

**CRIMINAL LAW AMENDMENT BILL 2001**

*Third Reading*

Resumed from 8 August.

**MRS EDWARDES** (Kingsley) [10.05 am]: I reiterate that this legislation will not give confidence to seniors. Members may have seen on the news last night the 80-year-old great-grandmother who was the subject of a predator. She was injured. The injuries were caused primarily by her fear, as she had to escape through glass broken by the offender. That is not acceptable. It is possible the act by the offender may result in a charge of only a minor nature. However, this 80-year-old great-grandmother has now become a victim. She is not able to go back into her own home. She is subject to fear, and she has become a prisoner. The offender has stolen the most valuable thing she had - independence. The community wants to know that the decision makers in government and Parliament will, through this legislation, give back to seniors the confidence to be able to live in their own homes.

The Attorney General has spoken about the minor nature of some of the offences. However, the Government considered those offences to be of such a magnitude that it included them in the range of offences for which penalties will be increased if the victim is over the age of 60. The admission by the Attorney General that his legislation will put only seven more people in prison is an admission that the legislation will be totally ineffective.

Mr McGinty: That is not what was said. It will mean seven beds in a jail in a year. It is a pity you do not understand this.

Mrs EDWARDES: It is a pity the Attorney General does not understand it. Did he see the news last night? Did he see that great-grandmother?

Mr McGinty: You should stop whingeing about a positive initiative. All you can do is come in here and knock, knock, knock, whinge, complain and criticise everyone.

Mrs EDWARDES: This will do nothing for seniors.

Mr McGinty: You did nothing for them in eight years. We are doing something and we want your support.

Mrs EDWARDES: This will do nothing for seniors.

Mr McGinty: Why don't you vote against it? You have not got the courage of your convictions to do that. If the legislation will not do anything, you are morally obliged to vote against it.

Mrs EDWARDES: This will do nothing to ensure that seniors have the confidence to be able to live in their own homes. They fear those predators.

Mr McGinty: You are a hypocrite. You do not have the courage to vote against it.

*Point of Order*

Mr DAY: The Attorney General is using unparliamentary language, while the member for Kingsley is trying to make a speech. The Attorney General may speak when she is finished.

The ACTING SPEAKER (Mr Andrews): There is no point of order, but I call the Attorney General to order.

*Debate Resumed*

Mrs EDWARDES: My remarks have obviously hit home. The Government has not implemented the matrix. It is doing nothing in terms of sentencing in this State. It will increase only the maximum sentence. It will not do anything; yet it refuses to support the introduction of minimum sentences, which it has admitted would have an impact. This legislation is a sham on all those seniors who have been the subject of attacks and who are fearful of being the subject of such attacks.

**MR QUIGLEY** (Innaloo) [10.09 am]: I have already indicated my support for this important legislation. It will increase the maximum penalties for attacks on persons over the age of 60 years by up to 50 per cent. What concerns me is the fear that the Opposition has been prepared to seed into this community by its dishonest argument. The Attorney General pointed to an example of what might happen under minimum mandatory sentencing if a 78-year-old man were struck over the head with a walking stick by his 76-year-old wife but suffered no harm. The 76-year-old woman would receive a mandatory term of imprisonment for 12 months, which could amount to a death penalty. The member wants to imprison the elderly. I have practised law for 26 years. There is domestic violence, especially in our indigenous community. The Aboriginal Legal Service has

raised the issue about domestic violence among people who are over the age of 60. Members should think about the discrimination that the member for Kingsley would impose on the elderly.

If a 59-year-old woman did her quince and slapped her 59-year-old husband because she was sick of him and that matter was prosecuted under a private prosecution - and dozens of these matters are, arising out of the Family Court - that woman would be let off with a caution. If a 59-year-old woman did her quince and struck her 60-year-old husband during a domestic dispute, the member for Kingsley would imprison that 59-year-old woman for 12 months minimum. It is outrageous! The member then proceeded with this dishonest argument.

I was a truck driver before I studied law; before that I was a shearer. I can remember that when I went to Leederville TAFE to do my mature age examination in English literature we studied a book called the *Lord of the Flies* by William Golding. It was about upper middle-class children marooned on an island and led by a gang who, individually were all nice people, but collectively were monstrous in their conduct -

Mr Day interjected.

Mr QUIGLEY: When I mix with members of the Opposition in the members' bar, individually I like and respect them, although I hold nothing but contempt for them and their dishonest arguments in this Chamber. For example, in reply to the proposition raised by the Attorney General that the effect of the legislation would see a 76-year-old woman incarcerated for striking her husband with a walking stick, the member for Warren-Blackwood was able to seize on an ABC headline and say - from my notes - that a person who hit a dog would get a greater penalty. He referred to offences against animals. He was comparing the Attorney General's example of a person hitting a 78-year-old woman or man with a walking stick and doing no harm, with a person hitting a dog in the same circumstances and doing no harm. The Bill dealing with cruelty to animals describes that cruelty against an animal as torturing, mutilating, maliciously beating, abusing, tormenting, or using a prescribed inhumane device, intentionally or recklessly poisoning the animal - this has nothing to do with hitting a dog and not causing it any harm. The member for Warren-Blackwood used this example to grab a headline and engender fear into the community by saying that the person who hits a dog with a stick will receive a greater penalty.

The member for Warren-Blackwood was a minister. I said that in the members' bar I like him, but when he comes into this Chamber and advances this dishonest argument I am contemptuous of him. Clause 4 of the Bill will amend section 301 of the Criminal Code to provide that where circumstances of aggravation exist there will be a prescribed maximum of seven years. The member falsely put about in the community the notion that this was less than the prescribed maximum penalty for cruelty to an animal which he knows to be five years. The prescribed maximum for wounding under clause 4 of the Bill, which amends section 301, is nearly 50 per cent greater, but the member for Warren-Blackwood was happy, for the purpose of grabbing a short-term headline, to put about a dishonest argument. I abhor that, because that sort of conduct creates a false sense of fear in the community.

That member was not the only one prepared to indulge in dishonest argument in this Chamber. The Leader of the Opposition, the member for Cottesloe, said that increasing the maximum penalties was a sham. From my notes, he went on to say that the Government put out a press release saying that the legislation would protect the elderly, and he said that was a sham. He also said that everyone in this Chamber knows it to be a sham. That was a dishonest argument.

I again return to the speech made by the member for Nedlands on 31 July at page 1733 of *Hansard*, book 7 of this session, when she said -

I commend the Bill. I prosecuted the types of offences that this legislation covers. I prosecuted them in the Children's Court, the District Court and the Supreme Court. I have also dealt with the victims of crime with which the legislation deals. The attacks on the elderly and the vulnerable are cowardly, heinous and despicable.

With that I agree. It continues -

I am pleased with the new circumstances of aggravation which will be inserted under section 391 of the Criminal Code; that is, firstly, the doing of bodily harm, the threat to kill and the fact that the person to whom the violence is used or threatened is of or over the age of 60 years. They are tools that the prosecution in this State can use when making submissions on sentence.

She is experienced. I also understand that the member for Kingsley ran a leasing practice in Malaga. It continues -

Similarly, the amendment to the Sentencing Act under clause 6 of the Bill are tools that the prosecution can and will use when making submissions on sentence.

I did not include the member's whole curriculum vitae about being a failed Attorney General.

The member for Nedlands made a valid point, which completely contradicts what the Leader of the Opposition said in his dishonest argument. The member for Nedlands continued -

In commending the Bill I note the factual circumstances outlined by the member for Ballajura -

Mr Day interjected.

Mr QUIGLEY: I will come back to the former failed Minister for Police in due course.

Mr Day: This is the sort of argument you resort to when you have nothing to say.

Mr QUIGLEY: I note that there is a timelag in the interjection; it takes a while for the wheels to turn. The member continues -

He gave one horrific incidence . . .

I will move to the next paragraph where the member for Nedlands said -

I am confident that this legislation will have a deterrent effect -

She is an experienced prosecutor; and I saw her in the courts -

and that it may cause offenders to look for other areas of crime because of the increased penalties. I say this because, in my experience, the judiciary will take note -

Wait for it! The member for Darling Range and the member for Kingsley might like to listen to this -

and reflect the views of Parliament in sentencing, as it does in relation to other matters that come before the courts. I have been in the courts and have made submissions and seen them acted upon.

From my experience I am also confident that my former hard-working conscientious colleagues at the Director of Public Prosecutions office will use the new legislation in their sentencing submissions to the courts. It is often the case that when they are before the courts, crown prosecutors use the new legislation and they use the second reading speech to sheet home to the judiciary the views of the community through the Parliament.

I concur entirely with the comments of the member for Nedlands and reject entirely the irrational rantings of the member for Kingsley. The Leader of the Opposition was mounting a dishonest argument in saying that everyone in the Chamber agrees with his view that these amendments are a sham, because clearly a member of his own party, the member for Nedlands, does not agree with that, and nor does the Leader of the National Party. The member for Avon said -

I agree with the member for Innaloo that the courts will initially take notice of the Bill. However, as time goes by, they will do as history has shown and sentencing levels will go back to what they historically have been, no matter what the maximum penalty. However, I support the Bill because a certain attitude must prevail; that is, that we should protect all the people in our community, whether they are aged over or under 60 years. It does not really make a difference; we have a right and a role to do that. We need to be involved in that process. The measures of the Bill have our support. However, research shows - although I do not necessarily agree with it - that increased penalties are generally not a deterrent. The real deterrent is police numbers. I will refer to that in a few moments.

I entirely agree with that because during my 26 years as a defence lawyer I have found that the real deterrent for a person about to engage in criminal activity is the threat of early apprehension, not what is contained in some legislation or what might happen in two years when he appears before the court. The deterrent to the person who is about to snatch an old lady's handbag on Perth station is the fact that a walloper standing by the escalator might collar him and take him straight to the East Perth lockup.

I said that in due course I would get to the member for Darling Range. I will do so because his immediate predecessor in the police portfolio is no longer with us due to the good graces of my learned friend, the new and great member for Albany. I recall that during the election campaign and in the lead-up to the election I was present in Fremantle Town Hall when our esteemed leader, Dr Gallop, the Premier of Western Australia, then in his capacity as Leader of the Opposition, announced, to public acclaim, Labor's policy to introduce 300 more police officers into Western Australia. The following day the response of the Liberal Government was that we needed not more police officers, but more computers. I did not understand then what Liberal Party members were talking about, but they had launched an airy-fairy program to introduce \$120 million worth of computers into the Police Service which they had not funded. That is what they were scrambling for. The community wanted more police officers. As soon as Liberal Party members saw the community's reaction to Labor's

promise of delivering more police, they copied the Labor Party policy even down to the last number, because they had run out of ideas.

As to the proposal for a sentencing matrix, the member for Nedlands knows, as I know because she has already alluded to it, each case has its own special, particular circumstances, whether they be circumstances of aggravation or mitigation. As the learned member for Nedlands said, in the superior courts the maximum penalty is rarely imposed because people can always imagine a worse scenario. Similarly, courts and the community abhor a mandatory minimum because a situation might occur that does not warrant a mandatory term of imprisonment.

I do not want to get personal, but we saw the Leader of the Opposition do his quince with the Minister for Education. It was not an act of violence; it was an act of frustration. He could not articulate his point to the Minister for Education so he struck him with a hunk of paper. Big deal! People in the community do their quince from time to time, and some of them might do a one-off, stupid act. A 62-year-old woman might do a stupid act and in frustration push a woman in a nursing home. That could become an assault and subject that 62-year-old woman to a mandatory term of imprisonment. It would be a grave injustice. The judges who are sworn to do their judicial duty and impose justice would be scrambling under the Sentencing Act to see whether they could dismiss it as a trivial offence, not worthy of criminal sanction or any punishment, and order a spent conviction. I can just see them bending over backwards because they have taken an oath to God to invoke justice, not to invoke cheap rhetoric such as the member for Kalgoorlie is wont to indulge in from time to time.

In every case there are circumstances of mitigation. There was a circumstance of mitigation for the Leader of the Opposition. He became frustrated that his children had been brought into the argument. He thought, whether rightly or wrongly, it was unfair. He could not articulate that at the moment and he struck out. Big deal! Does it deserve a mandatory term of imprisonment? Hardly, when someone is doing their quince on the spot.

I would like to reflect upon two things. First, I apologise to the member for Nedlands if I have in any way provoked the number crunchers in her party into taking action against her in the party room for having had the temerity to enter this Chamber and tell the truth.

Several members interjected.

Mr QUIGLEY: I said I would be a loose cannon, but I will always be pointed at the Opposition and the member for Darling Range.

As I was swimming laps, I was thinking more and more about the sentencing matrix or sentencing grid that the member for Kingsley would have judges force on the community, irrespective of the compelling circumstances of mitigation. Would it not be tragic if God had given St Peter a sentencing matrix? One could imagine the member for Kingsley walking up the steps to the pearly gates to find the sentencing matrix. St Peter would go down his list and say, "Failed Attorney General, discredited Minister for the Environment, lousy number cruncher for a discredited Premier." One could see a tragedy looming. The member for Kingsley would want to say, "I have been a faithful wife and a good mother, and I have served my community. I did my duty. Can't you forgive me the indiscretions of being a lousy Attorney General and a lousy Minister for the Environment?" I am sure that St Peter would welcome her in. However, if St Peter was constrained by a sentencing matrix and had to ignore strong mitigation, the fires of hell would burn bright in her face.

For the reasons I have explained judges must have discretion in sentencing. We need to understand, and the community needs to understand, that the process of sentencing, as the member for Nedlands has explained, is a difficult process. If we could all read the judges' sentences and what happens in the courts, the clamour for mandatory sentences would die down because it is a false clamour based on a false argument that is advanced by dishonest propositions. I commend the Bill to the House and I share the confidence of the member for Nedlands that this Bill will provide an effective tool to the judiciary for protecting the elderly. What will provide an even more effective tool for protecting the elderly is an increase in police numbers, quicker response times and more arrests. That will deter criminals, rather than what might happen two years down the track.

**MS SUE WALKER** (Nedlands) [10.30 am]: The member for Innaloo continues his fatal attraction with me. I used to look longingly and wistfully at him when he walked into court because he only had one or two files, and I had fifty! I thought then that he had a light workload.

As the member for Innaloo will understand, I would like to put a gloss on what I have said. I stand by the comments I made. I did not come to this chamber to not tell the truth about what is happening in the courts, because I believe the truth will assist the community. Without looking at the figures, and going on my own anecdotal memories, it is true that mandatory sentencing for the crime of break and enter has shifted the means by which drug addicts obtain money to support their habit. Instead of stealing and selling white goods as they

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did in the past, drug addicts have moved into the bag snatching arena. The problem is that in practice - and I speak here as a legal officer of the court - mandatory sentences are not always just and they are not always just for the reasons outlined by the member for Innaloo and the Attorney General. For example, a retarded person might be snared under the break and enter legislation - I have worked on such a case - for entering a house on his or her way home at night and taking some food from the fridge. Nobody is home and no-one is harmed. However, under the amendment, if that is that person's third similar offence, that person will be dealt with by the court and receive a mandatory sentence. Does that person, who has a mental problem and who has not harmed anyone, belong in jail? In comparison, a group of youths may break into a house in Perth. They may slash things, throw things around and generally tip the place upside down. They might even harm the dog before moving down the street to inflict the same damage on other homes. A mandatory sentence should be imposed in that case. Politically, mandatory sentencing is effective, but it is unjust in practice.

I disagree with the member for Innaloo; I think penalties have an effect. In my experience, many young offenders who appear before the Children's Court are dealt with lightly and they know it. However, as the member for Innaloo knows, the numbers drop off after the youths turn 18 because they know that an offence must be dealt with by the District Court - the big court - and they know they will be in serious trouble with that court. In that way, penalties do have an effect.

**MR MCGOWAN** (Rockingham - Parliamentary Secretary) [10.35 am]: It is always difficult to follow the member for Innaloo on these matters because of his learned exposition and the way he addresses the arguments put forward by the Opposition. Having followed the member for Nedlands, I would like to ask her whether she voted on this amendment the other night. I ask that because I find it interesting that the member for Nedlands argued against mandatory sentencing when an amendment was put forward by the member for Kingsley. In a division the other night, members opposite sat on this side of the House and voted in favour of a mandatory sentence of 12 months for common assault. They voted in favour of the amendment knowing that the amendment was based on a false premise; it was false in law; it would be completely ineffective; it was totally outside the bounds of justice; and it is too harsh. I have the results of the division that took place on the amendment on the night of 7 August, and the member for Nedlands voted for that amendment.

Mr Day: Big deal.

Mr MCGOWAN: It is interesting that the member for Darling Range says that. If members opposite argue against an amendment and vote for it, they are being fraudulent.

Mr Day: If you are so opposed to mandatory sentencing, will you, or your Government, remove the mandatory sentencing legislation currently in place in this State?

Mr MCGOWAN: The Government will not remove mandatory sentencing for murder.

Mr Day: What about the "three strikes and you are in" legislation?

Mr MCGOWAN: If the member for Darling Range wants to remove mandatory sentencing for murder, that is his prerogative.

If opposition members argue against an amendment, and then vote for it, they are frauds.

The Attorney General has brought into the House a Bill for which the Government has a mandate. The Opposition can cry crocodile tears and oppose it as much as they like, but the Attorney General has introduced legislation that the people of Western Australia voted for at the last election. The Opposition's amendment has exercised my mind. The Attorney General and the member for Innaloo have provided examples for opposing the amendment. I take it that many members opposite have teenage children. I suspect the member for Darling Range has teenage children, and I know that the member for Warren-Blackwood has children around that age. I present a hypothetical situation to the member for Darling Range. The member for Darling Range's son is at his local hotel - the Darling Range inn or whatever it is called - celebrating his eighteenth birthday. Also at the Darling Range inn that night is a man celebrating his sixtieth birthday. That man could well be the member for South Perth. I know that the member for South Perth is not 60, but I am sure that in the next 20 years he will be. If I keep saying he is 40 years of age, he might stop opposing my railway!

Mr Pandal: Whose sixtieth birthday?

Mr MCGOWAN: The member for South Perth missed it; it was a compliment!

The member for Darling Range's son is celebrating his eighteenth birthday and the member for South Perth is celebrating his sixtieth at the same hotel. At the bar they bump one another and spill their drinks. The member for Darling Range's son has the same fiery, lively personality, and is the same excitable, hot-headed character as his father. The member for Darling Range's son turns around and the two men exchange words. The member

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for Darling Range's son pushes the member for South Perth, committing an assault. Publicans are wont to call the police when an incident such as this occurs in a hotel. The witnesses tell the police when they arrive that the member for Darling Range's son, being a hot-headed young man like his father, assaulted the member for South Perth. According to the amendment put forward by the Opposition, that young man would go to jail for 12 months. Would the member for Darling Range like to see his son go to jail under those circumstances?

Mr Day: I can assure you that that is an entirely unlikely and hypothetical situation.

Mr McGOWAN: It is not unlikely at all because assaults happen every night of the week in Western Australian hotels. As I have seen when I go out with the local police, as I do on an annual basis, assaults occur in hotels, and other incidents occur when people are under the influence of alcohol and members opposite would have all these people in jail. We would have to build jails all over the State to cater for people committing those sorts of offences. When the member comes into this place and makes a cheap political issue out of this Bill, it shows how bereft of ideas and talent he is. Those circumstances to which I referred could happen quite easily and the member for Darling Range would send young men and women to jail in those circumstances. It is shameful for the member to want to do that.

Mr Omodei: You would put them in jail for kicking a dog.

Mr McGOWAN: I will deal with bleating from the member for Warren-Blackwood in a moment. The other night, the Leader of the Opposition said that he did not support the Opposition's amendment. He voted for it, but he admitted honestly that it was a furphy. That is the state in which the Opposition finds itself. They put forward amendments that they do not support. The Leader of the Opposition has said that he does not support the amendment.

The member for Innaloo mentioned *The Lord of the Flies*, a great book. He referred to how the boys in the book form a group. I have read *The Lord of the Flies*, and the Leader of the Opposition reminds me of one of the characters, Piggy. Do members remember Piggy? Piggy had some principle. All the boys got together - I think they were the right wing of the Liberal Party - and they rolled a big boulder down a hill. Piggy was at the bottom of the hill and the boulder hit him and knocked him off the cliff to his demise. In this circumstance, the Leader of the Opposition is Piggy. It will take a few months or a year before the boulder rolls down the hill and knocks him off the cliff to meet his demise, but I am sure that will happen. I know that the Leader of the Opposition has some principle; he admitted it the other night. He knew that the Opposition's amendment would not achieve anything. In this circumstance, the Leader of the Opposition is known as Piggy from the book *The Lord of the Flies*.

I refer now to the member for Warren-Blackwood. As I said the other night, we will debate the Animal Welfare Bill. The Government had eight years in which to introduce the Bill and it promised it for seven years. The member for Innaloo pointed out the furphy of the argument put by the member for Warren-Blackwood. I am happy to debate the Animal Welfare Bill anywhere with the member for Warren-Blackwood because I know that I have the public on my side. If the member wants to further drive down the Liberal Party's vote, he should feel free. He can do that to his heart's content because that is all he will achieve.

I would be happy to attend the Million Paws Walk or the various animal expositions and read to the public the comments made by the member for Warren-Blackwood; it would be my pleasure. He can keep on making his statements and I will enjoy immensely referring them to the public. The arguments he puts forward are furphies and the member for Innaloo has pointed out why. The Criminal Law Amendment Bill is a good Bill and I support it. It deals with the concern in our community about crimes against older people.

**MR MCGINTY** (Fremantle - Attorney General) [10.43 am]: We all understand that members of the public want to live in a safer community. The argument on this Bill is how we can best achieve a safer community for everyone. Three areas must be addressed to provide a safer community, particularly for our senior citizens. The first and most important is crime prevention. A raft of initiatives must be taken in that area. The second, which has been referred to by the member for Innaloo, is policing. Clearly, the most effective deterrent is that offenders know they will be caught. More offenders will be caught if more police are out on the beat where the crimes are being committed. The Labor Party is committed, as with prevention, to improved policing. The third area that must be addressed is penalties. They are the three Ps: prevention, policing and penalties. That is what must be done to achieve an integrated and coordinated package to make our community safer.

As I listened to the speech of the member for Innaloo, I waited for him to mention the member for Nedlands. He seems to be infatuated with her. I was pleased that when the member for Nedlands spoke, she reciprocated by talking in equally affectionate terms about the member for Innaloo. It was interesting to listen to arguably the two most experienced litigators on criminal matters in this Parliament. A great commonality existed in what they said in Parliament. They have spent decades prosecuting and defending criminals in the courts in this State.

**Extract from *Hansard***

[ASSEMBLY - Thursday, 9 August 2001]

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A great contrast has been revealed between the refreshing contribution of those two new members and the jaded, tired old arguments of members who, frankly, appear to have been here too long and have lost touch with contemporary thinking and contemporary practice in the criminal jurisdiction in this State. It was a profound observation because it cut across party political lines. I would listen, take note and act on the advice of people who were recently at the coalface and who dealt with this issue in the criminal courts in this State rather than listen to members who occupy the time of this Parliament with the tired old political rhetoric that has not served this State well over the past eight years.

From 1998 to 2000, the prison population in this State rose by nearly 40 per cent. In round figures, it jumped from 2 200 to 3 000. If locking up more of our citizens by accepting the member for Kingsley's amendment for more mandatory sentences made the community safer, it might be worthwhile. However, although we locked up a dramatically increased number of our citizens in this State for increasingly minor offences, the community did not become safer. Western Australia retained its crown as the crime capital of Australia for offences including home burglary, which is one of the most intrusive offences because it involves criminals breaking into people's homes and stealing their property. The State leads the nation in that form of offence and other personally intrusive forms of offending.

In recent times, assaults on senior citizens have dominated the media in this State. That has brought this legislation forward with one political objective; that is, to not score political points, but to make the community safer for our senior citizens and to send the clearest possible message to the judiciary, the offenders and the broader community that we will not tolerate it. Although I am grateful for the support for this legislation, I am disappointed that some of the jaded, tired old members fell back on rhetoric and said that it was a con and they criticised the legislation. If they had the courage of their convictions and they believed in what they said, rather than engaging in rhetoric, they would have voted against it; however, they will not. I am pleased that this legislation will pass through this House. I hope it comes onto the statute books soon and that it has a salutary effect in the community to make it safer for our senior citizens.

Question put and passed.

Bill read a third time and transmitted to the Council.