

ADJOURNMENT OF THE HOUSE

HON M.J. CRIDDLE (Agricultural - Minister for Transport) [9.55 pm]: I move -

That the House do now adjourn.

Mandatory Sentencing – Adjournment Debate

HON TOM HELM (Mining and Pastoral) [9.55 pm]: At question time today I asked the Minister for Justice a question about the courts' view of mandatory sentencing. I gave notice of the question and I am grateful that the minister gave more than a cold response. The minister gave his view on the wording of the question as well as the reply. Before the House adjourns I want to get a handle on the minister's response. The explanation that accompanied the minister's answer to my question on mandatory sentencing related in one case to how the courts had been uncooperative, and in another to how they had a problem in advising how many people had been sentenced under the "three strikes and you're in" law. I will use this opportunity to encourage the minister, or a spokesman for the people who think that mandatory sentencing has a role to play in our society, to convince me of how mandatory sentencing will help our society to be a little less lawless.

Hon Mark Nevill: I can remember when I was a member of Caucus that you supported it.

Hon TOM HELM: My comrade must be getting old, because I have never supported mandatory sentencing. Hon Mark Nevill should not say that because he is misrepresenting the truth, which I know he does quite often. If the member checked the *Hansard*, he would read that when the Labor Party brought in the Crime (Serious and Repeat Offenders) Sentencing Act, Hon Joe Berinson gave me permission to abstain from voting on it. I never spoke in support of mandatory sentencing. How could I? I lived in South Hedland for nine years and my house was broken into seven times. I would rather stop people from breaking into my house than catch them after they had done it and send them to jail. I have always been opposed to mandatory sentencing. I have tried to be as reasonable as possible in opposing it. I have not been vocal in opposing the Labor Party's position of supporting the coalition in this matter.

I want the Minister for Justice to convince me and others that the "three strikes and you're in" rule has an effect when the courts appear to have a difficult role or, as the minister explained it are "uncooperative", in explaining the effect that legislation has on the laws in our State. It is one thing to try to explain that to me as a member of Parliament and to those people who may support my position; it is another thing to have a problem determining how many people in this State have been subject to that legislation and how that relates to a reduction in the crime wave. The minister went to the trouble to point out that the offence of home burglary was not one of the top five reasons for incarceration of adult indigenous people in this State. It has been explained often enough that one of reasons for the "three strikes and you're in" rule is to prevent home burglaries. In fact we are all aware of a member of the Labor Party in another place who wants to increase sentences for people convicted of home invasions or burglaries against older people - that probably includes me - when it appears we do not have the evidence to support the legislation that is in place now. During the bidding war that happens before elections the coalition will suggest that we should have 2 000 policemen and the Labor Party will suggest 2 250 and we will see who can do the most damage. I want someone to explain to me how mandatory sentencing can decrease the crime figures and what is the attraction for bringing in the "three strikes and you're in" law when it is added to the intervention programs.

If Hon Mark Nevill had opened his ears and closed his mouth he would have heard me talking often enough in the caucus room about the programs which I supported when I lived in Port Hedland and which support to this day. My house is not getting broken into any more, but I always gave credit to the work that the current member for Pilbara, Larry Graham, put into the youth involvement program and the police and citizens youth centres in Port Hedland. The worth of the program is demonstrated by the reduction in the number of youths appearing before the Children's Court. The fact that we are reducing those attendances in court can in large part be attributed to the work that Larry Graham and my office put in in Port Hedland to try to divert those young people who were in danger of being attracted to a life of crime.

I use this opportunity - because I will not get many - to thank the Attorney General and ask the coalition if it will explain how it thinks that the legislation supported by the coalition and the Labor Party will help us prevent crime in this State.

HON PETER FOSS (East Metropolitan - Attorney General) [10.04 pm]: I do not know that in 10 minutes I will be able to satisfy Hon Tom Helm, but I will try. First I have some good news. I was out at Banksia Hill Detention Centre the other day and there are only 87 inmates out of a capacity of 120. The number of inmates has dropped considerably. A report from the Children's Court indicates that the number of children passing through the court has dropped considerably. I do not necessarily think that is due to the three-strikes legislation; it is due more to a firm and clear Children's Court judge. Judge French has probably been the best Children's

Court president we have had. She has not been criticised by the rednecks or the warm and fuzzies. She is clear and firm but fair, and that clarity is often what many juvenile offenders need because they do not get it in their ordinary, everyday lives.

Another piece of good news is the only statistic that we could check in relation to re-offending by people sentenced under the three-strikes legislation. We found that the re-offending rate of children who are sentenced but who are given intensive supervision is that one in three re-offend, which is lower than the normal re-offending rate, and only one in 12 is sent to detention. Interestingly enough, that is a four-times better recidivism rate for those who have been sentenced under the three-strikes legislation. That is in part justified by the fact that Banksia Hill Detention Centre is a very good institution. Unlike the old institutions of Riverbank, Longmore and Nyandi, which were terrible places, Banksia Hill is a very pleasant place. For many of the children there, it is a more pleasant place than the place from which they came. They attend classes ranging in size from six to eight students. They also learn metalwork and play sport. For the first time in their lives they have a highly structured day and an educational program that addresses the significant omissions in their education. Having said that, that is not the basis on which the three-strikes sentencing is justified. I have always made the point that we do not justify to a rape victim that the offender should receive a significant penalty because it will stop the amount of rape taking place. The penalty is significant because it is appropriate.

I have always justified the penalty for third-time burglary because it is appropriate. Home burglary - I have resisted extending mandatory sentencing to any other form of burglary - is not merely a property offence; it is a personal offence. The impact it has on not only the people burgled but also their neighbours and anybody who knows them and the public generally, is a feeling of considerable fear of what can happen to them in their homes. We have a right to be free of fear of home invasion as much as we should be free of fear of being assaulted, raped or murdered.

Hon E.R.J. Dermer: Free of a sense of violation.

Hon PETER FOSS: That is exactly the right word. It is not merely a property offence, but a personal offence.

With reference to mandatory sentencing versus any other sentencing, more Aboriginal people are in jail due to discretionary sentencing than mandatory sentencing. Even in the Children's Court where mandatory sentencing touches on many children, in the end the court can decide whether a person will go to jail. Invariably, that has been the case. As I said, the decision of the judge indicates that he or she had no alternative because there was nowhere else to send the person. The tragedy is that many of those children have nowhere else to go. The best place they have ever lived in is Banksia Hill.

The most important thing about any sentence is that it be fair. It is possible with discretionary sentencing for an unfair sentence to be handed down. Is it better to have a mandatory sentence that is fair or a discretionary sentence that is unfair? One of the complaints about discretionary sentencing is that, notwithstanding the discretion, judges exercise it in different ways. There are well-known "hanging" judges who impose enormous penalties and well-known judges who impose light penalties. The bulk of judges impose something in between.

Hon Tom Helm: I would not dare ask what is fair.

Hon PETER FOSS: Offenders who commit the same type of crime should receive the same sentence irrespective of which judge they appear before. People who appear before the criminal courts can tell us that there are known good people and known bad people to appear before. That is because they are human beings and, like all human beings, they carry their own baggage, which impacts on their decisions. Although the majority of judges make fairly predictable judgments that would sit about the middle of a bell curve, some judges' determinations are clearly at either end of that spectrum.

Hon Tom Helm: No two circumstances are exactly the same.

Hon PETER FOSS: Even allowing for that, comparatively, some judges consistently hand down some horrifying sentences. When I make that statement, everybody in the profession knows exactly to whom I am referring. People mention their names. One of the reasons I have recommended the matrix, which many people have criticised as being mandatory sentencing - I do not believe it is - is that it will show the mitigating factors and allow judges to see the bell curve for those offences. It will be possible to predict the sentence an offender may receive.

One of the first things that the Sentencing Matrix Bill will do is cut the extremes off the bell curves. When one considers taking the judge's decisions and factors into account, one says that people should not be subject to those extreme highs and lows. Given those factors, no matter who the judge is, an offender should fall within that range. A range of high, medium and low sentences will still apply, but there will not be extremely high and extremely low ranges. Offenders would have the right of appeal in the case of a more severe sentence than the matrix Bill allows for, and the right of appeal to the Crown would be available when a less severe sentence is

imposed. In the end, that will be satisfactory to the courts. Those factors will mean that people will get a fairer go.

The third stage of the matrix Bill will be fairer because a big problem currently is that Parliament tries to signify the respective seriousness of various offences. It is the role of Parliament to say this offence is serious and that offence is not serious. Parliament is yanking on the cord. What the court does is entirely up to it. Nobody ever receives the maximum penalty. Offenders seldom receive more than half of the maximum penalty. Generally speaking, the mean trots along no matter what Parliament does to the top of the scale.

On the other end is minimum mandatory sentencing which, generally speaking, I do not support. I have supported the three-strikes legislation because it always leads to at least a fair result. It would be very hard to say that after three times before the court one should not go to jail for 12 months. I have a problem in that in many cases offenders should receive a sentence of more than 12 months. A minimum mandatory sentence suffers from the problem that it must be a minimum. It must deal with the minimum set of circumstances.

The Matrix Sentencing Bill will improve the situation because it will deal with all sets of circumstances and enable one to find out what the judges do and the ranges they apply. If that range is unfair, it is an appropriate role of Parliament to move that range to one side. Essentially, given the same facts, the same offences and the same circumstances, the same sentence should apply no matter who the judge is. The basis of sentencing should not be whimsical or arbitrary; it should be calculated and fair. It does not matter whether that sentence has been given by mandatory sentencing or discretionary sentencing. The touchstone is whether it is fair in the end. If it is fair, it does not matter on what basis it is arrived at. If it is unfair, it does not matter on what basis it is arrived at. The essence of justice is that all people should be treated appropriately before the law, not according to whim or the caprice of the judge; that is, people must be treated fairly.

Dairy Industry - Adjournment Debate

HON KIM CHANCE (Agricultural) [10.12 pm]: I also will not keep the House for long. Today I received advice relative to the dairy industry. I thought it was an appropriate time to again raise the question of the dairy industry since it has now been operating without a regulated structure for a little over two months. The outcome for the dairy industry has vindicated some of the issues that were raised in debate on dairy deregulation, and has set aside some of the other issues raised. It was suggested that following deregulation, the downward pressure on milk prices for producers would, in the absence of any marketing structure within Western Australia, come not from Victoria but from within Western Australia itself.

As my old friend, later senator, Peter Walsh used to say, "A sheep's worst enemy is another sheep, particularly when that sheep is in the same paddock." It is an apt description. It means that the competition that hurts a person the greatest will be the competition closest to him. Indeed, although a sheep grazing in another paddock may have an affect on one sheep's welfare, it is far more likely to be affected by another sheep grazing alongside it. It is a very relevant analogy. Since we have broken down the regulatory structure of the dairy industry in Western Australia, a prospect launched particularly because of changes in far off Victoria, the structure which used to permit the equitable sharing of premium market access was the key element to disappear from the industry. What that meant was that those people - particularly the former Capel dairy suppliers, mostly producers south of Elgin - have been left with no equity of access whatsoever to the premium domestic milk market. Their prices consequently tumbled to a level of about export parity. It was always foolish to imagine, and we said so repeatedly at the time, that one could protect a price of around 35¢ a litre for those producers who were supplying the domestic milk drinking market while other producers in the same State, effectively the sheep alongside the sheep, were suffering prices of 17¢ or thereabouts per litre of milk because the 17¢ per litre of milk was always going to undercut what was left of the premium price. It is simple enough economics but for some reason we did not seem to want to understand it. Nonetheless, that problem arose. We are now seeing milk at the retail end undercutting the retail milk price. We are now seeing the 17¢ and 18¢ per litre milk appearing on the shelves at the retail level at under \$1 per litre.

Hon Barry House: That is because of Woolworths and major retailers.

Hon KIM CHANCE: If one irritates a dog, the dog will bite. If one offers a supermarket an opportunity to take a profit, it will take a profit. No-one can blame the dog for biting or the supermarket for making a profit. One can blame oneself however for irritating the dog or for giving the supermarket an opportunity to rip other people off. That sub-\$1 per litre milk - I think \$2.94 for a three-litre container at the retail end - is still providing an opportunity for the supermarkets to make huge profits because the processor who supplies them is buying the milk for only about 18¢ per litre. That was always to be the problem; the sheep grazing alongside the sheep, the worst possible enemy. Our dairy farmers are not suffering from competition from Victoria but from competition right alongside them.

I am not advocating a return to deregulation. We all know that that would be a nonsense at this stage, although at some time in the future it may not be a nonsense. We need to take a very close look at the State's price setting powers. We have those powers and the Commonwealth does not. Part of our milk production, I am told as much as 60 per cent, is under the commonwealth definition, drinking milk, rather than under the old state definition, quota milk, for which we can conceivably protect the import price parity; that is, the Victorian price plus freight. The Victorian prices at the moment are quite high but that will change in the spring. For 60 per cent of the market we can protect the price and keep the 17¢ per litre milk off the domestic market; in other words, it should go for its proper purpose and not be used to subsume the reasonable price expectation for drinking milk.

I have discussed this matter with the minister. Although he has not given me all that I wanted with regard to the terms of reference for the task force, he has left the door ajar. The task force should be able at least to look at issues of that nature.

Hon Barry House: Which task force?

Hon KIM CHANCE: The new dairy industry task force that resulted from the agreement between the Opposition and the Government. I am happy with the way that is progressing and the minister is meeting his obligations well in that area. The Opposition has had extensive input into that process. The task force will have its first meeting next Thursday.

I am pleased that the Minister for Transport is in the Chamber because this is something the Minister for Primary Industry should consider and either debunk or confirm. I was informed today that a memorandum of understanding has been reached between National Foods Ltd (WA), the Challenge Group Cooperative and Capel Dairy Co (WA). The MOU involves a buy out of the Boyanup and Capel dairies using a large proportion - as much as half - of the \$12.5m that the Government has allocated to underwrite future industry restructuring. I would be extremely concerned if that were the case. That is why I would like the Minister for Transport to ask the Minister for Primary Industry to respond. If that proposition is correct - I do not warrant that it is - the only possible outcome is farmers' money and government funding that was allocated to resurrect the industry being spent on nothing more than the retention of two clapped-out dairies - Boyanup and Capel. Under the Challenge Group Cooperative arrangement, the proposed corporation would have nowhere to go because it would be locked out of the drinking milk sector. It would be doomed to failure. Its only function would be to act as a sink for the unwanted milk.

If this \$12.5m or any part of it is to be used to implement a proposition of that nature, we should be consulted about how that will unfold. I do not condemn it absolutely; I simply say that the spirit of goodwill that has existed between the Government and the Opposition on this matter must be maintained.

Dairy Industry Deregulation - Adjournment Debate

HON BARRY HOUSE (South West - Parliamentary Secretary) [10.22 pm]: I have some notes on this issue, but not with me. I will make a more detailed contribution on the topic in the next couple of days.

I was invited to, and attended, the Challenge Group Cooperative shareholders' meeting last Friday. The memorandum of understanding between the Challenge Group Cooperative, National Foods Ltd (WA), and Capel Dairy Co (WA) was outlined. That was the first dairy industry meeting I have attended for a few weeks and I came away feeling more positive than I have previously. There was a feeling of optimism that something was being done to resolve the Capel dairy producers' dilemma about access to white milk. Some clauses of the MOU will provide those Capel producers with access to the white milk sector. I do not have the figures with me, but I believe that for 80 per cent of their milk they will get 26¢ per litre and for the other 20 per cent they will get 20¢ per litre. I will have to check those figures.

I do not subscribe to the negative outlook that Hon Kim Chance has adopted. I took it as a positive sign for the industry. We all realise that the Capel dairy producers were in very difficult position and for two months since 1 July they were in a very difficult economic position. There is some personal bitterness within the industry in that, in the words of Hon Kim Chance, one sheep has absolutely no regard for the other sheep. Those that think about the future of the industry recognise that the anomaly with the Capel dairy producers had to be resolved; otherwise the producers in the industry would feed off and destroy each other. I regard the memorandum of understanding as a very positive sign and a move towards resolving the issue and giving the Capel dairy producers some access to the premium supply.

Hon Kim Chance: The Opposition wants to be part of the process. It does not want to be seen as negative. If that were the outcome, the Opposition would be very unhappy.

Hon BARRY HOUSE: No-one is trying to exclude the Opposition. It is very early days. The announcement is only a few days old. As the member correctly says, it is contingent upon a portion of the state government

assistance package of \$12.5m being put towards it. One will also find that this is stage 1 in the Challenge Co-operative's grand plan. It is acknowledged that there is work to be done on the two plants to be bought at Boyanup and Capel. There is a fair degree of obsolescence in both plants. The ultimate plan is for a greenfields site with a modern manufacturing plant that will take the last litre of milk from producers in Western Australia. There is a market for it to act as a sump for the whole industry.

Hon Kim Chance: The most important thing that the member has said is that there is an intention that the cooperative have part of the drinking milk market. That is very important.

Hon BARRY HOUSE: That arrangement has come about through the memorandum of understanding with National Foods Ltd. Five million litres of milk are going from Capel to Harvey Fresh. There is a window of access to the white milk market.

Hon Kim Chance: I have doubts about the legality of that.

Hon BARRY HOUSE: The legality?

Hon Kim Chance: It is practising an over and under scheme without the legislation to do it. The Trade Practices Act may be offended.

Hon BARRY HOUSE: I do not want to get into that. The industry is making decisions of its own volition without regulation to try to overcome some of the insecurities that have crept in. People in the industry have walked on eggshells for the past few years wondering what their future will be. The minister advertised in the weekend press for expressions of interest for the state government assistance package of \$12.5m. It is worth reiterating that the money is the only money provided by any Government anywhere in Australia. It sticks in my craw to hear federal members of Parliament carrying on about the Federal Government's restructure package as though the Federal Government were providing the money. It is not. The Federal Government will receive a \$45m windfall from the taxation process of that fund. That, however, is digressing into side issues.

Over the past few weeks I have been trying to follow the milk industry as it moves into uncharted waters. There are a few other issues connected with the pricing of generic milk which need some comment. I hope to make further comment in the next few days.

Dairy Industry Deregulation - Adjournment Debate

HON M.J. CRIDDLE (Agricultural - Minister for Transport) [10.30]: I understand that I have been requested to give the Minister for Primary Industry a message about a memorandum of understanding between Challenge Dairy Cooperative, National Foods Ltd (WA) and George Weston Foods Ltd and the assistance they may provide to purchase the dairy factories at Boyanup and Capel, which would allow the Capel dairy farmers access to the white milk in that area. That would have ramifications for the \$12.5m funding that is available. I am meeting with the minister early tomorrow and will pass on that message so that he has a clear understanding of what the member is talking about and of the Labor Party's involvement in the task force.

Hon Kim Chance: And that we are entirely happy.

Question put and passed.

House adjourned at 10.30 pm
