$700 fine. This is despite her having an extensive criminal record, which is 35-plus charges, and the seriousness of that assault.

Our police are forced to deal with these kinds of circumstances day in and day out. Our police officers are protecting the community, but the state government-controlled justice system is not protecting them and this must be rectified. Police officers are fed up with this sort of leniency. Members on this side of the house are sick of it. The public is fed up with these ridiculously light and meaningless sentences. At all the meetings in Bunbury that I have attended the issues that continually arise are antisocial behaviour, breaking and entering, and lack of respect. The police are trying to enforce the law to protect the community. The police are the first people the community turn to when things go wrong. However, with these ridiculous sentences, we are sending a clear message that we do not value the police as we should. Therefore, we are promoting a lack of respect. We can turn that around by supporting this bill.

I congratulate the member for Hillarys for bringing this bill to the house. As the shadow Minister for Police and Emergency Services, I know how much respect he and the other members on this side of the house have for our police.

MR J.E. McGRATH (South Perth) [4.16 pm]: Mr Acting Speaker, what a disgrace. We have before us the Acts Amendment (Assaults on Police Officers) Bill 2008, which provides for the safety of our police officers and, apart from you, Mr Acting Speaker, there are six out of 31 government members in this house. I am pleased that the member for Yokine, a former police officer and a respected one as well, is in the house.

Mr J.A. McGinty: There is not one member of the National Party in attendance.

Mr J.E. McGRATH: They are in the government's coalition, not the Liberal Party's.

Dr J.M. Woollard: Plus one Independent Liberal.

The ACTING SPEAKER (Mr P.B. Watson): Members, can we get back to the bill.

Mr J.E. McGRATH: Like the member for Bunbury, I support the bill introduced by the member for Hillarys. To recap, this bill provides that a minimum mandatory term of imprisonment of not less than nine months be imposed in circumstances where a public officer is assaulted and, as a result of that assault, bodily harm is inflicted upon the public officer; that a minimum mandatory term of imprisonment of not less than 12 months be imposed in circumstances where a public officer is assaulted and, as a result of that assault, grievous bodily harm is inflicted upon the public officer; and that the summary conviction penalty for serious assaults on public officers be a minimum mandatory term of imprisonment of not less than three months. The bill also provides that an offender who is guilty of seriously assaulting a public officer will not be able to have the offence recorded as a spent conviction.

I am sure that members agree that anybody who assaults a member of our police force should be imprisoned. At the moment, that is not happening. Why are stronger laws needed to protect the police? In the eyes of the public, the authority of the police force is being undermined by the court's inability to justly punish offenders who assault police officers. The sentence that is imposed must act as a general deterrent against similar events occurring in the future. We all grew up with respect for police officers, but somewhere along the line that respect has gone. When we were very young and were at school, we feared police officers, and later on we respected them, but that has disappeared.

The Victorian Sentencing Manual states that attacks on government officers are to be considered by the courts as among the most serious categories of murder. The Victorian case of *Debs v Roberts* involved two police officers who were shot by two men trying to avoid apprehension. The judge said —

The proper sentence for the murder of a police officer in the execution of the officer's duty, in order to escape apprehension for serious criminal conduct, is life imprisonment. Upholding the law requires it. Protection of the police, and protection of the community they serve, require it.

The judge went on to say —

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

A safe and functioning society depends upon its police force. An attack upon a serving police officer is an attack upon society itself.

I am sure we all agree with that. Violence against police officers correlates with an increase in the number of police officers leaving the force. Unfortunately, I am not talking about isolated cases. I was told that there were 14 assaults in Northbridge in one week in March this year. Of those 14 assaults, six were against police officers. On 11 March 2008 *The West Australian* reported that there had been four attacks on police officers over the previous weekend. During one of those attacks, an officer was king-hit and choked. His partner was struck twice in the face. An off-duty constable was knocked unconscious and then headbutted, kicked and punched as he lay on the ground. Another officer was kneed and punched. What do such attacks do for the morale and job satisfaction of our police officers? On 20 January the *Sunday Times* reported that Western Australia Police is losing more than one officer a day. Apart from the personal trauma that is involved when a police officer leaves the force, this amounts to a loss to the public of both experience and money, because it costs money to train more officers. According to Mike Dean from the Western Australian Police Union, it costs between \$80 000 and \$100 000 to fully train and equip an officer. The *Sunday Times* also reported that while police chiefs are confident the recruiting problem has been solved, the Western Australian Police Union is not so convinced. The force lost 391 officers last year. In 2003 that exit number was only 206. Fortunately, 564 officers graduated last year, adding an extra 155 officers. What do those officers have to look forward to when they embark on a new career as an officer who protects the community? New officers are confronted with a barrage of reports about police officers being the victims of violence and life-altering injuries. How will this affect the departure rate from Western Australia Police? There is no doubt that police are being sent to the front line to combat an increasingly violent society. Statistics show that violent crime and antisocial behaviour among the youth of today is growing at an alarming rate. This is a very serious problem.

Let us look at some recent examples of violence against police officers. We all know about the case involving Constable Matthew Butcher. He is suffering from paralysis, possible permanent brain damage and other severe injuries following an incident outside a Joondalup pub. Constable Butcher was bashed in early February 2008. Another case that was well publicised involved two men who were convicted of assaulting three police officers at a Meekatharra hotel. One of those officers was a policewoman. She was kicked and stomped on—how disgusting. The next example highlights the sentencing situation in our state. Two police officers were attacked near Herdsman Lake, which is in the northern suburbs. The 43-year-old offender put one officer in a headlock, dragged her along the ground, removed her Taser stun gun and fired it into her body. He doused her in capsicum spray and then went after her partner. He gouged her partner's eyes while trying to remove his pistol. What penalty did he receive? He received a 12-month community-based order. What a disgrace! That is a joke.

Mr R.F. Johnson: The Minister for Police and Emergency Services said that this sort of thing doesn't happen.

Mr J.E. McGRATH: It will be interesting to hear what the minister says.

Several members interjected.

The ACTING SPEAKER (Mr P.B. Watson): Order, members!

Mr J.E. McGRATH: In spite of that type of soft penalty, the Premier has repeatedly rejected calls for mandatory jail terms for people who assault police officers. He said that judges need flexibility. We understand that. However, if a sportsman put a hand on an umpire or pushed an umpire—I refer to sport, because that is the field in which I was involved during my career as a journalist—he was out for a long time. If a sportsman assaulted an umpire, he would never get back into the game; his career would be over. Assaults on police officers should be regarded in a similar way. A police officer should be untouchable. Police officers are there to do a job. They should be able to do their job. If a police officer behaves improperly, he will have to go through a certain process. Where is the flexibility for our police officers? I refer to a case that happened on the foreshore in my electorate when a person used his mobile phone to photograph an officer. This case is unbelievable. The police officer had an offender on the ground. The situation was rather difficult. I think the incident happened during the Skyshow, an event that is always a nightmare for police officers. The officer had the guy on the ground and he was seen to give him a bit of a short-arm jab. Someone produced a photograph of the incident and the officer had to go through a departmental inquiry. His name was printed in the media and he was put under undue stress. That is the society in which we live today. Police officers have to carry out their duties whilst abiding by a strict code of conduct. When the member for Yokine was active in the police force, police officers did not have to follow such strict codes of conduct. What happens to officers who abide by a strict code of conduct? They are assaulted at a moment's notice by society's low-lives.

Another situation involved transit guards and the Rail, Tram and Bus Industry Union. We have all seen the disgusting footage of transit guards being attacked by thugs at the Perth train station. The Western Australian Police Union wants train transit guards and the police rail union to be merged into Western Australia Police.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

What sort of protection will they be afforded if we do not introduce mandatory sentencing for these sorts of crimes? Anyone who bashes or assaults these public officers while they are going about their job should go to jail. Police officers have been let down by judges and the courts.

In closing I will say three things: first, anyone who assaults a police officer should be imprisoned; second, the judiciary has let down police officers and the community; and third, this legislation addresses that anomaly and should be supported by the government.

MR C.C. PORTER (Murdoch) [4.27 pm]: The Acts Amendment (Assaults on Police Officers) Bill relates to the single most important public policy issue in this state. It is also the single biggest difference in that policy between the two major political parties that sit in this house.

As a lawyer, I believe that there are very rare occasions on which we should consider using minimum mandatory sentencing as a tool. The opposition's Acts Amendment (Assaults on Police Officers) Bill will have the effect of providing a minimum mandatory sentence of 12 months when grievous bodily harm is committed against an officer; a minimum mandatory sentence of nine months for assault occasioning bodily harm when harm is occasioned; and a minimum mandatory sentence of three months for an assault occasioning bodily harm when the sentence is handed down in the Magistrates Court.

We should introduce minimum mandatory sentencing only in situations in which there is a problem of undeniable, agreed and crucial public significance and in which minimum mandatory sentencing is more effective than all other nominated alternatives. That should always be the rule when deciding whether to implement mandatory sentencing. To determine whether it should be used here and now, we must understand the problem and the nominated alternatives that are said to be able to improve the situation. I will outline the problem clearly for the house.

Our society has moved on from the stage it was at 15 or 20 years ago when not only were police officers respected, but also their safety, by virtue of the mere wearing of their uniform, was sacrosanct. At some point we moved to a stage of sad indifference towards the authority of police officers. We have now reached a completely different stage. If people speak with attending police officers, they will be told that what police officers all too often face is a situation of positive, active and palpable contempt for their presence. That is a fact. The manifestation of that contempt is very real. From the point of attendance to the point of arrest, police face escalating abuse, aggression and physical violence. I refer to the case of *Cutter v R* and to the dissenting judgement of His Honour Justice Kirby. This has always struck me as an intriguing description. In describing an offender who stabbed a Western Australian police officer in the throat with a knife, he said that the offender had a past history of passionate antipathy to the police. That is a very interesting, euphemistic use of legal language. That is a description of what is commonly known as a cop hater. In debating the problem of violence against police, I cannot put it any simpler than this: it used to be the case 15 or 20 years ago that police would only face cop haters who were hardened criminals who had constantly come in contact with the criminal justice system. The problem that we now face—and it is a real problem—is that every time police attend perhaps at a suburban party in the northern suburbs, every third or fourth attendee at that party, fuelled by alcohol and informed by years of undisciplined and intemperate behaviour, becomes a cop hater. That means that the attending police face ever-escalating situations of violence and potential violence. It is interesting that some members who have spoken today have talked about some of the ways—albeit minor ways—in which Parliament has contributed to that problem, one example is by expanding the reach of equal opportunities legislation into the appointment of police, which I acknowledge is proper, appropriate and practical. However, that legislation has decreased the physical size and attributes of police. No-one should be under any illusion that those things did not previously contribute significantly to the authority that police had when attending the scenes of offending.

Parliament has also placed greater scrutiny on police in the discharge of their functions than existed 10 or 15 years ago. Again, that is quite appropriate and proper, but it has its effect.

The most significant effect that Parliament has had in contributing to the problem is that it has lost control over sentences handed down to those who assault police, and particularly those whose assault on police is at the bottom end of the hierarchy of assaults—below that of doing grievous bodily harm—but whose assault does bodily harm to police. I do not think either side of this house would disagree that there is an overarching disparity between the community expectation of an appropriate sentence for those who assault a police officer to the level of bodily harm, and what is actually happening.

The question before this house is: how can Parliament assert itself in the sentencing process? If, as it appears, there is agreement from both sides of this house that sentences need to be stiffened, how can that come about? How can it be achieved? Two clear legislative alternatives are before this house, and it is worth examining—albeit briefly—what they both are.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

This is Labor's alternative in a nutshell: it wants to increase maximums—not something with which the opposition takes dispute. In effect, the maximum penalty for assaulting a public officer to the level of bodily harm, but not in circumstances of aggravation, will be raised from a real penalty under the old system of 6.6 years to a maximum penalty of seven years. The summary penalty for offences that, under the old system, could possibly be meted out by a magistrate of three years' imprisonment or a fine of \$36 000 would remain the same, meaning a 0.4 of a year increase for assault on a public officer resulting in bodily harm, not in circumstances of aggravation, which is at the end of the spectrum where the real problem lies. Secondly, aggravated assaults undertaken whilst the offender is in company or is armed will be increased from 6.6 years to 10 years. It used to be case that there would be a penalty in the Magistrates Court of three years' imprisonment or a fine of \$36 000. Under the government's proposal, that can no longer be dealt with in the Magistrates Court. Thirdly, for an assault occasioning grievous bodily harm to an officer, the maximum will be increased from an effective 6.6 years to 14 years. The opposition acknowledges that that is a considerable stiffening of the maximum penalty. I will tell the house a hard and unpalatable truth: what effect will increasing maximums have?

Mr M.J. Cowper: Zero!

Mr R.F. Johnson: Nothing!

Mr C.C. PORTER: That may be slight hyperbole, but the effect will be near to zero. Increasing maximums has not had, in comparable areas, the effect of significantly increasing penalties at the lower end of the scale. What is more, the real problem lies not at the grievous bodily harm level, where the maximum penalty is to be increased from 6.6 years to 14 years, but at the lower end of offences, which represent disrespect for the authority of the police uniform. At that level the maximum penalty will be increased by 0.4 of a year. When I say that a large increase in maximum penalty will have negligible effect, 0.4 of a year will have zero effect.

Mr R.F. Johnson: That is exactly why they introduced that legislation —

Mr C.C. PORTER: Part B of the Labor plan is to move some, but not all, of the sentencing for assaults on public officers from the Magistrates Court to the District Court. I have heard the Minister for Police say on many occasions when he has heard examples such as the officer's own Taser being used upon her, "Don't worry, because under our plan that will be lifted to the District Court. A District Court judge, not a magistrate, will sentence on those facts." The situation will be that some, but not all, assaults will be sentenced by District Court judges, rather than magistrates.

Dr G.G. Jacobs: Does it increase the penalty?

Mr C.C. PORTER: No, it does not increase the penalty, which is the hook. Previously, an assault on a public officer could and often would be dealt with—if it were not a GBH offence—by a magistrate. Under Labor's proposals, an aggravated assault on a public officer will need to be dealt with by a District Court judge. If it is an assault to the level of bodily harm but not aggravated; if bodily harm is occasioned to an officer but by someone who is not in company or using a weapon—and I can assure members that that happens—that will still be what is called an either-way offence, which can still be dealt with in the Magistrates Court. All of that is a moot point in any event, because the rationale that simply because an offender, *ceteris paribus*—on the same set of facts—has been sentenced by a District Court judge rather than a magistrate is going to ensure imprisonment as the disposition is simply a nonsense. I say that if, as it appears, this house and the people of this state are dissatisfied with the sentencing being meted out in the Magistrates Court at present, simply moving some sentences, but not all, up to the District Court is not going to solve the problem. I will give members one example, which I think is probably the most interesting because it is the least hyperbolic of many I have seen.

This letter was sent into the police union, as I understand it. I will not read out the names of the individual. It states —

\$700 DESPITE EXTENSIVE CRIMINAL RECORD OF 35+ PLUS CHARGES

While police were restraining an offender on the ground who was under arrest in November 2006 she bit one of the officers on the left lower leg and police had to resort to physical force to make the accused release her grip.

The offender's teeth marks were left on the officer's leg and the skin broken by the bites with blood tests and immunisation boosters then being required. By her own admissions, the accused had hepatitis 'C'

She appeared in court 11 times before eventually being sentenced in July 2007 in Perth Magistrates Court, and receiving a \$700 fine.

I would like to see how that situation fits into the Labor Party's proposals for reform. It was a bodily harm offence, not a GBH offence; it was not occasioned in circumstances of aggravation, so the grand total of increase

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

in potential maximum penalty is 0.4 of a year, and it could still be sentenced in the Magistrates Court—in any event it would not be improved if it went off to the District Court. The sentence is not improved because there is a range of discretion. If members do a scan of Supreme Court decisions, single-judge appeals over the last seven years—appeals of matters that have come from the Magistrates Court and been appealed against on sentence by the Crown, which is a Crown appeal, because the sentence is too lenient—do members want to know how many successful ones there have been? That would be none. That is because the sentences we have heard about today are, like it or not—and a lot of members of the public do not like it—within the range of discretion available to both magistrates and judges of the District Court. That is a fact. There is only one way—and I acknowledge that in many respects it can be very clumsy—to diminish that range of available sentencing; it is minimum mandatory sentencing.

There are 28 judges of the District Court. Will moving an aggravated assault case against a public officer from the Magistrates Court to the District Court for sentencing, even with a moderate increase in the maximum penalty, guarantee, or even make it more likely than not in most cases, that that individual will get a sentence of imprisonment? The answer to that question is no. Of those 28 District Court judges, might some take a dimmer view of this sort of offending than their learned brothers in the Magistrates Court? They might well do. Might others take a less dim view of the offending than their learned brothers and sisters in the Magistrates Court? Again, they might well do. Shifting the problem from one court to another achieves nothing. If we are all in agreement that the types of stories that have been put before us do not represent adequate sentencing for the offence, we need to look at an alternative legislative reform that actually—here it goes—produces a result. The point about minimum mandatory sentencing, the criticism of it, and the best criticism of it—it is a solid criticism of it—is not that it does not achieve a result; it is that sometimes it achieves too much of a result. However, if we are in agreement that a result needs to be achieved, rest assured we will not get the result from the government proposals that are before us; that is a fact. Often the criticism of minimum mandatory sentencing is that we are taking a sledgehammer to crack a walnut; right? In some ways, as a metaphor or allegory, a sledgehammer is a reasonable description of minimum mandatory sentencing. However, the problem with that allegory in total is that we are not attempting to crack a walnut. We are facing the single biggest problem in criminal justice that I would argue this state has seen post World War II; that is, the parlous state of protection for police officers who attend at the scene of offending.

I say to people on the other side of the house who will tell us that minimum mandatory sentencing is too robust a solution to that problem that if they take that view, they should repeal section 401(4) of the Criminal Code, which provides, at this very time, for the minimum mandatory sentence of 12 months' imprisonment for a person who is caught and convicted of aggravated burglary for a third time. When that provision came in in 1996, the same arguments against minimum mandatory sentencing were used as are being made now, yet the provision was brought in and remains on the books and remains in use. On occasions it has results that are robust, undoubtedly, but at the time, and presumably now, by virtue of the fact that the government has not removed it from the books, there was a view that the problem of home invasions was at such a significant level that this was the only alternative to ensure minimum sentences of imprisonment. That was a big problem. However, let me assure members that the problem that police officers face, and, by virtue of what they face, the rest of us face, is a problem that makes that pale in comparison. Of the two alternatives that are now presented to this house, one will have negligible to no effect, and the other will actually do something to improve the situation.

MR T. BUSWELL (Vasse — Leader of the Opposition) [4.43 pm]: I rise to quickly add my support for the Acts Amendment (Assaults on Police Officers) Bill 2008, which was introduced into this house by the member for Hillarys. He is a member of this Parliament who for a long time has argued that we need to clamp down on unruly aspects of our society. I do not always agree with the solutions advanced by the member for Hillarys, but in this case I am 100 per cent behind him. In particular, we are all aware in this house of the member for Hillarys' passion for increasing the protection for our police officers.

I was interested to review one of the public relations surveys that the government conducts on a periodic basis, at great expense to the taxpayers of this state. It came as no surprise to me that statistically the people of this state agree with the evidence that is presented to us anecdotally through the screens of television sets, on the pages of newspapers and in many cases, unfortunately, through our own life experiences; that is, that despite the great wealth being generated in this state at the moment, people in Western Australian communities have never felt less safe in their homes and never felt less safe in their communities. It is abundantly clear that this is having a major impact on people's quality of life. Parents will not allow their children to go to the park for fear of gangs and hoons. Elderly members of our community effectively live in homes behind barred windows and heavily locked doors. We must ask ourselves: where are we headed?

Mr P. Papalia: This is a serious debate and you are debasing it.

Mr T. BUSWELL: Sorry; what was the member for Peel's interjection?

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

Mr P. Papalia: I said this is a serious debate and you are debasing it with what you are doing now.

Mr T. BUSWELL: What is the member talking about? Does the member not think that elderly people in our society are locked behind doors and have bars on their windows? Will the member for Peel stand and support police officers? Is he going to stand and speak to this bill? If he is not, he should keep quiet, because it is a serious issue. Another obvious manifestation of the breakdown in law and order is the increasingly serious assaults that we see all too often on our police officers. It is a matter that causes grievous concern to the community at large, it is a matter that causes immense concern to the police officers who dutifully serve our communities, and it is a matter that gives immense concern to the families of police officers serving in this state. This is an issue which is widespread and which reaches into communities around Western Australia. Recently in my home town of Busselton, a situation arose when police officers from my local police station attended a park in town to allegedly deal with an intoxicated youth. An offender allegedly came out from behind the bush. Another offender allegedly assaulted a police officer with a bottle of some sort and knocked him to the ground. The officer was injured badly and has had to take a number of weeks off work. For a lot of that time he has been confined to a darkened room, unable to move. These are problems that are manifesting themselves in communities across the length and breadth of this state.

Some weeks ago the Western Australian Police Union arranged for me to visit Constable Matthew Butcher and his wife, Katrina, while he lay practically in a comatose state in a bed in Sir Charles Gairdner Hospital. That was a most distressing experience for them—not my visit, but the events surrounding Constable Butcher being in hospital—and it certainly had a major impact on me. I could not communicate with Constable Butcher. I understand that he is slowly improving, and of course we wish him all the very best indeed in that recovery process. However, I had the good fortune to sit with his wife for some time and talk to her about the journey that she had just been on. The thing that I will remember more than anything—more than the physical discomfort and physical condition of Constable Butcher, and more than the emotional distress of his wife about his circumstances—is the fact that she said to me, “Do you know what? Every day he went out the door to go to work, I sat there and was worried sick that this would happen to my husband, Matthew.” I came away from the hospital with a very strong belief that in this Parliament we need to do everything that we can, and are empowered to do by the Constitution of this state, to defend police officers and to protect their families from having to go through what Matthew and Katrina Butcher and their extended families have had to go through.

The member for Hillarys has provided the house with innumerable examples of people who have assaulted police officers and received fines that were paltry in comparison with the offence. I will briefly share one with the house. I refer to a story sent by email from a police officer; I will not mention any names, of course.

The police officer had recently returned to police work after two years away, and said that he was stunned by the changes in sentencing and in the attitudes of magistrates towards police. He referred to a former magistrate of the Armadale Court of Petty Sessions and said that he remembered criminals recoiling in fear on being told that they were to go to court in Armadale, because they knew they would be in for a verbal flogging and a stiff, if fair, sentence. After returning to Western Australia Police, the officer was stationed at Armadale Police Station. In February 2007 he was on patrol with a probationary officer when they attended a call-out about a male refusing to leave a woman’s flat. The officers had to wait for the man to wake up; he was sleeping in the woman’s flat. When he woke up he became very agitated. The officer pointed out that the man had 11 court outcomes listed against him, including assault and possession of cannabis with intent to supply. The officer described the man’s state when he was woken up. He said that his partner took hold of the man’s arm and began to escort him to the door. The man then shrugged the officer’s partner off in an aggressive manner before grabbing hold of his shirt collar, forcing his elbows across his throat, and jamming him against a wall. He then released his grip and grabbed the officer’s partner by the throat, choking him with his hand. The officer yelled that the man was under arrest, and grabbed his free arm in an attempt to drag him off. However, it soon became obvious to the officer that his partner could not breathe and that the situation was escalating. The officer then shot the offender in the side with his Taser stun gun, which made him fall over. The offender was then handcuffed without further incident. At the station the offender said that he was sorry and admitted that everything was his fault. He went to court in Armadale the next morning and pleaded guilty to a magistrate who had replaced the magistrate referred to earlier. The magistrate in his summing up stated that the police had been excessive in their actions, and that the accused had suffered enough. This police officer had been pinned to the wall, unable to breathe, and his colleague could not get the offender off him, so he used a weapon legally provided to him and disabled the individual. He was charged with three offences and was fined for each of them: \$100 for assaulting a public officer; \$50 for breaching a police order; and \$100 for obstructing police. That is a grand total of \$250.

Mr C.C. Porter: Which he would never pay.

Mr T. BUSWELL: Exactly. This is the situation in Western Australia. This is the message we are sending to police officers.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

Mr R.F. Johnson: Yet what do you get for not wearing a seatbelt? \$500.

Mr T. BUSWELL: That is exactly right. We are saying to Western Australian police officers that if they go out on the job, are held against a wall and strangled and the offender is caught and found guilty, he will be fined less than someone who is fined for not wearing a seatbelt. That is the essence of the legislation before us. The opposition does not debate the changes recently introduced by the government to increase maximum penalties, although we think there is a fair element of political spin involved in that process; we are debating issues surrounding the protection of police officers who have been assaulted. One can use phrases such as “lower end of the scale” and “appropriate penalties will apply”. Government members have said to me that it means that if an offender pushes a police officer he will go to jail. That is not what the opposition is talking about. The minister knows that, and when he says such things publicly, he is disingenuously representing to the public the views of the opposition.

Mr J.A. McGinty: That is what the member for South Perth said.

Mr T. BUSWELL: I will tell the Attorney General what the opposition is saying.

Several members interjected.

The ACTING SPEAKER (Mr P.B. Watson): Members, can we get back to the debate?

Mr T. BUSWELL: The opposition says that if an offender pins a police officer to a wall, attempts to strangle the officer with his elbow and forearm and has to be shot with a Taser in order to be removed, he should go to jail. The opposition says that if an offender holds a female police officer in a headlock, throws her to the ground, takes her Taser and shoots her repeatedly with it, he should go to jail. The opposition says that if an offender pushes a police officer to the ground and thinks it is sport to kick the officer, he should go to jail. The problem with the system is that in many cases, people do not go to jail for offences of that nature. That is what this legislation will do. The minister recently stood in Parliament and said that under the Liberal Party plan people will receive lighter penalties for assaults on police officers. When I sit down and my colleague the member for Murray has finished his comments, I hope the minister will stand and attempt to justify the mistruth he has tried to perpetrate.

Mr J.C. Kobelke: I didn't say that for a start, but you're used to verballing people, aren't you?

Mr T. BUSWELL: He has insinuated that the legislation under consideration will lead to a lessening of the penalties imposed on people found guilty of assaulting police officers. That is what he said.

Mr J.C. Kobelke: I didn't; I said a Liberal lawyer suggested that. You can't tell the truth; your colleagues know you can't tell the truth.

Mr T. BUSWELL: A Liberal lawyer? That is what the minister said in Parliament. That is the argument he has tried to present, and it is quite simply not true. The technical aspects were outlined by my colleague the shadow Attorney General.

Mr J.C. Kobelke: No, he didn't touch on that aspect at all. You obviously weren't listening.

Mr T. BUSWELL: I listened to everything he said. He is a lawyer who has served in courthouses in this —

The ACTING SPEAKER: The member will address his remarks through the Chair. If he wants to draw interjections, he should continue to address government members, but he is supposed to speak through the Chair.

Mr T. BUSWELL: I will be rigid and bolt upright, Mr Acting Speaker.

The ACTING SPEAKER: I have made a decision. When the member speaks, he will speak through the Chair. If he wishes to ridicule that decision, I will call him to order. If the member wishes to continue speaking, he should speak through the Chair and not draw in other members from across the house.

Mr T. BUSWELL: I thank Mr Acting Speaker for his advice and guidance.

When the opposition receives advice about matters pertaining to law and order from our shadow Attorney General, the advice is coming from a person who has had experience as a lawyer in a courthouse and who has a fundamental understanding of the application of the law in a practical way. When he speaks, we listen to his advice as, increasingly, do government members. We do not rely on a briefcase-based lawyer to provide us with advice.

I will not speak for much longer, other than to say that it is the opposition's very strong view that the public of Western Australia want a strong message to be sent to people who assault or are thinking about assaulting police officers. It is our view that the police officers of Western Australia and their families want a very strong message sent to the people who assault or are thinking about assaulting police officers. If an offender thinks it is okay to assault a copper who is lawfully going about his duty, he is wrong and he will go to jail. It will be an interesting

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

test to find out whether government members will be prepared to stand with the opposition and offer the protection that the police officers of Western Australia demand and deserve.

MR J.C. KOBELKE (Balcatta — Minister for Police and Emergency Services) [4.58 pm]: I appreciate the opportunity to speak on behalf of our police and about the fantastic job they do. The government recognises the risks that go with that job. We are fortunate to have two members—one on each side of the house—who have served as police officers. They know better than I know—or, I suspect, than any other member knows—how difficult the job is and the dangers that go with it. We expect our police officers to respond to situations under very difficult circumstances in which they have to make judgements about the safety of the people they are dealing with and their own safety. We are very fortunate in Western Australia to have police officers of a very high calibre who make the hard calls to look after the public, to step in and seek to protect the public and to uphold the law. Unfortunately, they too often have to do so at their own cost. However, we are a much safer community as a result and we enjoy the enforcement of law and order because of the calibre of our police officers. There have been too many cases in which officers have been assaulted, charges have been laid against the offender, and the result from the court has been absolutely abysmal and in no way reflective of a fair and reasonable sentence for assaulting a police officer. The government has sought to address that. I will later detail the things we have done, and what further can be done to make sure that people who assault police officers are dealt with in a fair way by the courts. When I say “fair”, I mean a fair and just way that reflects the fact that an assault on a police officer is not only an assault on an individual, but also an assault on society.

The police uphold law and order in the name of our society and community. That is why the statutes include a special recognition of an assault on an officer; in fact, they are entitled serious assaults. Even if the nature of the assault is quite minor, it is classed as a serious assault because it recognises the standing and respect that should be given to police officers and other public officers. Clearly, we have a problem and that is why the opposition has brought on this legislation. There are too many cases in which the sentences that the courts have handed down have not met the expectations of this government, the opposition or the wider community, and they certainly have not met the expectations of police officers who do the hard work.

I am very pleased to be able to attend a large number of police graduation ceremonies. One comment that Commissioner Karl O’Callaghan makes at every graduation ceremony is that he backs our police officers and will stand behind them even if they make a mistake. However, he makes it absolutely clear to the graduating officers that they are not the punching bags of thugs and people in the community who think they can sometimes get away with —

Mr M.J. Cowper: It’s a shame that the government doesn’t share the same view as the commissioner.

Mr J.C. KOBELKE: We do; absolutely. The opposition wants to play politics. We know from many other instances that when it comes to supporting our police, the Liberal opposition is strong on words but very weak on action.

Several members interjected.

Mr J.C. KOBELKE: That is the opposition’s record.

The ACTING SPEAKER (Mr A.P. O’Gorman): Members do not get an opportunity to constantly shout across the chamber when a speaker is on his feet. I ask members to hold back their comments and let the speaker get his words out.

Mr J.C. KOBELKE: I appreciate it when Liberal members publicly announce their support for the police and when they say that they will take action to support them. However, I would rather that members were consistent in their actions and not just in the verbiage that they use. When the member for Warren-Blackwood was Leader of the Opposition, he attacked the integrity of the police in this very place.

Mr R.F. Johnson: No, he didn’t.

Mr J.C. KOBELKE: Yes, he did, on more than one occasion. When the Liberal Party held a meeting in Western Australia, Senator Johnston, a Liberal senator, said that there was political interference and the police targeted the meeting with booze buses. That is absolute nonsense. I could go through a whole list of instances when Liberal members have been happy to put the boot into the police because it suits their purposes. That is the Liberal opposition we have. I hope Liberal members will be a bit consistent for a change and carry through in supporting our police.

What did the Liberal Party do with police numbers in its last four years in government? When it comes to action, Liberal members simply want to say a lot of words; they do not want to act. In the last four years of the Liberal government, in which the member for Hillarys was a minister, it did not allocate money for one additional police officer. In four years there was not one additional police officer. On coming to government, we allocated money

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

and employed an extra 250 sworn officers in our first four years. By next year we will have put on another 350 police officers. That is an additional 600 police officers, plus 160 non-sworn officers so that more police are on the front line. We have committed to supporting our police and we are allocating the money. It is not just money for salaries. On the matter of resourcing, we have ensured that the police have Tasers and that they are covered by occupational health and safety provisions. All the time that the Liberal Party was in government, it never allowed our police to be covered by occupational health and safety laws; it was too costly and it would not do it.

Mr M.J. Cowper interjected.

The ACTING SPEAKER: I call the member for Murray to order.

Mr J.C. KOBELKE: The point is that we made sure that the police were covered by health and safety provisions. We have funded it. Today, the police in Western Australia, on a per head of population basis, are funded 18 per cent higher than the average of the police in other states are funded. We have made the commitment to our police and we will continue to do that.

In terms of occupational health and safety issues, we want to try to prevent police from being seriously assaulted and ending up in hospital. We know that, because of the dangers and difficulties associated with their job, the best we can do is reduce the number of assaults. However, we have made an effort. Under the previous government there were still single-officer patrols. Police officers now patrol together. We have looked at a range of issues whereby the government can provide the resources to ensure that we try to prevent assaults on officers.

I return to where we are at. Police officers have been assaulted and what has happened in the courts has been most inadequate. We recognise that. Therefore, we need to deal with that issue. As has been indicated by other speakers, there have been some high-profile cases recently that were absolutely sickening. Officers who have been doing their duty have been attacked without any provocation of any sort in the most malicious way. Clearly, I am referring to the case of Matthew Butcher. As the Leader of the Opposition has said, a number of people have visited him. I visited him two weeks after the assault and he had started to write things on a notepad. I saw the state that he was in, but I also saw the hope, which had almost been blown away, that he was going to recover. He is progressing, but it will be a long path for him and his wife, Katrina. I know that all members wish them well. However, it drives home the dangers of what can happen to officers while simply doing their duty. There are a number of other cases that members have mentioned. I will go through a few cases in which the sentences have not been adequate and for which we have sought to ensure that the sentences are adequate. In the incident in Meekatharra, two offenders assaulted First-Class Constable Shane Markham, Sergeant Vanessa Robinson and Senior Constable Christina Johnston. Leonard Wells received a sentence of three years and one month and the other offender got a sentence of two and a half years. Clearly, those sentences are not adequate. The point is that this legislation provides for sentences way below that level. The suggestion of a minimum mandatory sentence is totally irrelevant in these particular cases, because in these cases the offenders have received much higher sentences than the minimum sentence, and so they should. That is one of the deficiencies of a minimum mandatory sentence. A minimum mandatory sentence does not address the really serious cases. The sentences handed down in the really serious cases need to be pushed towards the top end, and that is what we are seeking to do.

Several members interjected.

Mr J.C. KOBELKE: Members opposite simply want to run a political campaign. They are not interested in backing our police.

Mr C.C. Porter: If an offender bites an officer, should he go to jail?

Mr J.C. KOBELKE: This is a serious debate and I am weighing up the case. I listened to the member for Murdoch and I will certainly take his interjections when I have developed my case. However, if he wants to support our police, he should make a contribution, as he has done, that is reasoned, appropriate and quite good. We will make a contribution to the debate in a way that shows that we respect and support our police, not simply to try to beat the political drums, as many members opposite have sought to do.

Leonard Wells and Peter Laylan, who committed assaults that were right over the top, deserved heavier sentences than they received. The new laws that we have put in place will ensure that heavier sentences are delivered when grievous bodily harm is done to police officers.

Several members interjected.

Mr J.C. KOBELKE: Again, we hear mutterings about minimum sentences. The minimum sentence provided for in this legislation would have no application to these cases, because these cases clearly deserve sentences much higher than the minimum sentence. Very stiff penalties need to be awarded for serious offences. The whole

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

point is that a minimum mandatory sentence is totally irrelevant to that group of cases. That is the first point that I make.

The point that the Leader of the Opposition raised with me was made by Tom Percy, who is a well-known Liberal lawyer. I do not have legal experience and so I will accept the member for Murdoch's view because he was a legal practitioner and he knows the law. A case can be mounted that in certain cases when a judge sentences an offender, he may award the minimum sentence because he can choose the term of the sentence from within a narrow range. It has been suggested that, in some cases, this might lead to judges awarding the minimum sentence and that, if no minimum sentence is prescribed, awarding a lengthier sentence. The opposition may reject that as a likely outcome. Tom Percy sought to advance that proposition. It would cause me concern if that could ever happen. That is all I said about the matter.

Mr R.F. Johnson: Is Tom Percy a friend of yours? It sounds like it?

Mr J.C. KOBELKE: I do not think I have even met him. He claims to be a Liberal. He certainly has trouble with the current Liberal Party, but that is true of most of the population of Western Australia.

The issue is whether we will deal seriously, appropriately and effectively with ensuring that stiffer penalties apply to people who assault our police officers or whether we simply use mandatory minimum sentences as a catchery for political purposes. That is what the community must judge and that is the situation with this legislation. The opposition's Acts Amendment (Assaults on Police Officers) Bill is playing catch-up with the government. We must all accept some responsibility for the fact that the legislation that we introduced and passed through this house very quickly languished in the other place for far too long. We would have liked to have had that legislation assented to before Matthew Butcher was bashed, so that it could have applied in his case.

The member for Murdoch made the case that the legislation would increase the sentences by only a small amount. I think the Attorney General might take up some of the issues the member raised. We have required that all serious and aggravated assaults are to be dealt with in the superior courts rather than in the Magistrates Court. That will ensure we have a graduated series of sentencing based on the seriousness of the offence. As the Attorney General has pointed out, because of the harsher penalties that we have put in place through these sentencing arrangements, the maximum penalty for causing grievous bodily harm to a public officer will increase from 10 to 14 years, and the one-third truth-in-sentencing discount has been removed. We are keen for the courts, through the clear urging of the Parliament, to award heavier sentences based on that legislation that will soon come into effect.

Mr R.F. Johnson interjected.

Mr J.C. KOBELKE: The member for Hillarys does not take assaults on police officers seriously. I put that clearly on the record. If he were serious, he would be willing to listen to our argument. We want to make sure that the people who commit very serious assaults get the maximum penalty—or as close as possible to that—and that those who commit assaults that have a lesser effect get a lesser sentence. The problem is that the courts have formed the view that the sentences should be at the lower end of the scale. We must change that view. If we put in place provisions that cause people to believe that we are sending offenders to jail for no good reason, people will wonder whether convictions will be awarded and the respect for the law will change. We must provide a balance. We agree with members opposite that tougher sentences are needed. However, we do not agree that it is to be done in a ham-fisted way that will not deliver that outcome over time. It might create a small shift for a certain period, but we want to make sure that we have a graduated hierarchy in which causing grievous bodily harm to a public officer is at the top, followed by bodily harm and then assault. We must make sure that the sentence reflects the severity of the assault. The Attorney General's legislation applies not only when an officer is on duty and performing a function, but also when the officer is off-duty and is performing a function. We have extended the provisions of that legislation to include other public officers, and the heavier sentences will be applied in a range of different ways to assaults on those public officers. Our legislation also applies the offence to assaults on a range of public officers, which now includes members of the Fire and Emergency Services Authority, the State Emergency Service, private and volunteer fire brigade workers, people who work in hospitals—where we have had problems in the past—and contracted court security officers. That extension goes beyond the key target, which is police officers.

We want the legislation to be evidenced based. I am disappointed that it is very difficult to get evidence on this. I asked Mike Dean, the president of the Western Australian Police Union of Workers and a man for whom I have great respect, to provide me with evidence of incidents when grievous bodily harm was caused to an officer and a jail sentence was not imposed. No-one has presented some of the extra evidence that we would like to see to check how the tougher laws will work. After taking advice from the police union and members opposite, we will conduct a review by the Office of Crime Prevention through the Crime Research Centre at the University of

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

Western Australia. We will look at what has happened over the past year or two under the old laws. We will match the sentences that were awarded based on the details of the level of assault and the level of harm that was inflicted on a police officer. The study of the new legislation will take place to see whether there has been a change in the sentences imposed and just how big the change has been. If it is necessary, we will ensure that we get sentences that are comparable with the severity of assaulting public officers. I have also asked for regular reports—hopefully they will be quarterly reports—as that study is being done, so that we can monitor the situation prior to the full analysis of those changes that will take place under the tougher sentencing laws we have put in place for assaulting a public officer.

Another area that the bill tries to pick up is of great concern, and, quite rightly, the opposition is seeking to do something about it. I refer to someone who has been convicted of assaulting a police officer and ends up with a spent conviction order. The opposition referred to the assault on a first-class constable, Michelle Ball. A 12-month imprisonment sentence was imposed for that assault, which is the within the minimum range that is allowed. However, because the sentence was suspended, it had no effect at all. It is my view, and I think the view of the government, that when serious assaults that cause grievous bodily harm occur, the offender should not receive a spent conviction order. Significant bodily harm was caused to the officer.

Mr R.F. Johnson: I don't think that would have been grievous bodily harm.

Mr J.C. KOBELKE: No, it was below that level. However, it was a serious assault that inflicted harm on the officer. In a case like that, it is my view and the view of the government that a regime should apply whereby a spent conviction order cannot be imposed. There is a range of arguments about how to best address that. Another case involved Constable Nicholas Armour and Constable Amanda Lee, which has been alluded to. Again, they were very seriously assaulted and injured. The perpetrator of those assaults received 12-month community-based orders, which is totally inadequate. We want to ensure that when that type of assault occurs, the offender receives a jail sentence and not simply a small fine or a spent conviction.

Mr R.F. Johnson: That is what this legislation addresses.

Mr J.C. KOBELKE: It does not.

Mr R.F. Johnson: Of course it does.

Mr J.C. KOBELKE: Wait until we look at that legislation.

Mr R.F. Johnson: You are insulting the police officers who had a major part in the drafting of this bill.

Mr J.C. KOBELKE: I will point out that the member's legislation does not do that.

Mr R.F. Johnson: You are insulting the police officers.

Mr J.C. KOBELKE: I am not insulting anyone; I am telling the member that my advice on the legislation before us is that it has a hole in it.

Mr R.F. Johnson interjected.

Mr J.C. KOBELKE: The member sought to do that, but my advice is that the bill does not do that.

Another case that has arisen when a spent conviction order was imposed relates to an offence that occurred at 1.00 am on 13 March this year. When police officers were talking with a group of males at the Perth Cultural Centre, the offender, who was from an unrelated group, approached an officer from behind and grabbed him by the neck and shoulder and pulled him backwards. The officer was slightly injured and was bruised on the left arm. The offender was then apprehended and arrested. On 18 March the offender appeared in the Perth Magistrates Court—this happened under the old law, but the same problem exists—and pleaded guilty to assaulting a public officer and obstructing police. He received a \$1 000 and a \$400 fine respectively on those two charges and was granted a spent conviction order. The offender had no previous criminal convictions. While the assault did not result in significant injuries to the police officer, the police officer was there carrying out his duties. He was assaulted in a way that was totally unacceptable, and I find it unacceptable there should be a spent conviction in that case.

Mr C.C. Porter: Does the minister say that offender should go to jail?

Mr J.C. KOBELKE: I am saying there should not be a spent conviction.

Mr C.C. Porter: The police officers want to know what the minister's view is.

Mr J.C. KOBELKE: We will come to that in a moment.

Mr R.F. Johnson: That is the trouble—they want to keep him out of jail.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

Mr J.C. KOBELKE: What we are seeing here, Mr Acting Speaker, is that people opposite are saying any assault on a police officer should result in jail.

Mr C.C. Porter: Assault, bodily harm.

Mr J.C. KOBELKE: No, the member did not say that. He said any assault.

Mr R.F. Johnson: The legislation does not say that. Let's deal with the legislation.

Mr J.C. KOBELKE: We will come to that. What the member just said is the offender should go to jail for any assault. "Assault" is set out in section 222 of the Criminal Code and relates to applying force to such a degree to cause injury or personal discomfort; any personal discomfort is an assault. Simply rearranging the arm sleeve of a police officer's shirt —

Mr J.E. McGrath: If a person got six teeth knocked out, that would be a personal discomfort.

Mr J.C. KOBELKE: The point that the member does not grasp is that if a person has teeth knocked out, there should be a very serious penalty attached, but if a person simply grabs an officer by the arm, that is discomfort, and the member is saying that the person should go to jail. My concern with that is it actually brings the law into disrepute. We have to deal with the law as it is written, not the airy-fairy political views of the opposition as to how it might like to put it. The situation is that if we are going to have a mandatory sentence with a very lower end, then it actually makes a mockery of the law and puts police into a situation where they will not be fully respected.

Mr C.C. Porter: Read the definition in full, minister! "Bodily harm" means any bodily injury; any injury that interferes with health or comfort. Touching a shirt sleeve is not an injury!

Mr J.C. KOBELKE: I am referring to section 222 — assault.

Mr C.C. Porter: Our legislation amends section 318.

Mr J.C. KOBELKE: The opposition is dealing with a different section. This is a tactic, Mr Acting Speaker.

Mr C.C. Porter: The minister is dealing with a section that does not apply.

Mr J.C. KOBELKE: This is a Liberal tactic when they do not want to deal with the truth. I am dealing with section 222, so if the member for Murdoch wants to go to a different section —

Mr C.C. Porter: Will the minister tell me how section 222 applies?

Mr R.F. Johnson: Deal with the legislation before the house! That is what the minister needs to do.

Mr J.C. KOBELKE: The problem is that Liberal Party members say one thing and do something else. They say they support police and then they attack them when it suits their purpose. They say they want people jailed for any assault and then they say no, they do not mean that, they mean something else. The fact is that when we make an amendment we need to make sure we get it right so that serious assaults on police officers result in convictions and much heavier jail sentences. We will deliver that because we have a record of delivering.

I think it was the member for Murdoch who stated it would not actually result in longer sentences. The Attorney General is going to take that up, but I know from the figures that I have seen that the jails are full because in a range of other offence areas the tougher penalties we have put in place have led to longer sentences; people are in jail for longer. In this case, people are sceptical as to how it will work. Clearly, this government's tougher penalties in other areas have led to longer jail sentences and that is evidenced from the terms that people are now spending in jail and the fact that our jails are full. The member for South Perth and others have said that an offender should end up in jail for any assault.

Several members interjected.

Mr J.C. KOBELKE: That is what he said. It is there in *Hansard*. This is the problem—opposition members say something but they mean something else. They say they are supporting police and, when it suits them, they attack them. They want it both ways. They do not want to be honest and accountable and they do not want to deal with the facts. We have a number of members opposite who have said any assault should result in jail. We will come to the legislation—that says something different—but that is what the members are saying.

Mr R.F. Johnson: This government is soft on crime and soft against assaults on police; the minister knows that and everybody else knows that.

Mr J.C. KOBELKE: Again, the rhetoric and not being able to deliver on it. What we have sought to do is make sure there are stronger and tougher penalties for serious assaults on police and the government has a graduated

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

set of sentencing arrangements so that at the bottom end it is left to the discretion of the courts as to how they handle it.

I will give the house an example. Some weeks ago, with the approval of the Attorney General, I spoke to Robert Cock, the Director of Public Prosecutions, to get his advice on what is not working and what penalties we need to toughen up. I asked the DPP what aspect can mandatory sentencing deliver for us. At that stage I was thinking that we could do something. It is not my area, it is the Attorney General's area, but I wanted to get the full picture. The DPP referred to the case of an elderly lady who was involved in a political demonstration and she hit a police officer with a walking stick. Clearly, that would have been taken as being an assault on the officer and, under the opposition's legislation, it will be minimum mandatory —

Mr J.E. McGrath: Bodily harm.

Mr J.C. KOBELKE: That is bodily harm.

Mr R.F. Johnson: She might have attacked him with a pencil across the head!

Mr J.C. KOBELKE: In clause 1 of the bill the term “bodily harm” means any bodily injury that interferes with health or comfort. If a victim has got a bit of a sore leg because an old lady in her 70s hit him or her with a stick, that is bodily harm. The point that Robert Cock made to me was this lady was charged and went to court for bodily harm. It is a fact.

Mr J.A. McGinty: It actually happened.

Mr J.C. KOBELKE: It actually happened.

Mr J.E. McGrath: A person has got to be found guilty of the offence.

Mr J.C. KOBELKE: That is the whole point. Under the opposition's legislation, if the evidence is there for a 70-year-old lady —

Mr C.C. Porter: What happened to her? Did she get off the charge?

Mr J.C. KOBELKE: Under the current legislation, she most probably got a spent conviction.

Several members interjected.

The ACTING SPEAKER: Members, the level of interjections is getting beyond what is acceptable. I am finding it exceedingly difficult to hear exactly what the minister is saying, even though the minister is rather loud! The member for Murdoch and the member for Hillarys are both shouting over the top of him and I call them both to order for the first time.

Mr J.C. KOBELKE: Mr Acting Speaker, I thank you for your assistance.

Mr R.F. Johnson: When did that happen?

Mr J.C. KOBELKE: I will get the details for the member for Hillarys as I do not have them here with me. I rang the DPP and he just relayed the details to me. When the member for Hillarys was reading out police files I asked him for the cases because I was interested. He said he would not provide them. I even asked him to cross out the names, but he still would not provide the cases to me.

Mr R.F. Johnson: I will read them out.

Mr J.C. KOBELKE: I will relay to the house a particular case as told to me by the DPP. The member for Hillarys does tend to hunt with the hounds and run with the hares because it is only in this place, in the past 24 hours, that he has been arguing for greater flexibility with judges in a case where a young gentleman was actually convicted of sexual assault and he does not want him to go on the Australian National Child Offender Register. He wants leniency or discretion by the courts. He was closer to the truth yesterday in the debate when he was saying we really do need to make sure that when we have the complexity of these cases we leave some discretion and flexibility with the courts. We want more serious and longer jail sentences, clearly for the mid-range to the top range, but we need to leave some flexibility at the bottom end with the courts.

The problem with the opposition bill is that it appears to have been drafted in haste, without the time taken to ensure that the stated objectives—because I have heard their stated objectives—would actually be met. By imposing that mandatory minimum imprisonment term in section 38 for the offence of serious assault, which covers a wide range of assaults, an offender could potentially be imprisoned for causing a public officer a very minor issue, as I said with that elderly lady. Clearly, there should be a penalty for it but I do not think in a case like that a person should go to jail.

Mr J.E. McGrath: She got off.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

Mr J.C. KOBELKE: Yes, under our law, but under the opposition's law it would be mandatory minimum imprisonment.

Mr J.E. McGrath: What if she is found not guilty?

Mr J.C. KOBELKE: I take the member for South Perth's question. That was the point I was making earlier, and I am not a lawyer. The opposition has got its own lawyers here. There can be a change in attitude. If we were to work on the basis that all the facts in a case are covered by the law but the courts determine to simply back off because the sentence to be imposed is not a good thing to do, it would make a nonsense of the law. The prosecuting officers can use their discretion. They might decide that a decision would look bad for them if they were to go through with it. The decision is made by the individual officers and the prosecutors. However, under the opposition's bill, if there is evidence to prove that a lady assaulted a police officer in public and that assault caused harm to the officer—a slight bruise causing discomfort to the leg—that would mandate a minimum jail sentence. That is the problem with the opposition's legislation. The opposition's proposed mandatory sentencing goes to 12 months if the assault involved grievous bodily harm and nine months if it involved serious assault. I did allude to what that covers. We are fairly clear on grievous bodily harm. However, if it is a serious assault it would come under section 318 of the act. If it is bodily harm—I have already read the relevant section to the house—subsection (1) states that it means bodily injury that interferes with health or comfort. As opposed to grievous bodily harm, it casts a fairly wide net. That is what the opposition is using as the catch for a minimum sentence.

The government believes that its legislation will lead to more people being jailed for assault if that assault harms an officer. That is what should occur. The government is confident that its legislation will deliver that outcome.

An aspect of the opposition's bill tries to genuinely address a very serious matter of officers being assaulted and the court treating the perpetrators very lightly by giving them a spent conviction. In the case of the officer in Northbridge to which I referred earlier, the commissioner has informed me that he has written to the Director of Public Prosecutions asking whether that decision can be appealed. I have been told by a number of people that we should have been appealing these decisions some time ago. A spent conviction for assaulting a public officer or police officer should not be allowed. A magistrate should not simply decide to give the offender a spent conviction. I am yet to hear back from the commissioner or the DPP on what steps will be taken. Through the Attorney General, I will urge the government to consider appealing some of the cases in which spent convictions have been awarded and taking them to a higher jurisdiction. We must set the rules. If the court does not effectively deal with this issue, it is an appropriate time to legislate accordingly. The advice to me from a number of legal people is that we should be appealing those decisions. The commissioner has asked the DPP to do that. If we appeal appropriate cases, we will get case law that ensures that those sorts of things will not happen in the future.

The government is very much committed to making sure that those people who assault our officers do not get off lightly and that they are given more serious and longer sentences. As I indicated, we have already put legislation setting higher penalties for assaults through the Parliament. We are waiting for the outcome on that. I will have no trouble convincing the Attorney General that if we cannot change the use of spent convictions through the process of appeal, we should make legislative changes at a later date to fix the issue.

MR M.J. COWPER (Murray) [5.34 pm]: I take this opportunity to mark the passing of a former colleague who last night unfortunately lost his life. I offer my condolences to his wife. I also make an apology to my former colleagues. I can see Bernie Ericks and other former colleagues in the public gallery and I apologise to them for what they have had to endure in the last half an hour; that is, listening to what has been said in this place.

I refer members to section 246 of the Criminal Code, as that will provide me with time to allow my passion to cool, because I am somewhat angry.

The credibility that the Minister for Police and Emergency Services had in this place has been diminished to such an extent by what he just said to the point that nobody would have any confidence whatsoever in him. I brought a bill into this place to protect our police officers and he said that he would protect them, but he has not demonstrated that in a tangible way.

Mr G.M. Castrilli: That was in 2006.

Mr M.J. COWPER: Yes, the member is right. I brought a bill into this place in 2006 seeking a safety net for police officers in the form of workers' compensation, which every worker is entitled to. The Labor Party is supposed to be the bastion of the working class, but it has left these people high and dry. Boy, I am angry about it and I will not let it go until the government brings an appropriate bill into this house. I will re-introduce the bill I previously introduced each September until it is passed. If necessary, I will restate those letters that the minister wrote years ago to Glenn Murray in which he said he would fix the problem.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

To give the reason that I do not have faith in the justice system and the reason that we need mandatory sentencing, I hark back to an incident that happened to me. I will not go over the incidents in which police officers have been assaulted because we have heard them ad infinitum. Probably the reason that I am here today is that I have been bashed around too much and am not right in the head. We have to be mad to come into this place and listen to the diatribe that we hear from time to time.

On 1 June 1993 I was the officer in charge of the Denmark Police Station and I was on leave and staying with my sister-in-law in Maida Vale. Another sister-in-law visited me and said that there was a police officer on Gooseberry Hill Road doing traffic work. I said, "Good-o, he's doing his job." I was on holidays and had just dragged myself out of bed and I had on my trackie daks and a pair of old sneakers. A few minutes later my sister-in-law left to take her children to the Maida Vale Primary School. She returned and said, "Murray, you had better come; there's an officer down." His name was Stephen Knight and he lost his life that day despite attempts by an orthopaedic surgeon and me to try to revive him. The person who killed Stephen Knight was a person by the name of Scott Anderson. He was charged with murder on 2 June. He was found the day after the tragic event and charged with murder. The day on which the incident occurred he was supposed to be in the District Court to face charges relating to drugs.

To this day I am angry that the charge was reduced from murder to manslaughter. There must have been good reason for that. All the circumstances would have been taken into consideration. I have no doubt in my mind that when I was next to where Stephen Knight was lying dead on the ground, I could see further up Gooseberry Hill Road the smashed indicator of a vehicle, which obviously is where Stephen Knight had been picked up and then dumped where I was standing. This person would have had to have swerved onto the wrong side of the road. No doubt during the court case expert evidence would have been given to the effect that the offender did this and could not see because the sun was in his eyes. I have no doubt that Stephen Knight was lined up and deliberately killed. Andersen was charged with manslaughter and received a penalty of eight years and four months. From memory the penalty for killing a person, let alone a police officer with a wife and five children who was protecting the people of Western Australia, is 20 years. With that one-third reduction in sentencing—I cannot see any sense in that—he would have served less than five years; that is five years out of 20 years for killing a police officer. What does a person have to do to get 20 years? Does the offender have to cut and quarter somebody and hang the pieces in the bloody Hay Street Mall? What a joke.

Damage was caused not only to the morale of the Western Australia Police, but also to Stephen's family. His mother had moved to Albany and she contacted me on my return to work to see whether she could talk to me. She said, "Sergeant Cowper, I want to come and see you because you were there when my son died and I was there when he was born." I had a frank discussion with his mother and father. It is something that I will never forget.

Yes, I am passionate about making sure that our boys are looked after and I am passionate about making sure that when they go out to do their job, they are protected. I want to know that police officers will be protected if they are injured. The courts are letting them down. Let us not split hairs. I have sat in many courts. I have sat in this chamber and heard the courts being described in a different light. When a police officer is out on the street facing insurmountable odds or getting his head pummelled whilst doing his job, in the back of his mind he thinks that he will be looked after because he is supported by the state. That is a misconception. Knowing what I know now, why on earth would someone want to join the Western Australia Police? It is because of the camaraderie, which is not reflected in the annual reports. Police officers look after each other. The police force is a brotherhood. Despite being on opposite sides of this house, the member for Yokine and I are brothers—we always will be. That is something that a person cannot understand unless he or she has been a police officer.

The courts do not reflect the expectations of the Western Australian community. That has been evidenced time and again. There is no better example than the case in which a person who was found guilty of the manslaughter of a police officer was given a five-year sentence. What a joke!

Dr G.G. Jacobs: He is probably out now.

Mr M.J. COWPER: He was released in 1999. I do not know what he is doing now. I hope he has done something with his life. He made a terrible mess of things. The police officer was survived by his wife, five kids and his mother and father, who now live in Albany.

I have no faith in the justice system. We must pass this bill. It pains me to say that the sentiments of the community are not reflected in the outcomes handed down by our courts. Unfortunately, when a case comes before a court, everything becomes hazy and cloudy and things do not seem as bad. The defence gives reasons why the accused is in the position that he is in. I have no doubt that some circumstances are mitigating. However, at the end of the day, if we do not protect our police officers, we will not be protecting ourselves.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

Frankly, I cannot believe how out of touch the government is on this issue. I cannot believe how out of touch the previous coalition government was on this issue. Some people's impression of our police officers has been denigrated. Would-be offenders are on a downward ski slope and it is getting a bit steeper. It is now all right to whack a policeman. I recently talked to a female and a male detective at the city police station. They told me that on one occasion when they were out on the beat, they pulled over a chap whom they had been looking for. He had a previous conviction for assaulting a public officer. He pushed the woman detective out of the way and belted the policeman in the mouth and split his lip. He received a \$600 fine for the two assaults. In effect, he was fined \$300 for each assault. That is ridiculous. When I was a police officer, I was hit by a bloke during a Jimmy Barnes concert that was being held at Karratha Football Club. It was his second offence. He snotted me and had to serve three months in jail—bang! That is one example. I was stabbed five times during the time I was stationed in Halls Creek and Fitzroy Crossing. Those offenders went to jail for a longer period. Justice was swift and appropriate then.

The Minister for Police and Emergency Services said that if these cases go to the District Court, the offenders will receive a higher penalty. However, he did not demonstrate how that will be the case. There is no justification for that view—none whatsoever. In the old days, justices of the peace, rightly or wrongly, were given power in the community. They knew what was happening in the community and they would issue swift and appropriate justice. Those powers have been removed and now offenders must appear before a magistrate. What happens now, particularly in cases that involve full-blooded Aboriginals, is that three months after they have been in prison and they come to court they do not understand the offence. They say that justice is denied if it is delayed. I say that justice must be appropriate in cases involving full-blooded Aboriginals in remote areas.

Police officers also have to produce hand-up briefs, which is additional work. They have to put those briefs together and take time off from their jobs in Halls Creek or Fitzroy and travel to Kununurra or to a District Court in another area. I can use examples from across the state. Those officers have to leave the town and cannot protect the community. Justice must be swift and appropriate. It must also be delivered in a timely manner. This bill must be passed because nearly every morning the people of Western Australia pick up a copy of *The West Australian* and read that another police officer has been whacked. Each day four police officers are assaulted. If the government wants to show its thanks to police officers for the job that they are doing and for their commitment, and if it wants to encourage new recruits, it should protect police officers. It is as simple as that. The government should offer them a workers' compensation safety net. Perhaps then the declining morale among police officers will be reversed. It pains me to say that there is low morale in the police service. I have an occasional chat about life in general with my former Commissioner of Police, Karl O'Callaghan. We talk, as policeman do, in a frank and open manner. He told me that he was in a difficult position because he was trying to look after his men and his master. The government is not keen to promote the safety of our police officers. He was in two minds about this issue. He told me that he would wait to see how the legislation went. He was convinced that, as the minister said, there would be greater scope for higher penalties and an increase in the penalties handed down by the courts. Clearly, that has not been the case. It has not been demonstrated. It is not tangible to the extent that the community's confidence has risen. He has now changed his view. He supports mandatory sentencing.

Mr R.C. Kucera: Are you sure about that?

Mr M.J. COWPER: Yes. The rank and file of the police service support it, the union supports it, the people of Western Australia support it and members on this side of the house support it. The minister must decide whether he will support it out of bloody-mindedness for political reasons or because it is the right thing for the people of Western Australia.

MR R.C. KUCERA (Yokine) [5.40 pm]: I will approach this issue from a slightly different direction. In the past few weeks, this issue has become an emotional political football. I understand that, given the nature of the assaults that have been committed against police. I agree with some of the points made by members opposite tonight. I also agree with many of the points made by the Minister for Police and Emergency Services. I want to put some balance back into the argument.

In 1829, the year in which this colony was founded, Robert Peel said that the police are the public, the public are the police and the police are only members of the public who are paid to give full-time attention to duties that are incumbent on every citizen in the interests of community welfare and existence. In other words, police officers are no different from any other person. They are simply paid to take the brunt of all those who choose to break the law. We pay them to protect us 24 hours a day, 365 days a year, regardless of the danger, risks and consequences. I have raised the issue of a compensation package for injured officers in my party room on many occasions. It has taken too long.

Mr M.J. Cowper: Try 20 years!

Extract from Hansard

[ASSEMBLY - Wednesday, 9 April 2008]

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Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke; Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

Mr R.C. KUCERA: I remind the member for Murray that 20 years is the term of three governments. I also remind this house that the bill that was introduced in this house last year was absolutely deficient. I was given assurances that a compensation package would be before this house in the early part of this year. I have had discussions with the minister. I have expressed my disappointment that there has been no package. That is the way it is. We pat ourselves on the back when we increase penalties. We keep talking about how we need to offer every protection. The reality is that members do not often know what the true picture is. I will get on to that in a moment, because it is one of my great concerns in even voting on a piece of legislation like this; I simply do not know. I do not take any credence from issues that I read about in *The West Australian*. I do not listen to the statistics that it gives me, because I spent 35 years of my life listening to evidence, not anecdotes. I joined the police force in May 1966—a long time ago. I spent almost 35 years—most of it on the front-line—as an active, operational officer. I am not an academic; I am not a compass; I do not have 360 degree vision in every direction. I worked out on the street pretty well all my life, in the city and country towns. In those days we policed the mining towns or faced down the mobs from the drunken Sunday sessions, and the bodgie and widgie fights at Scarborough that I think I saw the member for Mindarie flash in and out of occasionally, I might say! We dealt with all those brawls in the pubs of Kalgoorlie and Port Hedland; faced the out-of-control husband and the hysterical wife with the carving knife in her hand after stabbing her husband who has been beating her for 15 years, and then she turned the knife on us—circumstances. I have been in the circumstances of standing behind a brass curtain at the back of a house when a paranoid schizophrenic has just tipped 20 litres of petrol over himself and is furiously trying to get the lighter going whilst the fire brigade hit the window out and officers charge in and roll around in the water and the petrol as they try to pull the lighter out of his hand—circumstances! What would members do with a person like that? What would members do with the wife who stabs an officer in the arm after she has just killed her husband?

I also pulled a mate out of an alleyway in Fremantle after he had been taken to with a razor, and have tried to talk to a prison officer who had been bashed so badly outside the Norfolk Hotel that he never regained his sight. All of those things happened. However, I am talking about circumstances 43 years ago, when if the local hard case wanted to take me on, as a young copper in a country town I went outside and took him on. I had to make sure that I won, because otherwise the road in the town would be very hard for the next three or four years.

That was the world 40 years ago. In those days police always had the backing of the public because the public respected them. The public recognised, as Robert Peel said, that police were carrying out their duties on their behalf. The same hard case that we made sure we did not lose the fight to—the one who did lose the fight—was the first one to come to the aid of police.

There were unwritten rules that neither coppers nor women were hit. Drunken louts that did those kinds of things got the sentences they deserved. Something has happened since then. In those days police largely worked alone, so a police officer had to build those community protections in. By and large, however, the courts recognised that the pushes and punches police got down in the mud and the blood and the beer needed to be dealt with; not with a sledgehammer, as the member for Murdoch said; they got dealt with in the proper context. That is another issue we have at the moment with the legislation. In all of the definitions, I honestly do not believe there are clear definitions of the differences between the kinds of assaults that we are talking about. Yes, this new legislation goes a fair way to try to overcome that problem, but if members consider the English system of charging that police officers have at the moment, those definitions are clearly there. They do not leave any room for doubt. They do not leave any room for minor charges to be included in senior charges. The judges have clear direction on how to sentence. The English get by very well without mandatory sentencing.

I am not a fan of mandatory sentencing and I never have been. That is because I have been in circumstances in which the hysterical wife has stabbed me in the arm, and that of the paranoid schizophrenic who does not know what he is doing anyway. There needs to be some range and some discretion. Back in those days, if a young copper got the push and shove, those assaults, even at the Magistrates Court, would invariably get something at the high end of sentencing.

The other thing was that local newspapers and media generally worked alongside police, balancing community opinion with the need to support those whose sole duty was to protect each and every member of the community. Police officers learnt to appreciate and practice this balance when we preferred charges, and we knew very well what the elements were. One of the complaints I have from judges nowadays when I speak with them—and I was speaking with two judges just the other evening—is the lack of understanding that younger police officers have nowadays of the elements of offences. That lack of knowledge is partially to blame for some of the lessening of convictions that is happening in our courts. Magistrates will do everything in their power to make sure that people are properly dealt with, but if the charges do not reflect that, which happened with the three-strikes rule, they cannot deal with offenders properly. Mandatory sentencing of juveniles—which I did not agree with and which judges and smart lawyers do everything they can to avoid bringing into play—is still on the

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

statute books, by the way. That is what will happen if we start to head down this road without knowing what we are actually doing, because we do not know.

Mr R.F. Johnson: You do not support the legislation then?

Mr R.C. KUCERA: No, I did not say that. I do not support voting for anything that I do not know about. I have always dealt with evidence, and none of us know what we are talking about at the moment; it is all anecdotal.

When I look back at cases and I think about magistrates such as A.G. Smith, and people like him, it was rare that a case got past the Magistrates Court if it did not need to. They dealt with those cases properly and sensibly. I tell members now that John McKechnie and Graeme Scott, judges like that, dealt with the assault of a police officer as one of the most serious things to come before them. However, times have changed, and some 43 years down the track I know that our officers are faced with a very different set of circumstances every day. The so-called “push and shove” that is talked about—and I have often heard the member for Hillarys colloquially refer to it as the “trifecta”, when people are charged with disorderly conduct, assaulting police and resisting arrest —

Mr R.F. Johnson: I have never, ever said that!

Mr R.C. KUCERA: That has almost become —

Mr J.A. McGinty: That was me!

Mr R.F. Johnson: I have never, ever said that, my friend!

Mr J.A. McGinty: I think you might find it was me!

Mr R.C. KUCERA: My apologies, member for Hillarys, I was referring to the member for Mindarie. I am sorry.

Mr R.F. Johnson: Thank you.

Several members interjected.

Mr R.C. KUCERA: Can I just get on to my point? The problem has been that the magistrates have started to perceive that getting a push and a shove and a belt as a police officer—or a public officer—is regarded as a hazard of the job and something that happens during the course of police simply doing their duty. I saw a succession of charges treated almost in the same way as if the offenders were shoplifters, or someone caught urinating in the street. Also, most street offences have been reduced to a level of there being virtually no penalty at all.

The other thing has dropped away, quite frankly, and I do not agree with —

Mr R.F. Johnson: Because the courts won't impose them.

Mr R.C. KUCERA: I listened to the member for Hillarys in silence; please give me the same courtesy.

The lack of shaming and identification of offenders has changed the whole nature of societies. Some 30-odd years ago, if someone committed an offence and it got to court, it was clearly reported in the newspaper; the name—and often a photograph—was there. People were more worried about that shaming than they were about actually going to court. The opposite now appears to apply, and there have been countless press stories that examine in every minute detail not the thugs, but the actions of the officers. That concerns me greatly. Never have I seen any organisation so thoroughly scrutinised by a range of agencies whose budgets probably exceed the police department's nowadays. That situation has evolved over the past 25 years. Inevitably, it is the case that large resources are expended on investigating allegations against police. I have been telling members for many years now that crooks will always make an allegation against police regardless of whether it is true or not. Those allegations hold up the work of police officers generally, and the scrutiny they get is unbelievable.

On the one end there is the erosion of standards generally throughout the community, an example of which I will tell members about. I was out with my wife the other evening in Northbridge, and if two four-letter words were taken out of the English language, most of the young community of Perth would be struck dumb.

Mrs J. Hughes: It would be nice and quiet!

Mr R.C. KUCERA: It would be nice and quiet, especially without the expletives! The level of societal standards is going down on the one hand, which people seem to accept, but on the other hand there is public outrage when somebody bashes the police. Where is the balance in that? We cannot have the penny and the bun. Mandatory sentencing does not help that. Along with this has been a rise in the level of violence generally. I know it will be argued that the majority of assaults are of the push-and-shove style. Quite clearly, I think magistrates can deal with that. That is why I was pleased when I saw the new legislation that came into this house. It does, to a degree, take care of some of that discord. I agree with the minister absolutely on this. I was very angry the other day when both our side of the house and the other side of the house spent another day

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

arguing about whose fault it was that it took 15 months for that piece of legislation to get through this house. I walked out of the chamber that day and I was angry about it.

Mr R.F. Johnson interjected.

Mr R.C. KUCERA: Both sides of the house. I am not going to get into that argument with the member for Hillarys. He can hang his head also. We played silly political games on that issue for 15 months, and 1 838 police officers and public officers were bashed in this town while we waited for that legislation to go through. I really believe that that legislation gives us an opportunity to send a very clear message to the judiciary in this town. However, I have a number of other concerns. Mention was made today of Matt Butcher. I saw Katrina's face after Matt was bashed, and I saw the face of his mother, Gayle. I also saw her face a few years ago when a similar tragedy happened to another member of their family, also a police officer. I have seen that same look on the faces of countless wives and mothers, including my own mother and my own wife. However, the law is in place now. Let us start to move on. I believe that those amendments send a very clear message to every magistrate and judge in this state that bashing a copper will not be tolerated. However, I can also appreciate the anger that is being felt by my former police colleagues who are out on the streets. The legislation has been strengthened. Parliament has spoken, and I think the message is very clear. It must be heeded, otherwise judicial discretion will clearly be threatened. There is no doubt about that. However, it is a basic tenet of the law. In 40-odd years, on the occasions on which I have seen mandatory sentencing imposed—it has happened on a number of occasions in this state—each time it has been an abject failure, because the lawyers and the smart people out there find every device they can to get around it, and the very thing that we set out to do drops away. The very thing that we wanted to achieve gets lost in the arguments and the legal nonsense that goes on. Lawyers will use every possible device to avoid it.

[Member's time extended.]

Mr R.C. KUCERA: As I have said, I have never been a fan of mandatory sentencing. I talked about circumstances. I have listened to the member for Hillarys arguing passionately over the past two days because a certain person has been included on a mandatory sex offenders register. That is the great problem with this kind of legislation. There is no room for circumstance. Whoever bashed Matt Butcher needs to have the bloody book thrown at him. I say that within the confines of this house, because I do not even know whether that case has gone to court yet. That message must be clear. I could not count the number of times that I have had to drag people out of certain circumstances, particularly in cases of domestic violence. In the heat of the moment I was injured, but I know darned well that it was never intended. Those circumstances existed. The member for Hillarys argued today about the person's name going on the register. There are circumstances in which there should be a discretion to enable the law to be balanced.

I will go back very quickly to the mandatory sentencing of juveniles. Members should look at all the reports that have been written in the past two years, or in fact in the past five or six years. It is almost 15 years since the legislation came in. Not one of those reports has been in support of that legislation, and the common complaint that they make about that legislation is not that it is effective or ineffective, but that the law has in every way been usurped, twisted and manipulated to try to avoid the imposition of mandatory sentencing. The consequence of that, I believe, is that there are many people out in the community who should have been properly sentenced by being sent to jail. However, they have been able to avoid that. Like the member for Murray, I have looked down the barrel of a gun, and I have rolled in the mud and the blood and the beer, as I have said. I am not talking about the annual press party when some editor punches one of his reporters. In the real world, at this time, I have enormous sympathy for my previous colleagues and, more importantly, for their families. As I have said, I have also seen myriad instances in which things go dreadfully wrong, when there needs to be a balance and a degree of discretion.

After 15 months, with the passage of that legislation recently, the message that this Parliament has sent is that serious assaults cannot continue without the offenders being punished appropriately. I think I need to keep repeating that for the benefit of our judiciary. Serious assaults cannot continue without offenders receiving the appropriate punishment. The discretion that the judiciary has been applying must apply first and foremost in considering punishment. Secondly, the judiciary must consider, in its discretion, the victim. Thirdly, consideration must be given to the community. Lastly, and only lastly, the perpetrator or the offender should be considered. There seems to have been somewhat of a reversal; that is the perception.

Recently, the Chief Justice commented on this issue, and I thought it was a very scholarly article. I did not agree with all of it, but the Chief Justice certainly pointed out some issues. I will also say that at some stage we should attempt to have Justice McKechnie come to this house and give to all of us the presentation on sentencing that he gave at a Uniting Church breakfast that I attended last year. Some 60 people were in the audience. John McKechnie is no airy-fairy judge; he is a real person who knows how things are and who knows from his own

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

family circumstances what it means to have things go wrong. In my view, he is one of the better judges we have had in this state over the years. He took us through a system of sentencing, and at the end of the day, the sentences that the people in that room gave out, based on their own perceptions, were about half of what he actually gave in those instances. The great problem with all this is that it is a matter of perception. I do not deny that those 40 or 50 cases that went before the court in the past two years or so, as Chief Justice Wayne Martin said, need to be re-examined.

There is another issue here for us, and I will get onto that very quickly in a moment. However, I will quickly give members some figures from Justice Martin's article. Eighty thousand penalties were dished out in this state last year. The ones that were questioned numbered fewer than 50. There may be a reason for that; I do not know. However, I believe, as he said—I think we should hold him to this—that the court should lead, not wait to be led. Therefore, I think the message is out there for Chief Justice Martin and the rest of the judiciary that this Parliament has spoken about the penalties that have been given. The Chief Justice is against mandatory sentencing generally and, quite frankly, I can understand why. The other thing is that if we take discretion away from judges and magistrates, they, similar to the solicitors who twist and turn, will look at every way they can to make sure that they retain a degree of discretion within the process. Mark my words; that is what will happen. Here is the rub. The problem is: at the moment, are the police right in the view that they have on this general perception? Is Wayne Martin right on this general issue? I do not know. Is *The West Australian* right? I always know about *The West Australian*. I do not know whether I am right about this. I do not know whether this issue has become so bad that we need to undermine a basic tenet of English justice and take away the discretion of the judiciary. I do not know whether it is that bad; I honestly do not. I see Matt Butcher and his wife and his mother, and I want to go out and absolutely strangle somebody when I see them. I would probably be locked up for 12 months under the opposition's proposed sentencing regime. There is the rub; we do not know whether we are right. No-one actually knows whether all these sentences are manifestly unfair. I do not even know whether the police commissioner exercises his discretion and appeals every one of these sentences. If he has any gumption, every time he thinks there is a manifestly unfair sentence, he should be battering down the Director of Public Prosecutions' door and appealing. I do not even know whether that is happening.

Mr R.F. Johnson: We shouldn't have to appeal them all.

Mr R.C. KUCERA: I do not know and neither do members opposite. I do not know how many appeals there are. I do not even know whether the police commissioner has enough money for appeals. A senior police officer told me the other day—I do not know whether this is true—that the reason the police do not appeal these sentences is there is not enough money in the budget. I would be concerned if that was the case, but I doubt that would be the case, quite frankly. This is such a fundamental right and we simply do not know.

Mr M.J. Cowper: Will the member take an interjection?

Mr R.C. KUCERA: No, I will not.

Much has been said about the range of assaults perpetrated. I heard the member for Murdoch raise these issues in his very scholarly address. However, I do not believe that we really know whether the definitions and the delineation of these assaults are correct. I would honestly like to know that before I start passing judgement on a piece of hastily cobbled together legislation that, quite frankly, has been introduced by the opposition as a political stunt. I think members opposite do a disservice in doing that.

Several members interjected.

Mr R.C. KUCERA: I am further concerned that, apart from some anecdotal evidence, we do not know whether the sentences given are being carried out. I agree with the opposition that there should not be suspended sentences for serious assaults on police or any public officer. I think they should go by the board. There is no place for them in our justice system. On the other hand, a lot has been said about the judiciary. Perhaps they are ignoring public sentiment; perhaps they are out of touch. I simply do not know. All my life I have dealt with issues based on evidence that is clearly put before me.

Mr M.J. Cowper: You are closer than most of us to these issues.

Mr R.C. KUCERA: I also do not know about the complete range of assaults on public officers. I am told that the 1 838 figure I was given applies from the start of the last financial year up to this date. I do not know whether that is true; Mick Dean gave me that figure when we discussed this issue. I do not know about the appropriateness of the existing charges. I do not even know whether the police lay the proper charges. Perhaps that is why we do not get the sentences; I do not know. I do not know whether the police are being properly trained in the elements of the offences.

Several members interjected.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

Mr R.C. KUCERA: I can understand why the member only got to Sergeant.

Several members interjected.

Mr R.C. KUCERA: I do not know the actual and real statistics about the nature and the number of charges and their relevance or the nature of the injuries that are inflicted, if indeed there were injuries.

Several members interjected.

Mr R.C. KUCERA: Madam Acting Speaker, can I please have some protection?

Mr M.J. Cowper: I will give you the protection you need and so will those blokes in the public gallery. I am on my way out of the chamber.

The ACTING SPEAKER (Ms K. Hodson-Thomas): Order, member for Murray! That is highly inappropriate and the member knows better. As an Acting Speaker, the member knows that members are not allowed to speak when they are out of their seats.

Mr R.C. KUCERA: I thank the Acting Speaker.

I do not even know whether there is a proper comparison between the different courts of jurisdiction. I do not know what sentencing options were available, but I know what is now available. I do not know about the nature of the sentences that were given. We had members today give some examples of sentences, and I agree with the minister and the member for Hillarys that those sentences were manifestly unfair. I do not even know whether they were appealed against.

I notice that the minister has asked for a review of these issues over the next couple of years. I must say that I have some concerns about that, and I have already discussed some of these concerns with the minister. Before we even consider wiping out a basic tenet of our Westminster-style justice system, I would like some facts put before me. If those facts clearly demonstrate that the judges are not listening to the community or this Parliament, I would be more than happy to support the Acts Amendment (Assaults on Police Officers) Bill 2008 before this house. However, I simply do not know; even the prosecutor who has recently joined us does not know. He knows of individual cases, he knows the range of sentencing options that are available, but he would not know whether those sentences were being carried out. He would not know whether the Commissioner of Police regularly appeals these issues. He would know whether the people coming before him knew the elements of the offence before they even laid those charges. This is simply one of those issues.

I clearly remember the thousands of people who marched up the hill demanding mandatory sentences for juveniles. Whether or not this bill passes through this place today, I strongly suggest that the minister upgrade the review I mentioned earlier into a high-powered task force, under his direction, to review and report to this house on all these matters that have been raised, as a matter of urgency.

Mr R.F. Johnson: We wouldn't want you on that task force!

Mr R.C. KUCERA: Will the member for Hillarys be quiet for a moment?

The task force could provide this Parliament with a clear statistical picture of the incidents of assaults on public officers, the nature and severity of those assaults —

Mr R.F. Johnson: You've got them!

Mr R.C. KUCERA: We have not; all we have is the member's anecdotal rubbish that he normally brings into this house.

The task force could investigate the nature of the sentences that were applied, and the outcome of the sentences preferred from 1 January—as far back as members opposite want to take it; we could go back to 2000. I do not mind. The task force could also consider the appropriateness of the current range of charges that can be laid under existing legislation and the priority of the definitions that we have—we do not know any of this stuff—and the extent to which these definitions and offences reflect the range of assaults and their severity. I have an entire range of other options that I am more than happy to give to the minister.

I think we have given a very clear message—if not today, then since the other legislation was passed—to all the judiciary that it is about time they sat up and started to take notice. Again, who am I to say that when the judiciary may very well be taking notice?

Mr R.F. Johnson interjected.

Mr R.C. KUCERA: Of the 79 950 cases that were determined in our courts last year, it may very well be that all the sentences passed were manifestly correct. The other 50 cases that the Chief Justice referred to were manifestly unfair. If those sentences are manifestly unfair, is the process of appeal appropriate? Is the appeal

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

process being used properly? Is the Commissioner of Police doing his job? Is the Director of Public Prosecutions doing his job? Do these people have enough money to do their jobs? I do not know any of these things. Before we charge in and get rid of a basic tenet of the justice system in this country—not just in this country but in the Westminster system—let us have some evidence before this Parliament so we know exactly what to do. I must say that there is an old saying—I do not know where it came from—that the road to hell is paved with good intentions. I do not decry the opposition for its intention to protect the police officers of this state. I do not decry the fact that we have upped the sentences as far as we can go. However, I like to know what I am doing before I vote for a bill that, if passed, would undermine and undo a justice system that has been around for thousands of years. This justice system dates right back to Roman times; it goes right back to the Romans!

Several members interjected.

Mr R.C. KUCERA: I sincerely hope that the amendments we have introduced and the tools we have recently given to the judiciary are used appropriately. Let us be certain about what we are doing in seeking to support our police officers and our other public officers. As I have said, I know where they have been. Let us be sure about what we are doing.

MR J.A. MCGINTY (Fremantle — Attorney General) [6.19 pm]: I want to draw the house's attention to the fact that in two and a half weeks, new laws designed to offer far greater protection to our police officers will come into force in this state; that is on 27 April. These new laws will provide for far tougher sentences in recognition of the fact that what is currently dished out by the judiciary does not adequately reflect the seriousness of crimes against the police. To that end, I thank the member for Yokine for his contribution, with which I agree wholeheartedly, and for the way in which he put forward the position on the challenges that confront people today. That is the first thing the new legislation will do. I will return to the detail about the tougher new provisions that will enable the judiciary to hand down sentences that more adequately reflect the seriousness of assaults on public officers, particularly police officers.

The second thing that the legislation does is provide for more targeted offences. One of the problems alluded to by the member for Yokine is that there is essentially one offence referred to in the Criminal Code as a serious assault. It used to be known as assault on a public officer. It carried a penalty of 10 years' imprisonment for everything ranging from the most minor technical assault through to grievous bodily harm. Assaults on public officers were all incorporated under one offence. The government has broken that down into three separate offences, each to be dealt with in its own band of seriousness. These are grievous bodily harm on a public officer, actual bodily harm on a public officer and assault of a public officer. That will enable us in future—this was referred to by the member for Yokine and the Minister for Police and Emergency Services—to drill down into offences against police officers to have a better understanding of the gravity and seriousness of the offences, and the circumstances surrounding the offences.

The third thing that the new legislation does is provide for more assaults against police officers to be dealt with only in superior courts. In other words, it will remove those offences from the jurisdiction of magistrates and place them in superior courts. We already have that for assaults occasioning grievous bodily harm; they have to be dealt with in a superior court. The legislation will provide that those assaults that take place in company or in which a weapon is involved —

Mr R.F. Johnson: Aggravated assaults.

Mr J.A. McGINTY: Aggravated assaults, which can currently be dealt with by a magistrate and generally are, will in future be required to be dealt with in a superior court. In other words, those assault cases will not be disposed of quickly before a magistrate with, generally speaking, significantly weaker sentencing powers; they will be dealt with in a superior court that has a greater range of sentencing options available to it.

Mr C.C. Porter: Can assaults occasioning bodily harm still be dealt with by magistrates if they do not occasion circumstances of aggravation?

Mr J.A. McGINTY: Yes, that is right. That is why I pointed out those particular assaults involving aggravated circumstances.

All of this came about as a result of discussions between the government, the Commissioner of Police and the Director of Public Prosecutions more than two years ago. The government could see then that there were problems with the way in which assaults on police officers in particular, but also other public officers such as nurses in emergency departments, were not being dealt with in a way that reflected the seriousness of the crimes committed. We wanted to construct a new provision within the Criminal Code that would achieve a far greater concordance between the nature of the offence and the punishment meted out by the courts. I asked the Director of Public Prosecutions, Robert Cock, QC, to engage in an analysis of the existing law to the extent that he could and to engage at the same time with the police commissioner. The agreement which came forward and which is

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

reflected in the Criminal Law and Evidence Amendment Bill was arrived at between Commissioner of Police Karl O'Callaghan and Director of Public Prosecutions Robert Cock as the best way forward to deal with the very problem that we are discussing in Parliament tonight. That was the agreement, reflected in this legislation, that the government introduced to Parliament, if my memory serves me correctly, in about March or April 2006.

Mr C.C. Porter: Was the Police Union involved in those negotiations?

Mr J.A. McGINTY: I am not sure; I asked the police commissioner and the head of the DPP to meet, confer and discuss these matters. I am not sure about the extent to which the police commissioner may or may not have consulted with the Police Union.

Mr R.F. Johnson: I don't believe they were.

Mr J.A. McGINTY: It does not matter for the present purposes.

Mr J.C. Kobelke: I did.

Mr J.A. McGINTY: The Minister for Police consulted with the Police Union at the time about these matters. In fact, I remember him telling me at the time that he did exactly that.

The important thing was that we had expert minds having a good look at the issue of how best to deal with a problem that we all know exists out there. It is now a matter of public record and considerable disappointment that the Parliament—I refer to the upper house—let down the people of Western Australia and the police force.

Mr R.F. Johnson: You can't say that.

Mr J.A. McGINTY: I just said it.

Mr R.F. Johnson: Your Leader of the House in the upper house did not bring the legislation on.

Mr J.A. McGINTY: Madam Acting Speaker, I make the point that I listened to the member for Hillarys in silence when he spoke, and I have serious points to make about this matter.

It is a matter of public record that that bill languished in the Legislative Council for a period of approximately 18 months. It was certainly longer than 12 months.

Mr R.F. Johnson: Your leader up there didn't bring it on. You know that.

Mr J.A. McGINTY: The member can cast whatever aspersions he wishes to. The fact of the matter is —

Mr R.F. Johnson: It's true!

The ACTING SPEAKER: Order, member for Hillarys!

Mr J.A. McGINTY: The Legislative Council let down the people and the police force of this state by not progressing the legislation. The member will recall that when the legislation was returned to the Legislative Assembly, after having languished for so long in the upper house, it was treated with absolute priority and was dealt with in one day. There were minor amendments and the government treated the legislation seriously because it was something that should have been accorded that measure of seriousness. That is the background to this matter.

Legislation is about to come into effect that reflects the agreement of our senior law enforcement agencies—our senior prosecutor and our senior police officer—as the best way forward to deal with the quite proper demand from the community to deal more severely with people who bash police officers. That is a perfectly legitimate demand. In common with everyone else in the community, my stomach turned at the sight of some of the photos and graphic illustrations of assaults on our public officers, which are totally unacceptable and must be punished most severely. That is what the legislation seeks to do.

I return to the most serious form of assault, which is assault occasioning bodily harm. I do not make this point other than as a factual point, but there is nothing in the opposition's legislation to help Constable Matt Butcher, or to in any way at all affect the circumstances confronting either him or the person who committed that cowardly assault on him; absolutely nothing. The opposition is saying that the assault must have a mandatory minimum sentence of 12 months because it involves grievous bodily harm. That is frankly laughable, because assuming that the person who committed the assault is convicted, he will receive a significantly greater sentence than 12 months.

Mr R.F. Johnson: What will it be, then?

Mr J.A. McGINTY: I am not going to engage in silly speculation.

Extract from Hansard

[ASSEMBLY - Wednesday, 9 April 2008]

p2092b-2120a

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke; Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

The matter is about to go before the court. Assuming the person is found guilty, I would expect a very severe sentence to be handed down by the court. I can tell the member now that it will not be one year. It would be inconceivable for that to be the case.

Mr R.F. Johnson: Will it be 14? Will it be 10?

Mr J.A. McGINTY: Justice member for Hillarys can speculate all he likes, because he would not have the foggiest idea.

Let me make this point: the key element of the change we have made in our legislation, which is too late to help Constable Butcher, is the doubling of the maximum penalty available for future comparable cases involving assaults on police officers and grievous bodily harm. I would expect that proportionately, as a result of that, sentences will dramatically increase.

Mr C.C. Porter: For that offence?

Mr J.A. McGINTY: Yes.

Mr C.C. Porter: What about the lower end of the scale?

Mr J.A. McGINTY: At the moment I am talking only about grievous bodily harm. People have spoken passionately about Constable Butcher, and I think it angered everyone in the community enormously to see what happened there. At the moment, the court can impose a maximum of 10 years discounted by one-third, which is six years and eight months. That is the maximum that can be imposed for that assault, because that is the maximum penalty that the legislation allows. With the changes that will become law in two and a half weeks—I think it is unfortunate but we will see other assaults against police officers in the future, because that is a reality of life—we will be in a position to say that the maximum penalty for such an assault is 14 years with no discount, so the penalty will more than double. The maximum penalty for the most serious assault on a police officer will go from six years and eight months to 14 years. That will be dealt with in the District Court; it cannot be dealt with in a lower court. That is appropriate. The legislation will more than double. The maximum penalty that can be imposed on someone who commits a serious assault occasioning grievous bodily harm on a police officer will more than double in two and a half weeks. That is the government's response. The court's responsibility is then to look at the seriousness of the offence and consider the range of time from zero to 14 years, not zero to six years and eight months, which obviously means that the court is limited with what it can do in the more serious assault cases, and fix a penalty depending on where all the circumstances fit within that range of zero to 14 years. I have no doubt that the penalties will increase significantly. If members have any doubt about that, I ask them simply to look at the court's reasoning in the sentence that was handed down today on the people responsible for the cowardly attack on the Perth railway transit guards. In that case—we have all seen the footage on television in recent days—the judge said that the appropriate penalty for one of the offenders—I forget which one—was 33 months' imprisonment. However, that had to be discounted by one-third because of the Sentencing Act 1995 provisions; therefore, the sentence was 22 months. In other words, the judge was saying that, had the new laws been in place, the sentence would have been one-third higher. That is the proper rationale of a judge determining a sentence to be applied in a particular case. In this case of grievous bodily harm—today's case was not grievous bodily harm; it was actual bodily harm—I would expect that the judge would fix somewhere in that range of zero to 14 years, and the sentence would not be required to be discounted by one-third; therefore, there will be more than a one-third increase in the average penalties that will be handed down from here on. That is my expectation as a result of the legislation that we—I am including both sides of the Parliament—passed. We all supported it and that was what we thought was the appropriate response. At the most serious end, we are not talking about a one-year minimum term for people who commit grievous bodily harm and assault against a police officer; we are talking about a lot more than that.

I have looked at the figures on sentences handed down by the courts for all cases of grievous bodily harm, although these are not for harm against public officers. The legislation we have just passed reflects this. Grievous bodily harm against a police officer or any other public officer ought to be punished more severely than other assaults because those assaults are against public officers, and a deterrent issue is involved. The average sentence in all the grievous bodily harm cases that have come before the court so far this financial year has been two years. I suspect that if we were able to—we were not able to extract the figures—look at only those cases of grievous bodily harm assaults against police officers, we would find it somewhat higher than that. It was interesting that, as Tom Percy indicated on the radio the other day, three years was about the going rate for an assault causing grievous bodily harm to a police officer, in the context of the present legislation, whereas the maximum is six years and eight months. That seems to be the view about where it is settling at the moment. I expect that to grow by a significant number of months or years as a result of the changes that are due to come into effect in two and a half weeks. That is an appropriate response at the top end of the scale because I cannot imagine anyone who has committed grievous bodily harm on a police officer or a public officer not being sent to

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

jail. I am unaware of a single case. I have asked if there is a single case in which a person who has committed grievous bodily harm has not been sent to jail. We all know that if a person is sent to jail, the minimum sentence at the moment is six months. There is already, effectively, a minimum in the code. However, the real starting point for the courts is in fact several times higher than what the opposition has proposed in its bill.

The Constable Butcher case is at the very serious end of the scale, so I will not use that as an example, but there are other lesser, nonetheless very serious, cases of grievous bodily harm for which I am unaware of anyone being convicted who did not go to jail. Therefore, the mandatory minimum of 12 months will have either no effect or a negative effect. There is a bit of an inclination to look at a mandatory minimum as the appropriate sentence. My view—it is supported by other senior criminal lawyers—is that it might in fact lower what we are trying to bump up. That is one of the reasons I do not support the legislation.

Dr J.M. Woollard: My concern is that, whilst there has been an increase in the number of assaults, is a one-year minimum the right answer? Offenders who were not hardened criminals when they went to jail are more likely to be moving along those lines when they come out. I think the offences the Liberal Party is putting up for people who have assaulted police officers are not severe enough.

Mr J.A. McGINTY: I think the member is right. I think in reality they are much harsher.

[Member's time extended.]

Mr J.A. McGINTY: That is essentially the point that is made, for instance, by Tom Percy, a leading criminal defence lawyer. His clients are currently looking at about three years on average for grievous bodily harm. He would love his clients to receive the one-year minimum sentence that is proposed. However, a more serious issue is whether, in looking at sentencing, they see that as an indication from the Parliament that that is an appropriate sentence. In the overwhelming number of cases in which grievous bodily harm has been committed, one year is a totally inadequate sentence, so I agree with the member on that also.

I think the legislation that is about to come into effect needs to be given a chance. That is the point Karl O'Callaghan made publicly. It will be significant at the serious end of the scale. We have more than doubled the penalty. Let us monitor it and see how it works. That is the significance of the police minister's commitment to review the legislation over time following the implementation of the new regime for penalties.

I refer now to assaults occasioning bodily harm. That offence covers a range of circumstances for which I am not sure we want to prescribe a nine-month minimum jail term.

Mr C.C. Porter: Are you talking about aggravated assaults or non-aggravated assaults?

Mr J.A. McGINTY: What is the member for Murdoch proposing?

Mr C.C. Porter: I understand that our proposal is one year for aggravated, and nine months for non-aggravated bodily harm.

Mr J.A. McGINTY: I will deal with what assault occasioning bodily harm entails. As the Minister for Police has said —

The term “**bodily harm**” means any bodily injury which interferes with health or comfort;

That is the way it is defined in section 1(1) the Criminal Code. I have looked at some of the cases on this issue to get a better understanding of exactly what that means, because, quite frankly, that implies something that could be relatively minor. A bruise might be sufficient. In a case that occurred four years ago, heard in the WA Supreme Court as *Smejlis v [2004] WASCA 158*, the judge commented as follows —

. . . there must be some direct or circumstantial evidence to support a finding that the bruise interfered with health or comfort.

That is sufficient to establish a case of bodily harm. In another case, *Robinson v Smith [2005] WASCA 99*, it was noted —

Numbness, pain and a lump in the throat are sufficient.

In a further WA Supreme Court appeal case, *Brown v Blake [2000] WASCA 132*, it was noted —

Pain that has lasted for a couple of days is sufficient.

In that case, the judge went on to say —

. . . I take “bodily injury” to mean something in the nature of damage to bone, muscle, tendon, skin, organ or any part of which the human body is constructed. The word relates to more than merely a sensation of pain.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

Mr C.C. Porter: That's at the lower end of the spectrum, obviously.

Mr J.A. McGINTY: Sure, but that is my point. The reason I started with the grievous bodily harm cases is that I do not think there is any argument about that point. Grievous bodily harm means an injury that is likely to endanger life or is permanently injurious to health. We have more than doubled the penalty in those circumstances, and I have made the point that I think that the member's proposed penalty for those very serious assaults that result in grievous bodily harm is inadequate. This is what the Supreme Court has said that bodily harm means. I take it that they are the minimum definitions that need to be satisfied.

Mr C.C. Porter: You are aware of the decision that basically says that you can have an ear lobe or part of your ear bitten off and that constitutes bodily harm rather than grievous bodily harm, because there is no permanent injury to health or no injury likely to endanger life. There is quite a wide spectrum for bodily harm.

Mr J.A. McGINTY: Sure, but, equally, a person could have his little finger cut off and that would be grievous bodily harm because that could represent —

Mr C.C. Porter: Not necessarily. If it is a cosmetic disfigurement, it would not fall within —

Mr J.A. McGINTY: I think it would, and that is the ear lobe example.

Mr C.C. Porter: Yes, but a pinkie may well fall within bodily harm rather than GBH, but it is a matter of degree, obviously.

Mr J.A. McGINTY: The judge went on in the case of *Brown v Blake* to say —

. . . I am satisfied that as a matter of ordinary human experience one knows that, if pain has lasted, . . .
for a couple of days then the body has suffered damage.

I just wanted to say that so that we would know what we are talking about, and so that we would separate out the very serious cases, such as that of Constable Matthew Butcher, from other cases. The new legislation, which is due to come into effect in two and a half weeks, proposes a one-third increase in the maximum penalty that can be awarded by a court. I would expect the court to apply, according to the rationale in the example that I gave today of the assault on the transit guards, the very same logic that it applied when it reduced from 33 months to 22 months the prison term applied to that cowardly assault. That should now work in reverse; that is, it would have been 22 months under the previous legislation, which required the court to discount the penalty by one-third; therefore, it should now award 33 months.

Mr R.F. Johnson: I wouldn't guarantee it.

Mr J.A. McGINTY: That is the rationale behind judicial decision making on imposing penalties.

Mr C.C. Porter: That is correct, but for clarity, again, that is an aggravated assault and the effective maximum will be increased from 6.6 to 10 years.

Mr J.A. McGINTY: Yes, that is right. Common assault, if I can call it that, against a public officer will have a maximum penalty of seven years, which is appropriate because of who has been assaulted. It will give the court the power to prescribe a much more significant penalty.

Mr C.C. Porter: That common assault might result in bodily harm for that maximum, but simply not have a circumstance of aggravation.

Mr J.A. McGINTY: That is right. We have set up a new three-tiered structure, which will not come into effect until 27 April, that will give us a far better way in which to focus on making sure that the charge is appropriate for the nature of the assault, rather than having one catch-all provision for assault against a public officer. The point that the member for Murdoch makes is quite right. The use of a weapon in bodily harm cases, whether it be a stick or a rock or something else that can be picked up, is sufficient to trigger the more serious penalty. The recent incident in Meekatharra is a good example of a public officer being assaulted by a person in company. These incidents often involve drunkenness outside nightclubs and hotels, and the offender is in company every time. The overwhelming bulk of those cowardly attacks—which are fuelled by alcohol—outside licensed premises will be caught by the new more serious provision. That is the reason that we have constructed it in that way. If an offender is in company, that is a circumstance of aggravation and the offence will attract the higher penalty.

Mr C.C. Porter: Indeed, your second category doesn't even require bodily harm, only a circumstance of aggravation—being in company or armed. I think that's right.

Mr J.A. McGINTY: I will double-check that. I am dealing just with bodily harm cases. I think the simpler assaults can often fit into things that should be punished, sometimes by jail. However, often they are of the

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

nature of what was referred to by the member for Yokine as fitting into that trifecta of what is charged in those circumstances. I think anyone who has been to the Magistrates Court and seen those three charges come up together will know that the nature of the assault has caused no damage and no substantive harm, not that anyone tolerates it or wishes to diminish it. However, if no damage is done to the officer concerned, I think it needs to be dealt with differently from those more serious assaults to which I have referred.

Mr C.C. Porter: With respect to your lowest category, which is an assault of bodily harm with no circumstance of aggravation, the increase in the maximum sentence is moderate.

Mr J.A. McGINTY: It is one-third, is it not?

Mr C.C. Porter: No, it's not. It used to be 10, so, effectively, it used to be 6.6 and now it is seven. The increase is moderate. You can't use the one-third to show —

Mr J.A. McGINTY: That is common assault.

Mr C.C. Porter: For an assault of bodily harm without a circumstance of aggravation, the effective increase in the maximum is 6.6 to seven years.

Mr J.A. McGINTY: I do not think that is right, but I will double-check it. The important point is the more serious offences, and they are the ones that have excited the public passion on this. They are substantively dealt with in that legislation in those circumstances.

Mr C.C. Porter: But are they, though? What about offences such as biting?

Mr J.A. McGINTY: I am sorry; I have only three minutes left and I would like to make one other point that I think is critical. One of the things that the member's bill will do is provide that no matter what type of assault is made on a public officer, a spent conviction cannot be recorded. I agree with that. Anyone who assaults a public officer should be dealt with harshly. We have the test case. I spoke to the Director of Public Prosecutions today and he advised me that he has considered the particular case involving Mr Daubney. In this case, the police officer was talking to some people in Northbridge at one o'clock in the morning of 13 March. He did not know these people; he was a complete stranger. As it has been described, Daubney grabbed the police officer from behind by the neck and shoulders and pulled him backwards and the officer suffered minor injuries. A spent conviction was recorded in that case. I think that is totally inappropriate. That is why the Commissioner of Police raised with the DPP the need for an appeal. I thought there was a need for an appeal. I also discussed the matter with Robert Cock. Of course, he is completely independent in his decision making. He has advised me today that he will lodge an appeal.

Mr C.C. Porter: Should that person go to jail?

Mr J.A. McGINTY: I do not know enough about the circumstances. I know that that person should not get a spent conviction. That is my very strong view on that. I am hopeful that the Supreme Court will have the opportunity to pronounce on this question of spent convictions. We will go to court and strongly argue that a spent conviction is totally inappropriate when someone has assaulted a public officer. That is the argument that will be determined by the court. If the Supreme Court pronounces to that effect, that will obviate the need for that particular clause in the bill that the member has proposed. I make this point by way of commentary on the police: they have never once in recent years appealed a spent conviction being granted for an assault on a public officer. That is a matter that I have raised with Karl O'Callaghan. Others have also raised it. I am very pleased that the police are taking that action. I raise that point not as a direct criticism, but as an observation that they have never appealed those types of spent convictions. They will now do it. Subject to what the Supreme Court has to say about it, that should deal comprehensively with that part of the legislation before us.

I will close on this point: we have new legislation that has not even come into effect yet. It deals particularly with the most serious assaults against police officers; that is, those that anger the public so much. It should be given a chance to work.

DR J.M. WOOLLARD (Alfred Cove) [6.49 pm]: I will be brief. I do not think, as has been suggested by the member for Yokine, that this is a political stunt by the opposition. I do not think it is a political stunt when four police officers are assaulted on a daily basis. I am pleased that the Acts Amendment (Assaults on Police Officers) Bill 2008 is being debated in this house. As I said previously to the Attorney General, I do not think that this legislation is strong enough for serious offenders. Whilst this bill will not get the government's support tonight, I am pleased that a bill will be introduced into the house in the next few weeks.

Mr R.F. Johnson: They won't even let it go to a vote tonight because a deal has been done by the minister to get the member for whoever it is to talk about it.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

Mr J.C. Kobelke: Member, if you are talking about the bill that's already gone through, it is at the proclamation stage.

Mr J.A. McGinty: The one that I was talking about is about to be proclaimed. It's already gone through.

The ACTING SPEAKER (Ms K. Hodson-Thomas): Order, members! I notice that when the member for Alfred Cove is on her feet, there are incessant interjections across the chamber. They are not helpful and they do not contribute to her speech. I ask members to refrain from having conversations across the chamber.

Dr J.M. WOOLLARD: I am very pleased that the bill that the Attorney General was referring to will be proclaimed in a few weeks and it will increase the penalties. That bill has been on the table. The police officers who have come to this place tonight and sought this bill obviously feel that that will be insufficient. It is possibly time for the government to give more detailed consideration to this issue because the assaults on police officers are not acceptable. We need to have harsher penalties. We need to get the message out to the community that assaulting public officers such as police and nurses is not acceptable to the community and it should not be accepted by this Parliament. I congratulate the member for Hillarys for bringing this bill to the house.

The ACTING SPEAKER: The question is that the bill be read a second time. I call the member for Peel.

Mr R.F. Johnson: The reluctant member for Peel. He wasn't going to speak on this bill. It will not go to a vote tonight. Let the gallery know that the minister does not want to vote on this because he will be shown up.

The ACTING SPEAKER: The member for Peel has the call.

MR P. PAPALIA (Peel) [6.52 pm]: Thank you, Madam Acting Speaker.

Mr P.B. Watson: Listen to what he says first.

The ACTING SPEAKER: The member for Peel has not even spoken yet. I will have no hesitation in calling members to order.

Mr P. PAPALIA: The member for Hillarys is assigning me a far more Machiavellian mind than I could possibly contemplate.

Mr R.F. Johnson: Because he doesn't want to go to a vote.

Mr P. PAPALIA: Unlike some members, I have sat in this chamber through the entire debate. The member for Hillarys knows that and he knows that I have had some interest in it. I intend to speak only briefly.

Mr R.F. Johnson: Five minutes so we can go to a vote?

Mr P. PAPALIA: I wanted to record my support for the police. Unlike the member for Murray and the member for Yokine, I cannot claim the honour of having been an ex-police officer. However, I have served in uniform. I know the spirit of camaraderie and pride that such service engenders.

Several members interjected.

The ACTING SPEAKER: I call the members for Albany and Hillarys to order.

Mr P. PAPALIA: I also have a brother who is a long-serving senior police officer. I do not need to read *The West Australian* or watch Channels Seven, Nine or 10 to get an anecdotal report of the pain, suffering and anxiety experienced by family members of a police officer who has been assaulted. Those assaults have resulted in broken limbs or injuries caused after having been bitten by an individual who is infected with a contagious disease. I have sat beside my brother in those circumstances. I share the obvious concerns of members on both sides of this place about the safety of police officers in this state. Some of the acts that have been committed against our police officers, particularly those that have been reported in recent times in all media in Western Australia, are offensive and an affront to our society. These assaults concern our society. However, it does not do any good to respond as the Leader of the Opposition did this evening when he tried to imply that the government was somehow responsible for these offensive acts and horrendous assaults on police. That is not the case. The member for Hillarys knows that and I know that. We are all just as concerned for the safety of our police.

Mr R.F. Johnson: Let's go to a vote then. You're under instructions not to.

Mr P. PAPALIA: Until today I was under the impression that the police commissioner opposed mandatory sentencing and wanted to see the result of this new government legislation. I understood he publicly stated that he was waiting to see the outcome of the introduction of that legislation. The first I heard that that was not the case was tonight when the member for Murray told us that that was not the case. I was deferring to the advice of individuals who have far greater experience with this bill than I have, including the member for Yokine, my brother and the police commissioner. I understand that serving police officers are suffering from a lot of anxiety.

Mr John Castrilli; Mr John McGrath; Mr Christian Porter; Mr Troy Buswell; Acting Speaker; Mr John Kobelke;
Mr Murray Cowper; Mr Bob Kucera; Mr Jim McGinty; Dr Janet Woollard; Mr Paul Papalia

I share that. My gut instinct is to respond in support and take away that discretion. However, people with far more experience than I suggest that taking away that discretionary opportunity from the courts may result in an entirely different outcome from what we are hoping for, particularly at the lower end of the spectrum. At this stage the right thing to do is to support the government's legislation and watch very closely. If it does not result in the outcome that we all want, I would absolutely support mandatory sentencing. In fact, I would be arguing for it in our party room, and I do not think I would be alone. Just as many members on our side of the house as members opposite would advocate that if the legislation we are introducing does not result in the outcome that we all want.

Mr R.F. Johnson: You've got to keep going.

Mr P. PAPALIA: No, I do not actually. I was advised that I could speak. My main objective was to acknowledge the fact that police officers were so concerned about this issue that they showed up this evening. It would have been offensive for me to remain seated and not place on the record my respect for them and my concern for their safety.

Mr R.F. Johnson: There won't be a vote taken on this tonight.

The ACTING SPEAKER: Do I need to remind members of what I said earlier? The member for Peel has the floor. I will not tolerate any further interjections.

Mr P. PAPALIA: Noting that the member for Murray raised the issue, I would also like to refer to the subject of compensation for police. When the member for Murray's Police (Compensation for Injured Officers) Amendment Bill 2006 was debated on Tuesday, 16 October 2007, I voted against it. I received email correspondence from a concerned police officer. I shared a great deal of empathy for that officer when he outlined his situation and asked me why I had voted against the bill by the member for Murray. I explained to him that I had a great deal of empathy for those who served in uniform—I obviously cared about my brother and his colleagues—but the legislation proposed by the member for Murray was not well constructed. As I understand it, seeking advice from people who are more learned, experienced and knowledgeable than I in this matter, the proposed legislation stood to jeopardise the office of constable and possibly put at risk the high level medical care that police officers are currently afforded. They are currently afforded good medical care whilst they serve. We were all concerned about what would happen if they are discharged for reasons of not being fit to serve in the future. I would argue that we are compelled to introduce compensation to fix that situation as soon as possible.

Mr J.C. Kobelke: We have agreed with the police union and it is being drafted and we want it done as quickly as we can get it done.

Mr P. PAPALIA: The only reason we have not been discussing it much more in the party room is that the minister advised us that there were discussions with the police union.

Mr J.C. Kobelke: The discussions have gone to agreement.

Debate interrupted, pursuant to standing orders.

House adjourned at 7.00 pm
