

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

CRIMINAL LAW AMENDMENT BILL 2001

Second Reading

Resumed from 27 June.

MR DEAN (Bunbury) [7.10 pm]: I support the Bill. I will not discuss the Bill in detail, because both sides of the Chamber to a large extent - I hope it is 100 per cent - support the penalties contained within it. I will make a few comments about Bunbury and my experiences over the past six months with reference to crimes against the elderly. The perception in the community is that of a general increase in crimes against the elderly. I tried to track that down, but I had a great deal of difficulty finding hard statistics. Many of the statistics do not seem to have a hard and fast break-up of age or description of victims. In fact, many of the statistics on personal assault cases and so forth leave out the victim's age, and it is therefore hard to get a handle on them. However, the community, particularly the affected demographic, has a general perception that assaults against the elderly and persecution of the elderly have increased somewhat. I guess that is the origin of this Bill. In my research to find the statistics for assaults and crimes against the elderly, I ran into the reverse part of the spectrum; that is, I found some interesting papers on the origins of crime based on statistics and prenatal, postnatal and preschool studies. It is quite clear that crime has its origins very early in life. Longitudinal studies have shown that people with dysfunctional childhoods are more likely to commit acts of a criminal nature in later life. The origins of crime, especially against the elderly, are fairly complex, but early intervention strategies by the Government and by government departments would have the long-term effect of breaking down those types of offences. Obviously, the Bill relates to the immediate punishment of offenders, for which the community is crying out. I hope that in the future we will look at the causes of crime and, if types of causes are established, implement prenatal and neonatal intervention.

I spent six months campaigning and doorknocking in Bunbury. I am fortunate that the previous Government paid me long service leave to campaign against it. I thank it very much for that. I doorknocked 6 000 or 7 000 houses. A climate of fear exists in the community. I would go to people's houses unannounced, and at some times of the day, such as late afternoon, or even early morning, elderly people were very reluctant to come to the door, and when they did come to the door, they were very reluctant to open the chain that held the door closed. The perception in the elderly community - it mainly is only a perception, as Bunbury is not a violent city - is that people are looking to take advantage of them and hurt them in some way. I found that once I had established my bona fides, those people were more than willing to talk. The talk often centred around the need for punishment. A forum of concerned citizens to discuss various issues was held at the Parade Hotel this week. The perception of crime against the elderly and what the Government is doing about it was one of the issues raised. I was able to explain that this Bill to increase penalties against certain offenders would be debated this week. The people of Bunbury will welcome this Bill. They see crime and punishment as interrelated. Rehabilitation is not often on their agenda, for just reasons. They will be pleased when we are able to announce the penalties associated with this legislation. Unfortunately, it will not be the solution to the problem, because in many cases we do not know the problem or why people attack the elderly. We do not know whether the motive is purely for robbery or whether it is drug-induced or family-induced. In many cases, violence towards the elderly is inflicted by people known to them. However, the people of Bunbury will welcome this legislation as a step in the right direction. Members will hear this many times this year, but it is another commitment to the people of Western Australia that this party is honouring.

MR TEMPLEMAN (Mandurah) [7.17 pm]: I am pleased to endorse this Bill. I do so because I am very well aware, as many members would be, of the demographics within the Mandurah and Dawesville electorates and elsewhere in the southern corridor. Those areas of the southern corridor have for many years attracted people in their senior years, first of all to holiday and eventually to settle and retire. It is interesting to note that people aged 65 years and over comprise 14.4 per cent of the population of the Peel and Mandurah area, which is greater than the state average of people aged 65 years and over. People go to places like Mandurah, Bunbury and other coastal settlements not only for the lifestyle offered by those places, but also because they want to settle and continue their lives into their senior years in a place that is, hopefully, safe and secure. Over the years the population in areas such as the seat of Mandurah has boomed, as I have told this House previously. With that boom in population and increase in unemployment, which has many associated problems and difficulties, we have our share of social problems. The City of Mandurah is no different from any other area in the State. However, with a larger number of seniors living in Mandurah and the Peel region, the Government has a responsibility to ensure that those people who have made a great contribution to this State, and who have continued to build much of what this State has to offer the populations who live there and who will live there, can live out their senior years in safety and security.

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

The Bill before the House seeks to protect those people in communities that have a particular vulnerability. The Bill seeks to ensure that the people who seek to perpetrate crimes against those very important members of the community are dealt with in a manner that sends an important message to them. The measures outlined in the Bill are important to assure the senior members of communities that this Government is carrying out a promise it made before the election. It is very much about ensuring that they are safe in their homes and safe to go about their business in their communities.

I refer to the point made by the member for Bunbury that although the perpetrators of crimes must be dealt with after committing offences against vulnerable members of the community, we must be aware that measures must be taken before those perpetrators reach the stage of committing offences against vulnerable members of the community. We must bear in mind that if we were able to spend on education or family assistance amounts similar to the tens of thousands of dollars that we spend on incarcerating those people, we would not see some of the terrible crimes that are committed against vulnerable members of the community.

I want to share with the House a couple of examples. I was privileged to meet a lady in Mandurah the other day who had a problem not related to crime. She is an independent, wonderful, 93-year-old lady. She is very resilient and was able to share with me the experiences of her life and how society has changed. She remembered the days when people could leave a key under the mat when they left their household. In her younger days she had never heard of breaking and entering offences. She talked about a time when people cared about each other and looked out for each other, such as Mrs Smith or Mr Jones who lived down the road. If they did not see Mrs Smith or Mr Jones out in their front yard, they would do something about it. They would bang on their door and look out for them to see why they had not been seen. One thing that we can learn from smaller communities in country towns - I am sure the member for Wagin would be well aware of this - is the strong sense of thought for vulnerable members of the community. We can learn a lot from smaller communities that have practised looking after their elderly for a long time; and have done it very well. I am pleased to have lived in small communities, both as a teacher and having been brought up in the town of Northam, where that willingness and sense of caring was second nature to people. One of the challenges in my electorate - the City of Mandurah - where growth has been rapid and concentrated, is to continue that sense of community. Unfortunately, many people find themselves isolated - whether for economic or social reasons, or because of lack of access to transport - in rapidly growing communities. We must reassess how to approach those very important people. Many feel isolated and many need to be given a hook back into the community. Smaller communities have been doing that very well for many years and we can learn a lot from them.

The City of Mandurah has a wonderful population of seniors. They are magnificent in the way they are able to continue to make an outstanding contribution to the community. One senior citizens centre continues to win state prizes and has been recognised on two occasions as the best senior citizens centre in the city. The senior citizens practise the philosophy of looking after each other. Often when a senior member of that microcosm within the community is having a problem, be it either a health or family problem, or is falling on hard times, a very clear commitment is given by the members of that microcosm to do what they can to support that person.

I am very pleased that the Government is introducing this amendment Bill. However, I remind the members in this House that many senior members of the community find themselves isolated and feel trapped in their own homes. As their representatives in this House, we have an obligation to do whatever we can to ensure that their later years in life are memorable, and to do the best that we can offer them as a community. I commend the Bill to the House.

MR BIRNEY (Kalgoorlie) [7.26 pm]: The sentiment in this Bill, which is obviously designed to offer some protection to seniors from those who would perpetrate offences against them, is very good. All members are aware - I am particularly aware - that we as members of Parliament representing the people of Western Australia have a responsibility and an obligation to come up with ideas and policies that offer senior citizens protection from the scum who seek to injure them. Although the Opposition will support this Bill, it is my view that the Bill will not offer senior citizens that protection. I shall explain the reason for that view.

The Bill deals simply with maximum penalties. It seeks to amend a range of maximum penalties that the courts may or may not impose. For instance, home burglary has a maximum penalty of 18 years' imprisonment. I am unsure whether that offence is included in the Bill. However, if the Labor Party increases maximum penalties for offences against seniors, seniors may be forgiven for believing that the Labor Party is protecting their interests. They may be forgiven for feeling a little more comfortable knowing that the Labor Party has introduced this legislation. They may be forgiven for believing that crimes against the elderly may be reduced as a result of this legislation coming into play. However, the issue is that courts very rarely hand out the maximum sentence for an offence. The Government can amend the sentences as much as it likes; in fact, it can double or

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

triple them. It can say to the elderly people in the community, "We in the Labor Party have your best interests at heart. We in the Labor Party are going to protect you. In fact, what we did in Parliament was increase the maximum penalties for anybody who perpetrates an offence against somebody who is in excess of 60 years of age. How about a vote?"

That is what this comes down to. This is a cynical and cruel attempt to defraud the elderly in our community. It is politics at its very best: the Labor Party is trying to trick the elderly community into believing it will do something about crime against the elderly. I will give the House some details; I am not just talking off the top of my head. During 1998-99 the maximum penalty for home burglary was 18 years. The highest sentence imposed was five years. The average sentence imposed was 1.7 years. The maximum penalty for robbery during 1998-99 was 14 years. Courts had the discretion to impose a maximum penalty of 14 years on a perpetrator. The highest sentence imposed was four years jail. The average penalty imposed was 2.18 years.

Mr Omodei: Was that under a Labor Government?

Mr BIRNEY: I am not sure if it was. The list goes on. It tells people that courts very rarely, if ever, impose the maximum sentence. There are 13 offences listed. They range from attempted murder to robbery while armed, manslaughter, and acts intended to cause grievous bodily harm. Not one of those offences attracted the maximum penalty during 1998-99. The Labor Party can come into Parliament and say that it will protect the elderly in our community by increasing the maximum penalties. Maximum penalties are irrelevant. This is politics at its very best. It is very cruel politics when the elderly in the community are being told that they will be protected but the figures show otherwise.

There are a number of other options, some of which involve imposing a minimum sentence. I know that the Labor Party, with its soft left-wing leanings, runs for the door when people talk about minimum sentences or mandatory sentencing. These things do not go down well with the Labor Party. If the Government goes to the senior citizens in our community and tells them that their interests will be protected, I suggest it be done with a degree of vigour and that the Government mean what it says. The only way to do that is to increase the minimum penalties, not the maximum penalties.

MR QUIGLEY (Innaloo) [7.33 pm]: I am pleased to speak on this important Bill that amends the Criminal Code and the Sentencing Act. I come to this House having been a legal practitioner in the criminal courts for 26 years. The criminal mind will strike at the most vulnerable and those least likely to be able to defend themselves, and in circumstances where the perpetrator is least likely to be caught. In all those respects, the elderly, and those over 60 years of age, are the most vulnerable, the least likely to be able to defend themselves and the least likely to be able to take steps that will lead to the early apprehension of an offender. When I was doorknocking in the electorate of Innaloo, elderly people and those living alone were often secured behind security screens and deadlocked doors and would only open their doors apprehensively. They were fearful of becoming victims of crime.

Mrs Edwardes: They could have checked through their peepholes.

Mr QUIGLEY: They might have got a fright if they had looked and seen the member for Kingsley. That could lead to its own consequences. In my electorate, when they heard my voice, they opened their doors readily and quickly and asked me what I was going to do as the Liberals had done nothing for the elderly during their eight years in office. I said I would support the Labor Party's policy to increase the penalties for crimes against the elderly and the vulnerable. Unlike the member for Kalgoorlie, I am aware that the judiciary follows the proceedings and debates of this House.

Mr Birney: I did not say that.

Mr QUIGLEY: The member said that this was just rank politics and that the judiciary would take no notice. I wonder what the member for Nedlands has to say on the member's proposals as she practised criminal law through the Director of Public Prosecutions' office. I am sure that the judiciary will look with interest on the Internet at the list of speakers to see what the member for Nedlands has to say about the proposed penalties, and at the comments of the member for Kalgoorlie.

I support the Government in significantly increasing the penalties for crimes against the vulnerable and the elderly. When one looks at the schedule and the Attorney General's second reading speech, one can readily see that the penalties are increased by approximately 50 per cent across the board when the victim is over 60 years of age or is a vulnerable person. I am sure that from the debate in this House the judiciary will get the message that the community is looking for a 50 per cent increase in the severity of sentences imposed against offenders who

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

offend against the elderly and that there will be a 50 per cent increase in the number of occasions on which people are imprisoned.

This is an important piece of legislation, because the cost to the elderly is not only what they physically lose at the time - whether it be an injury that they suffer, or possessions that they lose - but includes a loss of confidence to be able to live by themselves and to move about the community.

Colleagues on both sides of the House have had the pleasure of meeting my father. He is 87 years of age and lives by himself. He has to lock himself in his home at night. Elderly people suffer a lack of confidence and the right to live by themselves as much as they suffer the crime that is committed against them. Many elderly do not have the confidence to move in the community in their own motor vehicles because of traffic levels and their frailty. They end up relying on public transport. Many do not have the confidence to go to stations such as Stirling, where numbers of youths gather and, in a menacing way, set upon the elderly. The youths commit minor crimes such as simple assault. When I mention minor crimes I am not talking about the infliction of unlawful wounding, but the pushing, shoving and threatening of elderly people - which constitutes an assault - right through to circumstances resulting in serious injury. This Parliament, rather than being critical of the judiciary and being divisive, should speak as one so that when the magistrates and judges of this city come to consider the amended legislation when they strike their penalties, they will turn to this debate and, in the sentences they impose, reflect the will of this Parliament.

On 50 per cent more occasions, we want imprisonment imposed. On all occasions we want significantly greater penalties imposed against offenders who offend against the aged and the vulnerable. It is significant and a credit to the Attorney General and the Gallop Government that these increased penalties will apply not only to crimes of violence, but also to cases in which fraud is committed against the elderly - as all members will note from the second reading speech and the provisions of the Bill.

In his second reading speech, for example, the Attorney General pointed out that many of the victims of the finance broking scandal were elderly because they are trusting people. They were brought up in different times. They lived in a cohesive community and have not become as cynical or cautious as some of us. Parliament requires the judges' sentencing for fraud committed against the elderly to strike penalties that are significantly more severe than what has transpired in the past. I commend this Bill to the Chamber and to the community. I have come to Parliament in no small measure to lend my voice as the member for Innaloo to make amendments to legislation that will see more severe penalties meted out to those who choose the elderly as their victims.

MR WALDRON (Wagin) [7.41 pm]: I also support this Bill. Like every other member in this place, I find crimes against anyone, but particularly against the elderly and those who are vulnerable, abhorrent. It is plain for everyone to see that over recent years, physical crimes, home invasions and other such crimes against seniors have increased. The population is ageing and if the problem is not addressed now it will only increase, and that is a problem for all of us in the community.

I come from the country, and represent a country electorate. The member for Mandurah mentioned the safety of people in the country and how those in country communities tend to look after each other. That is very true and it is one of the great things about living in a small country town. However, crime in country Western Australia has increased along with that in the metropolitan area. Previously many of my friends, and elderly people in particular, who live in country towns never thought about locking their houses at night and they did not worry about leaving their keys in their cars. However, now they are very much concerned about it. In my electorate not only the major towns of Narrogin and Katanning, which are regional centres, but also some of the smaller towns have crime problems. Members do not hear much about them because the crimes are localised, but they do occur. Many elderly people are worried about crime in their country towns.

It was interesting to hear the member for Innaloo talk about the old ladies he met when doorknocking during the election campaign. Some elderly ladies in the country wanted to invite me into their homes. I do not know whether it is because I am tall, good looking and have magnificent hair, but I was worried about going in! Some of those elderly people are lonely. It is a sad state when we must worry about those people. The member for Mandurah also mentioned education. I remember saying to people that I was worried about old people inviting me into their homes - I could have been anyone. We need to educate them to the dangers. That is an aside, but it is something that we should think about.

I support the Bill and the increased penalties. It will help to deter criminals, but it is not the total answer and it must be accompanied by other measures. I note that the maximum penalties will be increased, but that is still at the discretion of the judge or the magistrate. The actual penalties imposed are up to the judge. I hope that the

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

message from Parliament is received by the judiciary and it takes into account what this Parliament is trying to do; I am hopeful that it will. The Bill will have a deterrent effect, but criminology researchers will say that it will not necessarily deter everybody. Other measures must also be in place. I mention briefly that one of those important measures in my area is the number of police, but I do not want to dwell on that matter. This Bill is fine, and we support it, but we must also maintain and increase police numbers in rural Western Australia. In many cases, small towns do not have any police presence. I know that it is not possible to have police officers in all of those smaller communities. The little community of Broomehill, which is about 25 kilometres from Katanning, has no police station and the community wanted to make sure the police had a presence. They got together with the police and raised money to help house a police officer. A member of the police force from Katanning will soon live at Broomehill. The fact that a policeman is there and that the town has the presence of a police car from time to time will also help to deter criminals and make elderly people feel more comfortable.

In my own region, people are worried about crime across the board. Country people in Western Australia are moving to bigger regional centres and, as a result, those centres are growing. Therefore, we must make sure that we maintain the number of police to ensure those people are protected and this should go hand-in-hand with the legislation that is passed in Parliament. I also mention the town of Darkan. It is 60 or 70 kilometres from Williams and Collie and it has no policeman. It is a reasonably sized town, as the member for Collie knows only too well. A policeman should live in that town, and I will continue to work on that.

Another concern I have is that a review is currently taking place of the police numbers and the size of the police station in Narrogin. That concerns me because if we lose policemen, or the station is downgraded, people will lose confidence. We need other measures that go hand-in-hand with this Bill to achieve our aims.

In conclusion, I support the legislation. However, to make sure it is successful, we need other policing measures of which I have spoken about.

MR D'ORAZIO (Ballajura) [7.47 pm]: I strongly support this Bill. I have listened to some of the lawyers in this place tell of their experience in the courtroom. As a chemist, 70 per cent of my patients were retired pensioners. I will talk about the perception the elderly have about crime. Some seniors tell how in their time they left the doors to their homes open and were not worried about who came through their street or who was their next-door neighbour. They knew their neighbours, their neighbours' children and the children's friends. Nowadays, that has all changed. Interestingly enough, even the family unit has changed.

The senior citizens reminded me that in the old days the grandparents or the elderly citizens would stay with their families. The families would look after them, and that gave them a sense of safety. Now, through various government programs, we as a community support these elderly people to stay in their own homes. That is great; however, unfortunately, they do not feel safe in their own homes. Some of the horrific stories that I have been told by elderly people in my capacity as their local chemist would astound even the strongest willed people in this place. Some of the things that happened to our senior citizens in our community varied from simple break-ins and people pinching things when they were not there to bashing down doors or breaking windows. In one case, one street away from my chemist, an 84-year-old lady who had lived in the area for 30 or 40 years was raped five times in the middle of the night and had to endure the attack that lasted from midnight to five o'clock in the morning. What that did to her was absolutely unforgivable. I do not want to talk about the physical and emotional damage that it caused to her because of the problems that occurred not just to her but also to others in the community. Because it happened in a community in which it was not expected, it had a dramatic effect on all senior citizens in the community, to the point where people were too scared to go out of their homes at night. They built up a mentality that they basically had to imprison themselves within their own homes because of their fear. A lady came to see me when I was Mayor of the City of Bayswater. She was absolutely petrified. Not long after the attack on the 84-year-old lady, this woman was disturbed at one o'clock in the morning by somebody bashing on her door. She was so petrified that she rang the police, but she got no response. It took two and a half hours for a police car to get to her property. For two and a half hours she hid underneath her bed. We, as a society, cannot tolerate that. What happened to the 84-year-old lady cannot be tolerated. Some of my colleagues to my left, even the member for Bunbury, spoke about rehabilitation and how criminals should be looked after. I have no time for them. The simple solution is a bullet. Anybody who attacks an 84-year-old lady in that manner has lost the right to sympathy in any form. They are beyond being looked after or rehabilitated.

Mr Barnett: You support capital punishment, do you?

Mr D'ORAZIO: This House will have that debate at some other time. It is absolutely important that members support any attempt to increase the pressure and sentences on people who attack elderly citizens. It will

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

hopefully have a detrimental effect. It will also give some assistance to the elderly in the community to ask us, the politicians who represent them, whether we care about them, support them and understand how they feel.

When security patrols were introduced in the City of Bayswater, there was 93 per cent acceptance. The greatest supporters of that concept were the seniors, because they were the ones who thought they were the most vulnerable. We, as a society, must recognise that. As senior citizens are inclined to be encouraged to stay in their own homes, society must also provide them with the security so that they can live there without the threat of violence. When I was doorknocking in Ballajura, which has a huge proportion of elderly people, the only thing that they were worried about was making sure that the community was safe. They were not concerned just about themselves, but also about young children and young people within the community who are also vulnerable. We, as a society, must make a stand and make sure that these people are protected.

The item that increases the penalty for fraud against the elderly is also important. In this day and age, the elderly are not always conversant with the use of all the technology that has developed. Any fraud against the elderly should be treated in a way that discourages that type of conduct. The elderly need protection. They are the most vulnerable members of the community. I hope that, in my role as an elected member, I will do everything I can to make sure that a clear message is sent to those criminals who want to target the most vulnerable people within our community. That message should be that their conduct will not be tolerated and that the Government will do everything in its power to make sure that it stops. The increase in penalties will go no small way to create the perception within the community that the Government is serious and will do what the community wants, which is to make sure that the criminal element within our community is treated exactly like that - the criminal element - and make sure that they do not affect the lives of elderly citizens.

I worry about my father who is blind and lives by himself. I would hate to see the day that he is made vulnerable because of an attack. He bought himself a large Doberman because he was worried about being alone at night and about the effects of would-be criminals. Interestingly enough, even though he has a Doberman and lives at the end of a cul-de-sac and near a park, he has been broken into six times and has had things stolen from his house.

We, as a society, must understand that there are social problems within our community. I am the first to support programs to stop people becoming criminals. It is important that these people are given support. It is important that social programs are in place to support families and that the pressure to commit these crimes is alleviated. That is well and good and the community must understand that. However, the community must also understand that there is no excuse for crimes against the elderly and the vulnerable. Society cannot tolerate it. Penalties must be increased. Maybe a clear message should be sent in even stronger terms to the criminal element that this sort of conduct will not be tolerated within our community.

It gives me great pleasure to support this legislation. It is important that the community feel safer. When security patrols were introduced in Bayswater, the crime rates went down to some degree. However, the effect it had on the community and people's perception of safety was inversely proportional. Even though the crime rate came down between eight and 20 per cent, the community's perception of how safe they were in their community rose by more than 100 per cent. They felt that they were protected and safer, and were more responsive to the fact that they were within society and could be part of society without worrying about being attacked or mugged or about not having somebody in the community to support them when they needed it most. I am more than happy that this legislation is here tonight and that it is being supported. I hope we will get even stronger in dealing with this small element of our society and will make sure that elderly citizens can live their last years in peace and harmony. They must be thanked for the contribution that they have made to this great country, because without their sacrifices, we would not be here today. Not only that, we also need to respect them and make sure that they can live their lives in total harmony. They should not have to put up with attacks like the one that happened to that 84-year-old lady. Only an animal would do that and we do not need them within our society.

DR WOOLLARD (Alfred Cove) [7.57 pm]: I support this Bill. Like many members of the House, I too was made aware when I was doorknocking during the election campaign that many of our elderly are prisoners in their own homes. Before they would open the door they would sometimes disappear for five or 10 minutes to find the keys. They asked me to please wait because they wanted to talk. When they did open the door, they would talk about the crimes that had been committed in their streets and about the people who they knew had been affected by burglaries. It is an emotional issue for the elderly and for people whose families or lives have been affected by criminal activities. Three or four years ago my husband was knocked unconscious by two thugs with a crowbar. They took \$400 off him. He survived, but we were lucky that he survived. Crime rates are increasing. As members have said in this Chamber, each person they spoke to said that crime rates were

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

increasing in their area. As I have mentioned previously in the House, the ratio of police in Alfred Cove is one police officer to more than 2 000 residents. Police statistics state that there should be one police officer to 700 residents.

I support this Bill. We do not know if it will work, but it is an attempt. People claim that they have solutions, but there is no evidence of what will work. This Government now has the opportunity to look critically at this legislation and to see if it will work. If it does work, it can be used as a model for other groups.

In addition to this Bill, other measures have been implemented in the community. A Safer WA committee is being established in Melville and will include Melville City Council, Neighbourhood Watch, the police and members of the community. This committee is being established because of the increase in crime rates. I support this Bill, and I hope it is successful and these methods can then be adopted in other areas.

MR OMODEI (Warren-Blackwood) [8.01 pm]: I join members of this House in supporting the Criminal Law Amendment Bill and the associated amendment to the Sentencing Act 1995. No-one in this House could be angrier than I about the crimes perpetrated on our elderly. One of my predecessors, Sir Stewart Bovell, a former member of this House for the seat of the Sussex - which is now the seat of Vasse and takes in the western part of my electorate - was attacked in his home at the age of 90. Members will recall that he was the elderly gentlemen who was pictured on the front page of *The West Australian* with his face all black, blue and purple. This fellow was a bachelor and lived on his own. He was an absolute gentlemen, gave tremendous service to his community, and was highly regarded throughout the State and country. He said to me that when he was the member for Sussex, he would book into the Augusta Hotel for six days and visit every farmer and constituent in that area. It was an absolute disgrace that he was treated in that way by being attacked in his own home.

I can identify with some of the comments made by the members for Kalgoorlie and Innaloo. If the member for Innaloo is right in stating that the judiciary does take notice of the debates that occur in the Parliament - and I am sure it does - then today's debate is very important, because the proposed penalties in this legislation will have an impact on what happens in the future. Some of the items that the member for Kalgoorlie mentioned concern me greatly. For example, the maximum penalty for aggravated burglary is 20 years. However, the maximum sentence that has been imposed so far is 8.33 years, and the average time that has been served is 1.645 years. Many similar examples can be found, ranging from attempted murder, to robbery while armed, manslaughter, acts intended to cause grievous bodily harm, and robbery in company. The maximum penalties for these charges range from 14 to 22 years. The maximum penalties appear to be significant. However, the penalties that are set by the judiciary are not in line with community thinking today.

The Attorney General states in the second reading speech -

Currently the offence of wounding has a maximum penalty of imprisonment for five years, or on summary conviction imprisonment for two years or a fine of \$8 000. This Bill proposes to increase the maximum penalty to seven years imprisonment when the offence is committed against a person of or over the age of 60. The maximum summary conviction penalty will also be increased to imprisonment for three years or a fine of \$12 000.

Common assault has a maximum penalty of 18 months or a fine of \$6 000. The Bill will double that maximum penalty to imprisonment for three years or a fine of \$12 000, when the offence is committed against a person of or over the age of 60.

The Bill also amends the maximum penalty for the offence of assault occasioning bodily harm from imprisonment for five years, to seven years when the offence is committed against a person of or over the age of 60. For a summary conviction, the maximum penalty will be increased from imprisonment for two years or a fine of \$8 000, to imprisonment for three years or a fine of \$12 000.

Assault with intent currently has a maximum penalty of five years imprisonment which will be increased to seven years. In the case of a summary conviction, the maximum penalty will be increased from two years imprisonment or a fine of \$8 000, to three years imprisonment or a fine of \$12 000 when the offence is committed against a person of or over the age of 60.

It is striking strange that when the coalition Government introduced the matrix legislation, the penalty for unlawful wounding was to be increased from three years to five years, the penalty for home burglary was to be increased from 14 years to 18 years, and the penalty for aggravated home burglary - very important in this case - was to be increased from 14 years to 20 years; and the list goes on. Under the proposed legislation, the review for murder, which initially was to occur after seven years' imprisonment, was to be extended to between seven and 14 years; and the review for wilful murder, which initially was to occur after 12 years' imprisonment, was to

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

be extended to between 15 and 19 years. The Labor Party's change of heart is interesting. It opposed this legislation, along with the Greens (WA) in the other place. I agree with the member for Kalgoorlie that if we are to be serious about this legislation, we should talk about minimum rather than maximum penalties.

It is interesting that today the member for Rockingham gave notice that he will reintroduce the animal welfare legislation. It will be interesting to note the changes the Labor Party has made to that legislation. During the debate last year, the Labor Party made it very clear that it wanted to double the penalties for aggravated cruelty to animals, to the extent that some of the penalties would be \$50 000 and imprisonment for five or 10 years, and multiples of \$10 000 for a corporation and so on. I put it to members that in many cases, the penalties that the Labor Party was proposing for cruelty to animals were greater than the penalties that were being imposed for crimes against people. It will be interesting to see that legislation when it lands on the Table of this House and is second read, perhaps on Thursday, because, if that is still the case, the Labor Party is perpetrating a fraud on the elderly people of Western Australia by regarding cruelty to them as being less important than cruelty to animals. Members opposite should have a good look at this matter, because I know that tomorrow, they will send copies of their speeches to people in marginal seats, as they are wont to do from time to time.

This legislation is perpetrating a fraud on the elderly people of Western Australia. We should take this matter very seriously, and if maximum penalties do not do the job, we should introduce minimum penalties. It is incumbent upon the Government, of which the Attorney General is now a part, that rather than give platitudes and take soft approaches, whether it be on drugs or on a tax against elderly people, it introduce in this Parliament some dinkum legislation that will force the judiciary to impose penalties that will really penalise people who commit crimes against the elderly.

Mr Barnett: Perhaps the local news story will be, "Labor members fail to support minimum penalties." It may not come out the way they hope.

Mr OMODEI: That may be the case. All I know is that during the coalition's time in government, we introduced significant legislation to deal with the sentencing matrix, and a range of other legislation to increase the maximum penalties. That is on the record for everyone to see. If that is not working, and if that is not deterring the people who attacked those elderly women in Ballajura who were mentioned by the member for Ballajura, or who attacked the former member of Parliament whom I mentioned - a wonderful 90-year-old bloke who was bashed up in his own home - then we should not tolerate that sort of thing in our community.

I strongly support this legislation, even though it is a very small step, and I doubt it will make much difference. However, I want the Labor members of Parliament to be honest about this legislation and not perpetrate a hoax on elderly people by pretending to set a maximum penalty when the increase will be infinitesimal.

I hope that the member for Innaloo is right - John Quigley, QC, John Quigley, MLA - when he says that the judiciary takes notice of what happens in this place, because I doubt if it does. If it does, we should introduce tough legislation that deters these criminals from perpetrating acts of assault -

Mr Quigley interjected.

Mr OMODEI: The member for Innaloo is now on the right side of the House. Now he can really fire that broadside against the people he wanted to in the first place!

I support this legislation, and I repeat that I identify my comments with those made by the member for Kalgoorlie, the member for Innaloo, and some other members opposite. The House should not pretend to introduce legislation; it should introduce dinkum legislation to deter these people from doing the things they have been perpetrating on our society.

The ACTING SPEAKER (Ms Hodson-Thomas): Order! Would the member for Innaloo please resume his seat. I remind the member for Innaloo that I am on my feet.

I allowed the member for Innaloo to interject on the member for Warren-Blackwood, and he is not to interject out of his seat. If the member wants to make a point of order, I might take his call. However, I think the member for Kingsley was seeking the call.

MRS EDWARDES (Kingsley) [8.11 pm]: I rise as the lead speaker for the Opposition on the Criminal Law Amendment Bill 2001. I support all those people who took the line that it is essential to punish people who commit crimes, particularly violent crimes, against the elderly - we have heard about the 90-year-old man and the 84-year-old lady. More importantly, they must be seen to be punished. As the member for Warren-Blackwood indicated, this legislation will only be window-dressing and a sham against those elderly people who think that all of a sudden they will be protected. If increasing maximum penalties were the sole answer to ensuring that people who commit crimes against the elderly are punished, we would not be standing here today.

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

In the time of the previous Government, a number of penalties for a range of serious offences were increased. The penalty for unlawful wounding was increased from three years to five years imprisonment. The penalty for home burglary was increased from 14 years to 20 years imprisonment - a significant increase. The penalty for aggravated home burglary was increased from 14 years to 20 years imprisonment. A third strike provision for home burglary was introduced, which meant that both juvenile and adult offenders would be given a mandatory sentence of 12 months detention or imprisonment - three strikes and you are in.

I know that many members opposite are totally opposed to mandatory sentences. Increased penalties have made no difference to the crimes being committed against elderly people. The penalty for grievous bodily harm was increased from seven years to 10 years imprisonment, and the penalty for assaults on public officers was increased from five to 10 years imprisonment. A number of other penalties were also increased, and strict security life imprisonment was introduced for wilful murder.

This Bill will only increase maximum penalties; it will have no effect on the actual sentences imposed. I have here a chart that lists sentences imposed. The maximum statutory penalty for robbery while armed is 22 years imprisonment, while the maximum sentence imposed was 12 years, the minimum sentence was one year and the average sentence was 3.9 years. For acts intended to cause grievous bodily harm, the maximum statutory sentence is 20 years, the maximum sentence imposed was five years, the minimum sentence imposed was one year, and the average sentence was 3.14 years. For robbery in company, the maximum statutory penalty is 20 years, the maximum sentence imposed was six years, the minimum sentence imposed was one year, and the average sentence was 2.14 years. For home burglary, the maximum statutory sentence is 18 years, the maximum sentence imposed was four years, the minimum sentence imposed was six months, and the average sentence was 1.91 years. For grievous bodily harm, the maximum statutory penalty is 14 years, and the maximum sentence imposed was five years. Note the difference between the two figures, and I remind members opposite that the figures do not include provision for parole, which further reduces the time actually spent in prison. The minimum sentence imposed for this crime was six months and the average sentence was 2.07 years. For other burglary, the maximum statutory sentence is 14 years, the maximum sentence imposed was six years - again, less than 50 per cent - the minimum sentence imposed was three months, and the average sentence was 1.58 years. For serious assaults, the maximum statutory sentence is 10 years, the maximum sentence imposed was four years - again, less than 50 per cent - the minimum sentence imposed was six months, and the average sentence was 1.82 years. For assault with intent to rob or threat of violence, the maximum statutory sentence is 10 years and the maximum sentence imposed was 1.5 years. These are the sorts of crimes that have been committed against the elderly. The minimum sentence imposed for this offence was one year, and the average sentence was 1.25 years. For assault occasioning bodily harm, the maximum statutory sentence is five years, the maximum sentence imposed was four years, the minimum sentence imposed was six months and the average sentence was 1.8 years. I could go on, but I have demonstrated my point. If increasing the maximum sentences were the answer, the solution would have been achieved by now. The 84-year-old woman and the 90-year-old man would not be victims of crime. All that is being purported here is pure window-dressing, because it all comes down to how the judges view the person and the crimes before them.

I refer to a speech made by the Chief Justice, Hon David Malcolm, in 1989. The principles still apply, even with the new Sentencing Act. The speech was made at a public forum conducted by the Law Society of Western Australia, the Australian Journalists Association (WA Branch) and the Criminal Lawyers Association, and was on the subject of dealing with the offender. During his speech he talked about the principle of sentencing. He said that imprisonment was a sentence of last resort, a principle that was deleted and replaced in 1994. The speech stated -

The sentencing task requires the imposition of a sentence "proportionate to the gravity of the offence". At this stage the various alternatives to imprisonment must be considered. When the conclusion is reached that there is no alternative to imprisonment it is necessary to consider a term which is appropriate, having regard to the seriousness of the offence, unless there is a mandatory sentence . . . Where there is a maximum penalty, the offence needs to be placed on a scale of seriousness.

That is important, because the principles of sentencing under the new legislation involve the seriousness of an offence. The sentence imposed on an offender shall be commensurate with the seriousness of the offence. Justice Malcolm stated -

Where there is a maximum penalty the offence needs to be placed on a scale of seriousness having regard to the circumstances under which it was committed and the need for consistency. The range of sentences commonly imposed, where that can be established, is relevant to consistency. The term will be increased by any relevant circumstances of aggravation. It is then necessary to consider to what

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

extent the sentence should be reduced or discounted on account of all relevant mitigating factors personal to the offender including those related to age, background, employment history, physical and mental health and the absence of any significant prior record. Mitigating factors may also include co-operation with the police and making a plea of guilty as well as consideration of time spent in custody prior to sentence.

At the end of the day the maximum sentence is reduced according to all the mitigating factors, the seriousness of the offence and the like. Defence lawyers stand up before the judge and go through all of those mitigating factors. They refer to precedent and to what judges have said in previous cases and the resulting sentence. Defence lawyers put all those details and the principles forward. They try to get the shortest sentence for their clients. That is what happens in the real world. I just read out figures on maximum sentences. The chart shows what most people realise - the maximum sentence is rarely, if ever, imposed. As I pointed out, penalties seldom reach 50 per cent, or even 25 per cent, of the maximum sentence.

The Government has come into this place today to suggest that it will become the saviour of elderly people; that it will reduce the crimes perpetrated against them by increasing the penalties. The Opposition will support the Government's move to increase penalties. However, it is window-dressing and a sham to suggest to those elderly people that this legislation will reduce the incidence of crime being perpetrated against them. That will not happen. One need only consider the sentences imposed by the judges to realise that they do not get close to the maximum sentence. Home burglary is one of the major crimes against seniors. It has a maximum statutory sentence of 18 years. In 1998-99 the average sentence imposed was one year and 10 months; the greatest sentence ever imposed by the court was five years. What does the Government think about that? What would government members like to do with the judges who make those sentencing decisions? Would members like to tell judges that this Parliament has legislated for a maximum penalty and they want them to impose the maximum penalty? Do they want to tell the judges to increase the penalties that they impose when the offences have been perpetrated against those who are vulnerable in our society, particularly the elderly? Is that what members would like to do? Would they like to say to those judges that the sentences they impose are not good enough, and it is not a good enough outcome for those who are vulnerable in our community? That is what the matrix legislation would have done.

In 1999 the Sentencing Amendment Bill - the matrix legislation - was introduced with three parts. Part 2 dealt with benchmark guidelines so we could calculate the level that the sentence ought to be. The matrix system has been operating in Oregon for a number of years. I note the Health Department review by Mike Daube in which he recommends that the Government start a consultative process along those lines to get the people involved. From where did he get that idea? It was from Oregon. Nothing is new in what we do in this State; it has happened elsewhere. The Government can get the details about those guidelines from Oregon. They will say what the penalty is for an offence against senior citizens in their own home. Members know how vulnerable they would feel if their privacy were invaded; if they went inside their home and found it had been broken into and their drawers had been pulled out and they knew that somebody had been in their home - let alone if they were in their home at the same time, which is often the case with the elderly. Members know how fearful the elderly are of returning to their homes. Under the matrix system we can specify the penalty in those circumstances and if the victims are over the age of 60. That is what the Government is doing in this Bill by specifying the maximum sentence. However, it does not work in practice. If it worked in practice we would not be here today.

What has the Attorney General done with parts 1 and 2 of the Sentencing Amendment Bill, and what will he do with part 3 to ensure that some sense can be made of the sentencing decisions that Parliament and the community believe are serious matters? It is fine to say that we want the court to impose a sentence that is commensurate with the seriousness of the offence. I would have thought that if the Parliament determined a maximum term of imprisonment that was considerable - for instance, 18 years, which is the example I raised earlier for home burglary - the Parliament regarded that crime as serious. If the average sentence being imposed is one year and 10 months and five years is the greatest sentence imposed, that is not commensurate with the seriousness of the offence that the Parliament has determined. There must be a new way of thinking in sentencing. Increasing the maximum penalties does not achieve what we want. If the Government does not like the matrix system it should think about what it wants in order to ensure that those people in the community who feel vulnerable can have some respect for the courts and its decision making on offences that the Parliament has determined are serious.

Earlier I referred to a speech by Justice David Malcolm, the Chief Justice of Western Australia. In another speech the Chief Justice reverted to humour. It probably was quite humorous when it was presented, but it is

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

also pertinent to the thinking of the judges. That is where we need to start to look: what do judges think about when they are sentencing? In 1989 Justice David Malcolm addressed the Press Club on sentencing. In referring to a case in the Supreme Court he stated -

It is a very serious subject, but even so it has been productive of some humour. There was one offender before the Supreme Court some years ago who thought his trial was unfair and his sense of injustice was compounded when he was sentenced to five years imprisonment. He blurted out:-

“That’s just what a crazy and cruel old bastard like you would do!”

The Judge replied:-

“And I further sentence you to a further two year’s imprisonment for contempt of court. What have you to say about that?”

To which the offender replied:-

“Nothing, Your Honour, you’re too good at repartee for me!”

Taken in that light it is pretty humorous. However, if members think about it, the judge added an extra two years for contempt of court because the offender yelled at him. The judge thought it was pretty serious.

Ms MacTiernan: Don’t give up your day job.

Mrs EDWARDES: I have news for the minister: this is my day job.

The average term of imprisonment for home burglary in 1998-99 was one year and 10 months. That offender would have received an extra two years for contempt of court after yelling at the judge. Contempt of court is a very serious matter; however, we are talking about the seriousness of some offences, especially crimes that are perpetrated against the more vulnerable members of our society, such as the elderly, who become frailer and more fearful as they get older. We want them to continue living in their own homes. In fact, we put a lot of money into keeping the elderly in their own homes. We should take serious measures to ensure they become more confident. The Community Newspaper Group last year conducted a survey. I am sure all members know about it, as they were asked to comment on its findings. The majority of people said they wanted tougher penalties for criminals convicted of attacking or robbing soft targets, such as the elderly, the frail and people with disabilities; those who are the most vulnerable in our community. The community wants tougher sentences for those who commit crimes against the vulnerable. We are not getting there. I say “we” because Parliament makes these decisions. However, the State Government, which has introduced this legislation, is not getting there either. The previous Government introduced legislation that dealt with the issue in a form new to Western Australia, and the Labor Party knocked it on the head. The Labor Party became very personal and asked how the Attorney General, Hon Peter Foss, could be trusted. It may not have liked the then Attorney General; however, it should not refer to personalities when people are trying to instil some confidence into the system. The current Attorney General should reflect on what he is doing, because maximum sentences will not achieve that confidence. I am sorry the member for Ballajura is not in the House, because I think he would agree with me.

David Indermaur, a highly regarded Western Australian criminologist, is well known to most of us. He delivered a paper a number of years ago on some research that he had done on the responses of victims to violence. Obviously, this was before the victims of crime legislation had been introduced. Again, it highlighted the fact that the public wants the penalty of imprisonment to be used more often. His research uncovered a perception that the courts were not severe enough and that they were inconsistent and unfair. That view reflects the findings of the Community Newspaper Group survey. Mr Indermaur said his studies showed the public was willing to endorse positive plans or alternatives to prison for non-violent offenders; however, in cases of violence, particularly violence perpetrated against the elderly, people want the courts to impose tougher sentences. How do we get the courts to impose tougher sentences? Maximum penalties do not achieve that. The Government may not like the matrix system, but it should come up with something that will ensure that the victims, who are being dealt with unfairly, have more confidence in the system. Mr Indermaur sums up -

Clearly then, much of the dissatisfaction the public has with the courts -

We are dealing with not only the elderly, the most vulnerable in our community, but also their families and a wider section of the community. None of us likes this sort of crime. It is not only a small group of people but also the wider public that will be impacted by measures that deal with violence. I quote -

Clearly then, much of the dissatisfaction the public has with the courts has to do with a perception that the courts do not consider violence seriously enough . . .

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

That is the area in which the Government must work. How do we get the courts to consider violence, particularly against the more vulnerable in our community, more seriously? If maximum sentences were the answer, we would have got there long before now.

I mentioned the sentencing matrix. I go through the features of the Sentencing Amendment Bill to refresh people's memories. The first stage of the matrix was an information-gathering process. That essentially required the courts to provide a sentencing report for each prescribed offence, which included mitigating and aggravating or other factors that were taken into account when arriving at the sentence, the weight attached to each of those factors, how the maximum and minimum penalty for the offence affected the sentence and any other information required by regulation. It would be an important tool for dealing with future amendments or changes to legislation in this area. It would also be an important tool for ensuring community confidence in what judges think about during the sentencing process. The second stage was "information and publishing of benchmarks". The regulations would define a range of sentences for which an indicative sentence would be prescribed. Therefore, after information had been gathered, the court would be required to report on the same set of factors that I previously described, as well as the indicative sentence. Those two stages were contained in the Sentencing Amendment Bill. I am not sure whether that Bill has been proclaimed.

Mr McGinty: No.

Mrs EDWARDES: It still has not been proclaimed? I ask the Attorney General to let us know when he will do that or, if he does not intend to do that, to tell us why. I thought that, given his support for that Bill, it would have provided him with a very important tool for dealing with future sentencing legislation.

The third part of the process that was knocked on the head would have provided the capacity to increase the sentences imposed by the court, particularly for offences seen by the community as serious. If the judges had a benchmark, but were not applying it according to the set of factors I referred to in stage 1, Parliament would have had the power to increase the matrix sentence for a particular offence. There was opportunity for far greater input into the sentencing process. We would have been able to ensure that offences involving the elderly or other vulnerable members of our community resulted in higher or harsher penalties in line with that which is considered appropriate by members of the community and by ourselves. At the end of the day, we do not make decisions lightly to impose maximum sentences. Members have expressed their support for the legislation on the basis that any increase in maximum sentences will have some impact. I say that history shows that it has no impact whatsoever.

I refer to a couple of comments the Attorney General made about the Criminal Law Amendment Bill. He said in a media release that -

... the Government shares the community's concerns about the number of violent and other offences committed against seniors. This included an increase of around 145 per cent in reported offences against people aged 55 years and over since 1992.

In his media statement of 20 May this year, the Attorney General said that the Government wants to send a clear message to offenders that these people should no longer be seen as easy targets. He said -

Offences against seniors are cowardly, heinous crimes that have devastating effects and warrant a significant response under the justice system.

Anyone who has seen the footage of the appalling injuries that result from even minor assaults on elderly people know just how serious these crimes can be.

Returning to the debate on the Sentencing Amendment Bill on 15 November last year, the Attorney General referred to the first and second parts of the legislation that came back to this House with the third stage removed. He said the first component would be the sentence to be imposed and the second would be the benchmark sentence that would take into account the factors that have been referred to. If the sentence imposed by the judge deviated from the benchmark, the judge would have to explain the factors that he took into account and the reason he did not apply the benchmark.

Again, that is not objectionable and by and large reflects the practice that applies in our courts today. I do not believe it does enough to ensure that people will be comfortable with the sentencing that is occurring. The Attorney General then referred to the third part of the Sentencing Amendment Bill, about which he gets a little personal, which referred to -

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

... the ability for the Attorney General to adjust benchmark sentences and certain consequential matters that flow from giving the Attorney General, in some circumstances concerning the Parliament, an ability to control actual sentences imposed by the courts. One reason I am pleased that the third leg of the sentencing matrix legislation - the most odious part - has been deleted, is that legislation with parts 1 and 2 in operation will point to whether part 3 is necessary.

Yet, I think it is a staged process. I agree that one cannot get to stage 3 until stages 1 and 2 have been completed; therefore, stage 3 could have been passed by this Parliament, which would have indicated to judges that Parliament does not increase maximum sentences lightly and judges should impose sentences according to Parliament's view of the seriousness of offences.

The Attorney General continued -

The Opposition has the gravest doubts that it is justifiable, but Parliament will now have time to make that judgment on whether a further control or fetter on the court's power to exercise discretion in sentencing is necessary and well-founded. The ability to fix a matrix sentence, and for it to be adjusted by the Attorney General, has been deleted from the legislation. The matrix benchmark sentence is presumed to be the correct sentence. If the Attorney General believed that the benchmark sentence should be increased or decreased, it would be done by a regulation that required a vote of approval by both Houses of Parliament. Parliament cannot amend; it can only approve or disapprove of the Attorney General's proposal for a new benchmark or matrix sentence in an offence.

Therefore, the ball is in the Attorney General's court. He will be able to tell us what he is doing with stages 1 and 2 and the way in which he proposes to deal with those benchmark guidelines will be available publicly. He continued -

The legislation also provided an automatic right of appeal if the court deviated from the matrix benchmark sentence.

...

The first criticism raised was that well paid, highly skilled judges made decisions that took into account different facts and circumstances in each case, but those decisions would be replaced through this legislation by sentencing by computing.

If one does not like computer programs and the rest of it, somewhere along the line in the twenty-first century the way in which one sets up a program will obviously be based on the information received. However, the Attorney General said that well-paid and highly-skilled judges take into account different facts and circumstances, which must be identified through stages 1 and 2. However, that legislation set out a scale for the types and seriousness of offences and how sentences should be applied to those offences. That therefore produces a benchmark sentence. The Attorney General further said that it would be of concern if minor offences received increased penalties. He also said that one consequence of the legislation might be that more serious offences would receive lesser sentences. However, we will never know the truth of these assertions because we cannot get detailed information on them unless the Government proclaims those two parts of the Bill. Although some information I have highlighted can be gathered, such as maximum, minimum and average sentences, there are no details of the other factors that have been taken into account. As can be seen, they are nowhere near the maximum sentence; not even 50 per cent of the sentence. I highlighted the maximum and minimum sentences imposed but there is parole in addition to that. Very rarely do judges not impose non-parole periods that would be imposed for much more serious offences than the offences perpetrated against the more vulnerable members of our community that we are debating today. The sentences I highlighted that are currently imposed, although the maximum sentences are far greater, are not the actual sentences served by those perpetrators.

Members referred to deterrents and rehabilitation. I have long been a supporter of judges having a wide variety of options at their fingertips to deal with these issues, particularly alternatives to imprisonment, rehabilitation and the like, which are appropriate in some circumstances. However, the Parliament and the community is saying in this legislation that the offences perpetrated against those who are vulnerable in the community are extremely serious. The member for Ballajura put it much stronger than I have put it tonight. Some members, particularly the Attorney General, are opposed to mandatory sentencing. Strictly speaking, mandatory sentencing refers to the practice of Parliament setting a fixed penalty for the commission of a criminal offence. Members may believe, given the debate in the Northern Territory and this State, that the "three strikes and you're in" legislation is a new idea when in fact mandatory sentencing has a long history. In the eighteenth and nineteenth centuries, as members will know given Australia's history, mandatory sentencing was used in a wide

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

range of offences. It was largely abandoned by Parliament in the nineteenth century in favour of setting maximum penalties.

I now refer to the Australian Institute of Criminology's paper No 138 titled "trends & issues in crime and criminal justice" which deals with debates on mandatory sentencing involving the imposition of significant minimum penalties, usually jail sentences, with penalties escalating for subsequent offences. The debate revolved around whether mandatory sentencing prevents crime, whether it puts in place prevention for crime, and whether it creates an opportunity to introduce certainty and consistency to the criminal justice system, which I said lacked some of those qualities. It does not reflect the community's views and standards on the more serious attacks on seniors.

The paper's summary states -

Available evidence suggests that mandatory sentencing can deliver modest, but expensive crime prevention.

If that means that it stops a young thug from belting up a dear old lady or man in the community, what is the cost of that? The large government investment that is required through the consequences of that impact on that senior citizen is not taken into account. It is often the case that people leave their homes if they have been attacked there. Extra accommodation and care needs to be found as well as hospital treatment. That requires a level of investment. We are not just dealing with the investment by the Government in a mandatory sentencing law and its cost on the justice system. I am talking about the social and direct costs of the impacts on senior citizens. I know that the Attorney General is concerned about the increased number of people in prisons and that a lot of money has been spent on constructing new prisons and providing more beds. It is likely that even more money will have to be spent. If this Parliament determines that a crime against an elderly person is serious, then it is regarded as serious. That is the point being missed by the judges, but it is not missed by the community. The community is not confident that a person who goes before a court after an attack on a senior citizen - one of the more vulnerable members of the community - gets the penalty he deserves. People who commit crimes, particularly violent crimes against the elderly, must be punished. The community is saying that offenders must be seen to be punished. When there is a maximum of 18 years imprisonment for an offence but the highest penalty imposed is five years and the average sentence is one year and 10 months, criminals are not being seen to be punished. If parole is added, it is clear that the community has no confidence that attacks on seniors are being dealt with appropriately. The Bill provides for an increase in the maximum sentence. The Opposition will support it, but it will not get the Government there. If increasing maximum penalties was going to achieve changes by the courts in their decisions, it would have done so by now. We would not have the sorts of sentencing decisions that I have highlighted today. The House needs to find a way of requiring courts to treat the seriousness of offences in the same way as the Parliament and the community treat the seriousness of attacks on seniors.

This Bill provides for an increased maximum penalty when a violent crime is committed against a person over the age of 60. The exception is the amendment to section 409, which concerns fraud against the elderly, and that carries an additional three years imprisonment. The Opposition supports the change because, over the years, a number of people have exploited the elderly. The effect on the elderly is extreme as they do not have the ability to recover their financial position by earning further income. The real challenge is to get courts to impose the penalties. The Opposition put forward the sentencing matrix and I intend to move an amendment during consideration in detail that will require a minimum sentence. This legislation does not require the courts to take seriously the offences in the way that the Parliament and the community do.

The Government described the sentencing matrix as unworkable. I pointed out that it has worked well overseas and merely uses judges' own methods. Judges have been asking for a program to assist them in sentencing. That is exactly what the matrix does. It is a judicial information system. Going back to my days, I remember judges asking for assistance through the use of computers. Judges want the ability to benchmark themselves. It is something that they are starting to do in a limited way. The matrix would allow the same flexibility that judges currently have and allow the Parliament to exercise its legitimate role. The community is saying that judges do not take offences as seriously as does the community. This is why the Government is bringing in the legislation - to get votes. The Government is bringing in the legislation because the community has told it that the situation is not acceptable. If the community is saying that for a particular offence the sentences being handed down are not acceptable then, under the matrix system, the Parliament would have a legitimate role in stating what the range for sentences would be. Parliament and the courts would be armed with more effective sentencing measures.

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

The amendments to the Sentencing Act ensure that the vulnerability of a victim is taken into account by judges when assessing the degree of aggravation. Under the Sentencing Act, judges are already meant to do that. The legislation highlights what judges are already doing. It does not hurt to highlight it further. It will not make a difference to the way judges look at their sentencing practices. If the Attorney General will not proclaim the matrix or bring in something similar to the third part - which the Government discounted last year - the Opposition wants to know what he will do to assist courts to reflect what Parliament and the community believe is most serious. The Opposition will introduce an amendment that will contain a mandatory element. It is in two parts: one part seeks to recognise the fact that many cases require a heavy penalty, but ensures that the aggravating factor of crime against the elderly will necessarily carry a further 12 months imprisonment. Courts would be required to add a further 12 months to whatever sentences offenders were due to receive. If there was not going to be a term of imprisonment in the first case, the amendment would ensure that an offender received a minimum 12 months imprisonment.

Mr McGowan: What offences is that for?

Mrs EDWARDES: It is for a number of offences. They are listed in the amendment and deal with sections 297, 301, 313, 317, 317A, 392, 393 and 409. Essentially it follows through on this Bill.

The Opposition will support the legislation, but it will not get the Government and the community to where it wants to go. It will not get to the level of sentencing that the Opposition would like to see carried out in this State, particularly for offences against vulnerable members of the community. This legislation is window-dressing; it addresses the community in the language of the Attorney General when he said in his media statement of 27 June -

... that crimes committed against the elderly were reprehensible and inexcusable, and the people who committed them were cowards.

All too often, we see the bruised and battered faces of elderly victims paraded across our television screens, ...

The victims, by virtue of their age, are seen by their attackers as easy targets, which makes the crime more serious and deserving of greater punishment.

We believe that and support it absolutely and totally. However, increasing maximum sentences will not get us what we want. It will not get the courts to make decisions that reflect the seriousness of the crime. If the Bill were to do that, we would not be here today; the courts would have already taken into account that we regarded those crimes as serious and they would have reflected the views of the community. The judiciary has seen the battered faces of the elderly people on the nightly television news, but that has not changed the impact of the sentences.

We will support this Bill. However, it is an absolute sham for the elderly people who might believe that the Government is doing something to help protect them in their homes. They might believe that this measure will prevent crime and that, in some minor way, it will prevent people from breaking into their homes; however, it will not do that because the sentences imposed will not reflect the seriousness of the crime against those who are vulnerable in our community.

MS SUE WALKER (Nedlands) [9.01 pm]: I concur with the comments made by the member for Kingsley about the seriousness of this offence. I am probably one of the few people, apart from the member for Innaloo, who has spent many years in the criminal courts. What I am about to say, I say with experience. 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. 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. 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.

In commending the Bill I note the factual circumstances outlined by the member for Ballajura. He gave one horrific incidence, and many more have been before the courts in recent years. The purpose of the Bill is to protect the elderly and vulnerable in their homes and on the streets from, for instance, bag snatching. I am not sure, but I think a suggestion was made when I was a prosecutor that the mandatory sentencing for break and

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

enter moved the crime of robbery - or of the drug addicts who searched for money in homes - to snatching bags from the elderly in the streets. Bag snatching is one of the crimes dealt with in this legislation.

I am confident that this legislation will have a deterrent effect 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 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. It would be very instructive for members of Parliament to go to the courts on sentencing day to see what happens in court. Imposing a length of sentence on any citizen is a skill and a difficult task and an infinite variety of circumstances must be taken into account.

I commend the Bill and believe that the public, particularly the elderly, can be confident that we on this side of the House support the Bill and are serious about the elderly in the community.

DR CONSTABLE (Churchlands) [9.05 pm]: I will comment about the weaknesses in the legislation. I will start with the main purpose of the legislation, which is to increase significantly the penalties that will apply to offenders who commit offences against seniors; that is, those people who are 60 years and over.

In his second reading speech, the Attorney General referred to a number of horrible crimes committed against elderly people, particularly those in their own homes, in recent times. These crimes have quite properly attracted a great deal of media coverage and interest. One of the problems with that is that it causes many other elderly people in the community to be fearful within their own homes. All members have seen in our electorates, particularly when door knocking at the time of the last election, how many people, particularly older people, fortress themselves in their own homes. The media's coverage of these horrible crimes means that all people in our community become aware of the horrific consequences of home invasions and violent crimes within our own homes. It affects the way old people conduct themselves and the level of fear they might feel. In the past 10 years that I have been a member of Parliament, I have seen an enormous change in people's attitudes to security in their homes and the worries they have about violent crime.

It is important that we are mindful of the people in our community who are vulnerable and also to be clear in our minds who they are. For some time many people in the community have sought harsher penalties for these types of violent crimes, especially against older people. I am sure that the majority of people in my electorate of Churchlands would want me to support this legislation, which I intend to do.

I have been asked how an arbitrary age can be set for a cut-off limit for harsher penalties. What is the difference between someone who is 58 or 59 years old and someone who is 60 when they are attacked and unable to defend themselves? I suspect that few people in our community could defend themselves. A week ago, a young fellow who works in a cafe in my electorate was attacked when he was at an automatic teller machine getting out some cash which he had been saving to pay for repairs on his motor vehicle. While he was at the ATM he was attacked by two young people, one of whom had a wooden mallet and the other a metal bar, and he was beaten around the head. He had no chance of defending himself and he was very vulnerable. People have asked me why he is less vulnerable than someone who is 60 or 62 years of age. He could not defend himself in that situation.

This legislation fulfils an election promise of the Government that was set out in its protecting WA seniors policy. The Bill is designed to increase the maximum sentences; some detail of this has been given by the member for Kingsley and I do not intend to repeat that information. I am pleased that it targets the vulnerable people in our community and that the notion of vulnerability is part of the legislation. I hope that the Attorney General will give us some notion of the definition of what is meant by the word vulnerable.

Mr McGinty: It is used in a general sense in the legislation rather than a limited sense. You can look to a range of legislation such as that in the disability services area in which the term is defined with more precision. We gave some thought about whether to define it. That then gives rise to the difficulty of what degree of disability or vulnerability -

Dr CONSTABLE: I agree that it is difficult to define.

Mr McGinty: We left it without being defined, but we looked to some areas for assistance.

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

Dr CONSTABLE: "Vulnerable" does not necessarily mean that someone has a disability. Quite clearly, people with physical or intellectual disabilities can be easily identified as vulnerable in this situation. However, I would venture to say that the young man about whom I gave the example, who was taken by surprise and attacked and beaten about the head by two people at an automatic teller machine, is vulnerable in that situation, as would be a young single mother with two small children attacked in her own home. Where does it begin and end?

Mr McGinty: That is the reason that, in the end, we opted not to define it.

Dr CONSTABLE: So, everyone is vulnerable. Who is not?

Mr McGinty: I do not know that it goes that far, but obviously for someone with a physical or intellectual disability, it is a question of degree of that disability. The point you make is also valid; that people who do not suffer from that disability might well, in the circumstances in which they find themselves, be vulnerable. That has been left to the discretion of a judge to apply, but it is a fact that must be taken seriously and into account.

Dr CONSTABLE: Indeed. It will be interesting to see how it is applied by judges when they are faced with the victim of a crime. I applaud the Government for looking at this side - the victim of a crime - in this way. I would be vulnerable in my home if I were attacked, perhaps not in the same way as someone with a physical disability, but I would not be able to defend myself. Are we talking about the ability to defend oneself or the measures used? It is probably best left undefined and for the judiciary to define it over a period. Given the breadth of the Attorney General's explanation, the judiciary will take a broad view of the term.

One thing that has been brought to my attention is that the policy behind this Bill has been adopted in response to the violent invasions and attacks on elderly people in their homes in recent years. The high rate of household break-ins in Western Australia must also be considered. The Australian Bureau of Statistics' "Year Book Australia 2000" showed some disturbing statistics in its crime and safety report. It reported that in the 12 months to April 1998, Western Australia had the highest victimisation prevalence rates of any State in Australia in the crime categories of household break-ins and attempted break-ins. During that period, 124 households per 1 000 were broken into, while 24 in every 1 000 motor vehicles were stolen. This high crime level is not a badge of honour that Western Australia can wear. It is important that the penalties for those crimes are addressed. The Bill looks at increasing penalties for violent crimes, particularly against elderly or older people in the community. The second objective is that the victim's level of vulnerability is taken into account in sentencing.

My research assistant sensibly phoned the Western Australian Council on the Ageing to seek its views on this legislation. She came up with some interesting information from that phone call. The Council on the Ageing is an independently run peak body that offers advocacy on issues affecting people over the age of 50 in Australia. It is recognised federally as the national umbrella representing seniors' interests. It is worthwhile listening to and understanding that organisation's opinions. The Council on the Ageing reported to my office that it supports any legislation that allows the vulnerability of a crime victim to be taken into account by the courts when sentencing offenders. The issue of vulnerability is one that is supported unconditionally. However, there is a very large "however" in its thinking. The Council on the Ageing is not supportive of legislation that specifies that people who attack victims over the age of 60 years should receive harsher penalties. The reasons for that are interesting. The council quotes statistics that I will look at in a moment which state that it is simply not true that people who are in the 60-plus age group are more vulnerable or are soft targets. It is worried that this view that is being perpetrated in the community actually erodes the independent status of seniors in our community. It is an interesting line to take on this legislation and one on which I would value the Attorney General's comments when he sums up later.

The Council on the Ageing is concerned that this legislation might create a climate of fear for older people in the community and that they will fear, even more than they do now, that they will become a victim of crime, that this will have an effect on their daily lives and will encourage more and more of them to become prisoners in their own homes. The council is worried about the negative effects that this legislation might have and that seniors in our community will be stereotyped more and more because of this legislation. The Australian Bureau of Statistics information on crime victimisation supports this point of view to some extent. On 25 May 2000, the ABS released its crime report titled "Crime and Safety, Western Australia" for the 12 month period to October 1999. That report had some revealing statistics that 5.6 per cent of people aged 15 years and over in that year saw themselves as victims of personal crime. Personal crime is defined in the survey as robbery, assault or sexual assault on females. When that figure is looked at more closely, it is revealed that 6.8 per cent of males and 4.5 per cent of females were victims of personal crime. If age groups are examined and broken down even further, the most vulnerable age group for these aggressive crimes is the 15 to 24 age group, with 13.3 per cent of that group in that year being victims of crime, compared with only 1.5 per cent of people over the age of 55.

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

The stereotyping that the Council on the Ageing spoke about is an interesting and perhaps serious issue for members. The most vulnerable group when it comes to violent crime is the 15 to 24 age group. Some people are concerned that the approach taken in this legislation might be illogical. Why discriminate against people when it comes to penalties on the basis of age when perhaps all people should be treated in the same way?

I support the amendment that is found in clause 12 of this Bill, which raises the question of vulnerability. I mentioned that before. It is perhaps a landmark, and I am sure members are fairly pleased the Government has introduced it here. To extend the principles of sentencing to include vulnerability is a good direction for this Parliament to be going in. It remains to be seen what that notion or idea of vulnerability will be. I will follow it in the coming months and years with some interest. I agree with the Attorney General that the courts should give the clause a broad application.

I am delighted that this legislation covers the issue of fraud and the notion of a person's vulnerability to fraud. The statistics support this amendment to the legislation. All the figures that I have found, which are confirmed by the Council on the Ageing (WA), indicate that people aged 55 and over are far more likely to be the victims of fraudulent behaviour than are younger people. It is interesting that the introduction of harsher penalties for crimes against older people may force those unscrupulous people who have committed fraud against older people, such as in the finance broking industry, to turn their attention to other groups in the community. I hope the Attorney General will monitor the situation closely to determine whether the introduction of these harsher penalties does increase the incidence of this type of behaviour against people younger than 60 years of age. Many people in my electorate have been affected by the finance broking scandal. They have lost some or all of their superannuation, and they are unable to get jobs to rebuild their retirement nest eggs. It too late for them. Those people need to be protected in this way.

I have an underlying concern that the Bill is at odds with the democratic principle that every person should be equal before the law. It concerns me that the penalties will differ according to the age of the victim. This is also a concern of the peak body that is involved in policy formation for older people. I hope this matter will be monitored closely by the Attorney General and that if there is a need to review this legislation as a result of obvious changes in behaviour to other groups in the community, that review will be conducted sooner rather than later. The fact remains that many young people are also the victims of crime and are maimed or have their lives ruined, and we need to ensure that we do not increase the potential for them to be harmed and that they too are protected.

MR McNEE (Moore) [9.23 pm]: After listening to the debate on the Criminal Law Amendment Bill, I am appalled to think that we have these sorts of people in our community. I took notice of the cases that the Attorney General and the member for Ballajura presented. Imagine that 80 year-old lady who was subjected to five hours of torture. How would members feel? If that lady had been my mother, there would have been another court case, because I would have gone after him in a big way. What sort of animal are these people? If a dog got in among a farmer's flock of sheep, no questions would be asked, no matter whether the sheep were young or old. I do not want to make light of this situation, because it is a terribly serious matter. Like other members, I have knocked on doors and found that people are too scared to open them. I do not know why.

Mr McGowan: They have obviously got a peephole!

Mr McNEE: They probably thought it was the member for Rockingham approaching! People keep saying to me that the problem is that the penalty is not enough. I have listened to the members for Kingsley, Innaloo, and Nedlands. These members are all experienced in how people are sentenced, and I can appreciate that. However, the point is that if a person breaks into somebody else's home and commits these sort of heinous crimes, what rights does that person have? I believe that person does not have any rights. Of course, the judicial system would probably say the offender had bad parents - his father was a drunk and his mother was a drug addict; therefore, we should just hit him with a wet lettuce leaf and send him home. This is the very thing that people are objecting to. I am happy to support the Government's legislation. However, I urge the Government to go further. We need a system of mandatory sentencing, or something to that effect. There is no sense in putting such offenders in prison. We need to make these offenders do something that is hard and that puts blisters on their hands and reminds them every day of the crime they have committed against a person, whether that person be young or old. These offenders are not fit to walk the streets. I have no respect for them at all. In my view, no punishment is strong enough. I support the Government's legislation, but I beg the Government to tighten it up to ensure that these offenders are given a penalty that matches their crime, and in that way they will really pay a price for their crime. I do not believe there is one member in this House who would want such offenders to be treated lightly. This issue is terribly serious, and I am pleased that the Government is trying to do something about it.

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

MR McGOWAN (Rockingham) [9.27 pm]: I support the Criminal Law Amendment Bill. This is a serious issue, because it deals with our seniors and with those people in our community who are vulnerable and have been the victim of assault, grievous bodily harm or fraud. Like other members here tonight, I represent an electorate in which a substantial proportion of residents are seniors - including, I might add, the member for Moore - and in representing that electorate, I know that many elderly people are very nervous and frightened about being the victim of crime. Those people expect that their Government, no matter what its political persuasion, will stand up and do something about this problem. We have a range of solutions, but they really start at the bottom with education, assistance with parenting, and creating a community in which people feel included. These are all matters that the Government is attempting to address in dealing with these issues from the start. Many of us have not experienced the forms of social alienation from the community that other people have experienced. I believe that these feelings of alienation start early in life, and we must address this situation.

Be that as it may, during the election the Labor Party took to the people a policy that stated that if it were elected to government, it would increase the range of penalties available to the courts for people who commit crimes against people who are vulnerable or aged over 60. It is easy to define people aged over 60; therefore, the major provisions of this Bill deal with that group. This Bill also contains a provision to deal with people who are vulnerable, and proposes an amendment to the Sentencing Act 1995 to ensure that the vulnerability of the victim is taken into account when handing down penalties for assault, grievous bodily harm and fraud, and other offences of that nature. The Government has received a mandate for this policy, and I am very pleased that the Attorney General has seen fit to introduce this Bill early in the Government's term. It is interesting that both before and after the election, and during this debate, opposition members have bemoaned these provisions because they believe they are meaningless. I have heard the shadow spokesperson for legal affairs call for mandatory sentencing in relation to these offences, and I will deal with that in a moment, but she has said that these offences mean nothing. I remind the Opposition of the principles of the Sentencing Act 1995. I suspect that the opposition spokesperson was possibly the Attorney General at that time. The Sentencing Act specifies, under subsection 6(1), that when a court is imposing a sentence -

A sentence imposed on an offender must be commensurate with the seriousness of the offence.

Subsection 6(2) states -

The seriousness of an offence must be determined by taking into account —

(a) the statutory penalty for the offence;

What could be clearer? That is something for a court to take into account when deciding on the sentence of an individual. The Government is saying that it will increase the maximum penalty available to the courts for people who commit these offences. The Sentencing Act 1995, passed by the former Government - I do not know if the member for Kingsley was Attorney General in 1995, although I think she probably was - actually states that it is available to a court to consider the statutory penalty for an offence when imposing a sentence. The Government is complying with laws passed by the last Government, and putting in place maximum penalties, which the courts can take into account, in accordance with laws that the Opposition passed when in government. For the Opposition to come in here and knock, knock, knock - as a former Premier once said - these provisions the Government is putting in place, really speaks volumes about the Opposition, and says that hypocrisy is alive and well on the other side of the House.

The Government has undertaken these reforms in a sensible way, as evidenced by the Sentencing Act, and the fact that it is increasing the maximum penalties available for all of these offences. I do not wish to be misrepresented here, but at times, all these offences have the capacity to be quite minor. For instance, I will take the case of section 313 of the Criminal Code, which deals with common assaults on individuals. Under the Government's reforms, the maximum penalty available for common assault is increased to three years imprisonment, and fines are also increased. A court has discretion to impose a maximum of three years, while under the former provisions, the maximum available was 18 months. I would object to a mandatory sentence in relation to the offence of common assault, not because it is not a serious offence - at times it is quite serious - but because the definition of assault, as defined by courts throughout Australia, is an apprehension of fear. If I were to say to the member for Warren-Blackwood - and I will say it right now - "I am going to get you", under the law that is an assault. I am sure the member for Warren-Blackwood is frightened at the fact that I just threatened to get him.

Mr Omodei: If you said that like you meant it, I would be scared.

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

Mr McGOWAN: The member knows I did not mean it! Actually, I did - observe where the member for Warren-Blackwood now sits!

Let us suppose a domestic dispute occurs between two elderly people, as sometimes happens in aged persons homes. People living next to one another sometimes do not get on. They may be 80 years of age, but a dispute takes place, and one older person says to another, "I am going to get you", and the other person feels an apprehension of fear. Under section 313, that constitutes a common assault that can be pursued by the courts, and a prosecution can be launched. I would not support a mandatory sentence in relation to that sort of offence. Then I see the amendments to the Government's Bill put forward by the Opposition. The Opposition thinks there should be a mandatory penalty of 12 months in prison for anybody who commits a common assault against a person over the age of 60 years. The Opposition believes someone who makes as vague and meaningless a threat as I just made to the member for Warren-Blackwood should go to prison, without exception, for 12 months. That is the calibre of the amendments being put forward by the Opposition. That is the Opposition's ability in relation to his debate. After eight years in government, without all their advisers around them, without the phalanx of lawyers and legal assistants, and all the rest that goes with government, that is what the Opposition is up to - putting forward amendments to this Bill which prescribe 12 months jail for people making vague and very nebulous threats against another person, in which that other person, in a subjective test, was under an apprehension of fear. It is just pathetic that the Opposition could put forward something like that. The Opposition should go and ask the former Attorney General in the upper House; he would have ripped up this amendment, if he had seen it. I know the member for Warren-Blackwood is not over 60 years of age, so I will go to the member for Dawesville. If I were to say to him, "I am going to get you", under the law as provided by the Opposition's amendment, I would have to go to jail for 12 months. That is the calibre of these amendments. They are not worth the paper they are written on. I ask the member for Dawesville not to take these matters to the police if these amendments are passed - he may then not see me for 12 months!

It gets worse than that. I will quote from the Opposition's amendments -

12. Minimum sentence to be imposed

- (1) If a person is convicted of an offence against Section 291 . . .

Being a good member of Parliament I went along to section 291 of the Criminal Code - bearing in mind that this amendment refers to older people - and found that that section refers to concealing the birth of a child. So, if a person over the age of 60 is convicted of the offence of concealing the birth of a child, he or she goes to jail for 12 months, under the amendments provided by the Leader of the Opposition. We should call the *Guinness Book of Records*! Why would we send someone to jail for an offence such as that? That would be something that should really go into the record books. I really am being unkind to the shadow Attorney General, because after reading all that I realised that it must be a mistake. What it does point out, however, is that the Opposition does not actually read its own amendments. When a party goes from government to opposition it begins to believe that a vague threat from me to the member for Dawesville should land me in prison for 12 months, and that people over 60 years of age who conceal the birth of a child, instead of going into the record books, should go to prison for 12 months. The Opposition does not read its own amendments, and does not know what it is doing. This is evident every day in question time. Opposition members fumble around with pieces of paper and have not even organised who is following whom. I thought that some members of the Opposition were quite competent when in government, but when they do not have people behind them -

Several members interjected.

Mr McGOWAN: I hope the member for Warren-Blackwood does not believe that the member for Willagee and I committed a threat against him when we had our photo taken in front of his farm.

We took an expedition to the electorate of Warren-Blackwood. We were successful. The member lost three per cent of his vote because the member for Willagee and I visited the area, although he still has the safest Liberal seat in the State. We took a photograph outside the member's farm. I hope he does not think that was some sort of assault upon his person, because it was not meant as such; although the member did send it back to us with a bullseye on it. Members opposite still have a lot to learn if they put up amendments like these, and they perform in the way they have in question time. Their performance really leaves a lot to be desired.

MR EDWARDS (Greenough) [9.40 pm]: I do not know if the member for Rockingham was being patronising or what he was doing. I will be brief and will take a slightly different tack with the Criminal Law Amendment Bill. There are different levels of crime and of sentencing and punishment. I note reference in the Bill to the Young Offenders Act 1994. In my part of the world, although I understand that the elder citizens of our society

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

are vulnerable - and I applaud the Bill - I believe that juvenile crime is an aspect that we need to address equally and importantly. We need to take action when 10 to 14-year-olds can go around happily and stab people, rob, burgle and make mayhem and can walk away from that time and again. As I said, while I support the Bill I question whether those young offenders are adequately sentenced or punished. I do not believe they are. They are not apprised of the damage or the hurt that they visit on their fellow human beings.

I believe that this Bill to some degree will protect our senior citizens. They are the most vulnerable members of the community, apart from the very young. However, it is equally important that our young offenders learn that they cannot offend and walk away from their crime time and again. We need to give those young people a clear message of how their actions impact on the society in which they live. Respect, discipline and being good citizens are prerequisites of a community. The behaviour of some young people can be very questionable. It is necessary that young people who go off the rails should be adequately sentenced - that is, punished - before they go on to higher crime. If we address the issue before this happens we will be in a far better position. That punishment - either compulsory education, some other tougher punishment through harsher sentencing or some other means - needs to be put into place.

I said I would keep my speech brief and I have. I will listen with interest to the minister's response to the comments I have made on sentencing young offenders. I support the legislation.

MR MARSHALL (Dawesville) [9.43 pm]: The Criminal Law Amendment Bill has a lot of merit. Seniors need to be looked after, especially in the area of the crimes that are mentioned in the Bill like grievous bodily harm, common assault, robbery, and assault with intent to rob. I know that I speak on behalf of all members when I say that no-one likes to see in *The West Australian* an elderly person who has been bashed, and is bruised and has black eyes. I do not like to see it on television where it is depicted even more graphically, but the picture always tells the story and we all sympathise with the victims. I also agree that there should be harsher sentencing.

The Bill refers to 60-year-olds, and that seems almost to be age discrimination. Why is there no provision for assault, robbery and burglary of people with disabilities, people who are under 60 years with back injuries and who cannot move fast enough when their houses are invaded, people with intellectual impairment, broken legs and the like? I ask why those other circumstances have not been included in this Bill.

I am a senior. I mix generally with people who are 60 years and over.

Mr Hyde: People in the Liberal Party?

Mr MARSHALL: The member for Perth should be careful about references to older people. The member knows that wisdom is knowing what to do and virtue is doing it. The member will find that older people have both of those attributes up their sleeves, while younger people believe that wisdom is knowing what to do; but they do not know what to do afterwards. The member should be careful about criticising elderly people.

The veterans tennis club of Western Australia has 1 750 members. I am a life member of that club; I have seen it develop. Those veterans are active people who are 60 years and over, and they have an opinion, which I will refer to the Attorney General in just a moment. I am talking to the Government that says it listens to the people of Western Australia. It has said it so often it has begun to believe it. The majority of people I mix with are over 60 years of age, and I know what they are thinking. The over-50 club at the South Mandurah Tennis Club meets on Friday mornings and 50 to 80 people play there every week. One cannot get into the Mandurah Golf Club for Monday and Friday veterans' days unless one books two weeks in advance. The members of bowling clubs in the Mandurah area are predominantly over 50 years of age, even though it is becoming a game for younger people. I mix with those people. This Government that listens to the people is not listening enough. It has got it only partly right. The seniors I talk to agree with the amended sentences; they think they are terrific. Thanks to the Attorney General I have a list that sets out offences in the Criminal Code and the increased penalty that is proposed when the victim is over the age of 60. Section 297 is grievous bodily harm, and the sentence will be extended from 10 years to 14 years. The people I mix with are happy with that. Section 301 is wounding and similar acts; the sentence will be extended from five years to seven years. Section 313 is common assaults; the penalty will be increased from 18 months or a \$6 000 fine to three years or a \$12 000 fine. All of those changes are good; there is no doubt about it. However, my constituents ask why there is not a minimum sentence. That is because they are scared. They have seen people who have been severely injured and the culprit comes out of court without the sentence for which we have legislated. They want to see a minimum sentence, so that the offenders cannot walk out scot-free. I have known people who have been assaulted and a week later have seen

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

the culprit in the street. The culprits have gone in and out of the courtroom door, and my constituents worry about that.

The Government should listen to all of the concerns of people who are over 60 years of age. They understand that the legislation is designed to protect people who are less able to defend themselves. However, they will tell members that many seniors who are 60 years and over can defend themselves. I know people who are 60 who sleep with a baseball bat or a golf club by their side, and they look forward to an intruder breaking in. They cannot wait to say, "Son, I've worked all my life for my worldly goods and no young fellow who lacks discipline or respect for seniors will come in here and take them. You will learn a lesson."

Some 60-year-olds think like that. I know 70-year-olds with a black belt in karate. It is a generalisation to say "60 and over". The legislation should be more definitive about the people it is looking after. I heard a lawn bowler jokingly say the other day when one of the younger members upset him over a principle of bowling, "Son, do you respect your elders?" to which the younger fellow replied, "Of course I do." The bowler then asked, "Do you keep your promises?" The kid, who is about the age of the member for Rockingham, replied, "Do I keep my promises? Of course I do." The bowler went "whack" and smacked him. He said, "Now I know you won't hit me back." There is a message in that for all the younger people who do not understand the temperament of older people. A percentage of 60-year-olds feel compromised by this Bill. They are made to feel old and helpless, and they are not. Some believe, as has already been mentioned, that it is a vote-catching exercise.

On a serious note, our vulnerable seniors - and I put the emphasis on "vulnerable" - will be pleased with this Bill. Unfortunately, it seems that the days when youngsters respected their elders have vanished.

Mr Hyde: Oh. That's a bit of a generalisation.

Mr MARSHALL: The member for Perth may say "oh", but it is better to be a flickering flame that never goes out than a flash in the pan. He should remember that. He should also remember the people with whom he is dealing. I hope the extended sentences provided for in this Bill will enable our seniors to feel safe. Although I believe an extended minimum sentence should have been included in the Bill, the increased penalties are a move in the right direction. I know the Government will get great support for it from seniors. I support the Bill.

MR TRENORDEN (Avon - Leader of the National Party) [9.51 pm]: I support the Bill, although there is not a lot to support. It involves a principle about which everyone has waxed lyrical, which is fine. However, the facts are, as was illustrated by the people who spoke before me, that the courts do not necessarily take notice when maximum penalties are increased. 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.

Magistrates and judges already assess the age of the individual who has been victimised by criminals. There is no question that it is already part of the process. Any examination of the records of outcomes of cases will show that people who perform violent acts against elderly people or people over 60 years of age receive a harsher sentence. That does not necessarily mean that we should not recognise what the Government is trying to do. However, I cannot get excited about it, nor do I believe it will change the world.

This legislation could have a small unintended consequence. Some of the violence inflicted on people of over 60 years of age is perpetrated by people of the same age living in the same house. That may cause an unintended effect. The Attorney General knows that because many of those people have seen him. I have had several people come to me and say, "I know my husband beat me up, but I really do love him and he really loves me, and I do not want you to be too aggressive towards him. Although I am not happy that he beats me, I still prefer him home than in jail."

Mr Hyde: Would you oppose the minimum sentence?

Mr TRENORDEN: At the time I was first elected, there was a famous case involving a woman who lived in Pinjarra. The member for Dawesville might remember it. She was separated from her husband, who repeatedly went to the pub, got himself charged up, went home and raped her. On three separate occasions, she told him the next time he did that to her she would kill him. He did it a fourth time, and she killed him. She received the

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

minimum sentence for premeditated murder, which was 20 years. There was an outcry in the community that a woman in those circumstances could receive that sort of penalty. I agreed with that outcry. I visited her in Bandyup Women's Prison, and met with her, along with many people from the member for Perth's side of politics. Judyth Watson and a number of other people were involved in that process. I felt very sorry for her. A campaign was waged over a two-year period that finally resulted in her release. Even though she had no right to take another person's life, imposing a penalty of 20 years on someone who was brutalised in that way was over the top. That is why I do not support minimum sentences. Minimum sentencing automatically applies to those events which are outside the norm and which reasonable people would not accept.

Mr McRae interjected.

Mr TRENORDEN: The member has reminded me about judges, which will add another half-hour to my speech. During the period of the Court Government, I explained to Hon Peter Foss the process that I believe should occur. In most cases, I convinced the previous Attorney General that what is happening now is not a good process. I believe that those people who are aggrieved about decisions should be able to ring the courts and, rather than speak to the judge, speak with a person with responsibility for communicating with the public and the judges collectively. People should be able to ring the courts and say they are opposed to a certain sentence and outline why it should be increased or decreased. Someone in the court system should have the capacity to reason with that individual about decisions and so forth. The judges could also use that as a barometer without going through the Attorney General, me or this Parliament, and without having that interference that is often talked about in debates on law and order. In a system in which judges are appointed for life, the public has a right to believe those judges are acting in the public's best interests and that it can have an input, whether or not that input is reasonable. It would not change the legislation, but at least people would have the capacity to talk directly to the courts. What they do instead, of course, is talk to us, and we bring in Bills like this, which will not necessarily have much of an outcome. I believe that we must ask those people to have that sort of accountability in the process of justice. I agree that the aggrieved person should not be able to ring the judge or confront him at his house. I could not agree with that more. Why should there not be a mechanism that allows an angry, aggrieved or concerned person to have direct contact with the process for that sort of outcome? I maintain the view that it is a good idea, although it has not gone anywhere.

I refer the Minister for Police to a case that occurred in Northam a few weeks ago. An individual in the 20 to 30 age bracket perpetrated a violent crime in the streets of Northam by pursuing a female, knocking her down and badly kicking her about. The female who was attacked was not over 60 years of age. The offender appeared in the local District Court and, after being processed, escaped into the broader community. One individual found out where he was and rang another individual because the first individual was not confident of going through the process and the second individual had had a lot of dealings with the police. The second individual told the police that the escapee was at a particular house at that time but the police said they did not want to know. They said that 30 things were happening in the office and they would not be able to get to the house until the next day. The escapee had a criminal charge pending against him and was well known in the community for the act that he had perpetrated. The police said, "Go away." I add that a few months ago I took the victim I am talking about to the Minister for Justice's office; he will therefore know about whom I am talking. She has a great deal of gumption and is not deterred by too many people. She almost mauled a police officer to make sure that the police went to the house where the escapee was hiding. The escapee was asleep and the police apprehended him without conflict. However, they did so only because she demanded it.

Mr McGinty: She is a pretty forceful character.

Mr TRENORDEN: She is far more forceful than the average person. Frankly, minister, I would not like to take her on!

The community policing part of the process is important. I will find it difficult to return to my constituents and say that this legislation is the bee's knees when the Government is taking police officers out of the wheatbelt. The reason that the police officer could not go to the house to arrest the escapee was that the roster could not be filled for that day. That police officer had to be hauled off another task deemed important by the duty sergeant to go and arrest the individual. Obviously, it should have happened. However, at the same time, the Minister for Police is whipping police out of the central wheatbelt.

The critical point I make - unfortunately the Minister for Police is not present in the Chamber - is that community policing in my town is working to the point that community members are ringing the police and telling them the location of offenders. Surely that is more important than this legislation. Even the Minister for Justice would agree that it is more important. I can tell the minister the reason that there is an 8 per cent clean-

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

up rate for burglary in Perth and a 30 per cent clean-up rate in Northam. It is because members of the community get involved in the process and ring the police to tell them who did it, which results in a considerably higher clean-up rate. I support the Bill, therefore, with some trepidation. Community policing is what makes a difference.

I was disappointed in February two years ago when a member of the community came to see me about an elderly lady in the town of Northam. I visited her house. The contractor she employed to nail shut every window and door, except the front door, came to see me. The woman was terrified of being beaten up. Off the top of my head, I cannot remember any woman over 60 years of age in the town of Northam having been beaten up. I do not say it has not happened, but it is not a common event in a country town such as Northam. She was terrified because of the events that had occurred in Armadale and Midland, which I am sure all members will recall. She had every right to be terrified. She had been watching a program on the box about it and it was as real as sunrise was to her. However, being beaten up was not going to happen to her in Northam; what was going to happen to her was asphyxiation. It was 100 degrees, she had no airconditioning and had everything locked. She is a person without a lot of support in the community, other than friends who tend to be of her age. I commend the contractor for coming to tell me about what happened to her because we had those things fixed up.

Mr McRae: There is social isolation that comes from that, too.

Mr TRENORDEN: That is right. Every member is in agreement with this Bill. I have not heard any member in this House oppose it. However, I am concerned that if we pass this Bill we will forget about the good, proactive, community work at the front end of the process.

Some years ago I became involved with an American professor who taught me many things. I was grateful to meet him. He operated a great deal from Europe. His argument was about a process called cleaner production, which several universities in Western Australia adopted. He said that it was ridiculous to go to the back end of the environment and pollution process by penalising people who are throwing out emissions, smoke, water or whatever. It is better to fix it up by going to the front end of the process and telling them about how not to create the emissions in the first place.

Mr Carpenter: That is a very good analogy.

Mr TRENORDEN: Yes. Primary schools are at the front end of the process. That is the reason that I was interested in the Minister for Education's announcement this morning. If it is what I believe it is - I fear it might not be, as it might not relate to a community individual -

Mr Carpenter: A community individual?

Mr TRENORDEN: I want the person in the high school not to be on the payroll of the Department of Education.

Mr Carpenter: Right.

Mr TRENORDEN: I want that person to be able to range out in the community and back into the school. We need harmony not only in the school ground but also on the basketball courts and football fields and up and down the main street. That is the only question mark.

Mr Carpenter: There is funding for that.

Mr TRENORDEN: In that case I will be backing the minister, although he probably knows that I have been asking for this funding in Northam for four to five years. I was not successful in getting it from my side of the House. I visited Peter Browne a year ago and started to get some success in the process. The program announced by the minister this morning will be excellent for the towns of Northam and Toodyay and the 40 other communities outlined by him. It relates to the cleaner production argument and starts to deal with the front end of the process and with parents. Despite what the majority of the community believes, it does not matter how big are the alcohol, drug or domestic problems that people have, they still love their kids. They do not want them beaten up at school. Many people are aware that they are deficient in the skills required to enable their kids to develop as they should. By getting people in the community involved in that process we can effect that process.

I agree with the Minister for Justice that I can do that in the town of Northam more easily than he can in Fremantle. However, because of that we should be resourcing towns like Northam, Narrogin, Albany, Bunbury and, particularly, Geraldton. I am wearing Geraldton's badge today. Geraldton is currently in serious trouble, but not with issues that cannot be resolved. The attitude that must be applied is that of cleaner production. We must deal with the issue at the front end of the process rather than the rear end.

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

I support the Bill. I believe that judges will take note of it - I was a member of a select committee on sentencing in this place some years ago and therefore have some knowledge of this matter - but that sentences will increase slowly and then drop off.

Next time this issue is discussed, it would be nice to talk about the front end of the process and not have police officers taken out of the central wheatbelt. At the risk of repeating myself, I will back the Minister for Education and tell my electorate what a good measure this is.

MR MCGINTY (Fremantle - Attorney General) [10.10 pm]: I thank the 13 members who have contributed to this debate. Some have offered qualified support and some have offered cynical support. Nonetheless, I am grateful for all support. Having listened to the debate, it reflects well on the House that members from diverse backgrounds have expressed differing opinions and brought their backgrounds to bear on the debate, whether as a criminal prosecutor or a criminal defence lawyer or whether they have worked in a city pharmacy or come from a rural background. A great diversity of experience has been reflected in the debate. It shows different life experiences.

In the short time that the Government has been in office there are two crimes that have particularly repulsed me. One is paedophilia. My views would be shared by most members of the House. I have visited the Bunbury regional prison and Riverbank, both of which house a disproportionate number of paedophiles. The other offence that has a similar effect - a number of members have expressed the view - is assault on defenceless and vulnerable senior citizens. That is the reason this legislation has been brought before the Parliament. I note the comments and views that this legislation may not achieve the desired outcome. I hope that it does as I believe that things like attacks on seniors anger most decent people in the community. A third category of offence was brought home to me when I attended a meeting of a homicide victims support group. It was a racking experience to sit in a room for several hours with the families of people who had been murdered and see the ways in which the lives of those who remained were destroyed. Murder is generally a crime of passion, whereas the other two offences are more premeditated and that is what gives them a particular quality that most members would condemn.

A number of members have expressed concerns that the legislation may not work. The Parliament can only do its best. The legislation sends a message that cannot be made clearer to the judiciary and to the perpetrators of crime against seniors that such crimes will not be tolerated under any circumstances and that the level of offending is such that the Parliament has seen fit to pass a law. Two weeks ago, the former Attorney General, Joe Berinson, and I had a chat. I have always found Joe to be a delightful person to speak to and someone who is particularly insightful. Joe reflected upon the Bill that was introduced with a lot of controversy by the Lawrence Government in 1992. It dealt with the then spate of high-speed car chases that resulted in a large number of people being killed. Young people were getting high on speed, stealing cars and killing people. It became an epidemic. Joe commented to me that, after the Bill was introduced and passed, and as controversial as it was, there was a significant reduction in offences of that nature. As wise a man as he is, he said that he did not know whether it was due to the Bill or something else. Nevertheless, the level of offences reduced in the years immediately following the introduction of the legislation.

Mrs Edwardes: It did not last long. As the Leader of the National Party said, this sort of legislation has an impact in the short term, but the practice is that it is not sustained.

Mr MCGINTY: The challenge is to make it sustainable and, if it has a short, sharp shock and then starts to fade out, I hope we would be able to press ahead and take other action that will have a significant impact in this area. As the member for Greenough has said, we are all concerned about the seeming leniency of sentences and the incidence of violent offences. We all want to see something significant occur in those areas. I hope the Bill will be a contribution, if not the ultimate panacea, in this area.

Members will recall that, before the election, a similar Bill was introduced by the then Leader of the Opposition, who is now the Premier. After the Bill was defeated, the feedback received indicated that it had two significant shortcomings. People asked why there should be an arbitrary cut-off point of 60 years of age and why it dealt only with offences where victims were 60 years of age or older. The Bill was drafted that way to try to obtain uniformity throughout the Criminal Code. An existing provision dealt with sexual assaults against women aged 60 years or more. It was treated as a circumstance of aggravation and carried a heavier penalty than the rape of someone under the age of 60 years. Although it seemed an arbitrary age, it pre-existed in the Criminal Code and we were seeking consistency. People asked about other forms of vulnerability. That is the reason that this Bill contains an express amendment to the Sentencing Act directing a judge, when sentencing an offender, to take

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

into account the vulnerability of the victim. It is cast in general terms but it is a clear and unmistakable direction to the judiciary. I hope it will have the desired effect.

The Bill introduced last year included the crime of burglary. Burglary is not a crime against the person; it is a crime against property. When a property is broken into it is burgled; it is an offence against the property. The property could be empty. When talking about someone breaking into a property, it is hard to identify who is the victim of the crime, particularly if the property is empty. Is it the lessee, the owner or an occupier who happened to be there on the occasion? For that reason burglary has been left out because it is not the same sort of crime as these other offences, including fraud, which are offences against a particular and identifiable person. The Government has picked up the views of the community and incorporated them into this legislation. Hopefully, it is better legislation than that put forward when the Government was in opposition.

Since coming to office, the Government has been grappling with the effects of failure. This State has the highest rates of imprisonment of any State in Australia and has the highest rates of imprisonment of Aboriginal people of any State or Territory. We also have the highest rates of offending. People would be content with high rates of imprisonment if it were accompanied by low rates of offending; in other words, what is often held up to be the Singapore experience. Where there are high rates of imprisonment and high rates of offending, something is going horribly wrong in the equation. That is a matter with which we are grappling and we are trying to come up with a better way of doing things than we have used in the past. The member for Kingsley spoke at some length about the sentencing matrix that has not been proclaimed. As she pointed out, the first step of the matrix is to consistently report sentences and the second step is to have benchmarks in sentencing. Those matters were passed by the previous Parliament but not proclaimed. The third step, which is to give the executive arm of government the power to recommend and have Parliament adopt new sentencing regimes, is a fraught proposition. That is the reason it was defeated in the previous Parliament. It did not receive support from either the Labor Party or the other parties. To answer the question posed by the member for Kingsley, we are currently considering whether stages one and two of the matrix ought to be proclaimed or whether they simply impose a further burden on the sentencing process. We have not yet come to a conclusion on that.

Mrs Edwardes: It may not be a burden; it may be a tool for Parliament to know where it is going. All the issues you have talked about and that members have raised deal with sentencing in a complex way - and it is complex, there is no doubt about that. However, until we get better tools to know on what basis the courts make their decisions, all we have is the decision. The decisions must be consistent. Although the Supreme Court and the District Court have attempted to make a database for the purposes of uniformity, it is not documented in a way that will help us make decisions in the future. If it is not started, we will never get there, unless you come up with something else and bring it back to us.

Mr McGINTY: Today, my good friend the member for Innaloo raised a proposition with me that would be a step towards making the judgments of courts more transparent, publicly understood and accessible. We are considering all of them.

Mrs Edwardes: I hope you have more success than we did.

Mr McGINTY: No-one says that it will be easy. We all want the courts to be more responsive. As the member for Kingsley no doubt did in the past, I have dealt frequently with people who have grievances about the leniency or severity of sentences, or other matters to do with the judicial process. We are considering ways in which that can be addressed.

Last year the truth in sentencing legislation was passed with our strong support but with one reservation: that legislation would require offenders who were sentenced to less than six years to serve half rather than a third of their sentence. However, a technical difficulty with that legislation has held it up.

Mrs Edwardes: Has that legislation not been proclaimed either?

Mr McGINTY: No, that was not proclaimed either. Arguably those Bills should have been proclaimed, but they have not been. I want to see the truth in sentencing legislation progress if we can fix the difficulty that exists.

The other matter I will comment on briefly was raised by the member for Churchlands; that is, because of their lifestyles, young people are the most victimised or offended against; there is no great secret in that. However, the group that fear victimisation the most are the elderly. That is the reality of what confronts us. A number of people have made the point about what has been referred to tonight as a climate of fear. The Leader of the National Party graphically referred to the woman who nailed herself inside her house because of that climate of

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

fear. We want to offer some assistance to those people and to make sure that we can take some positive steps in those directions.

I will quickly comment on a couple of other matters. A number of members spoke about the fact that, in recent times, the courts had not awarded the maximum penalties in any of these areas. If the analysis were proper and rigorous, we would have examined the issue of home burglary in which the maximum penalty was increased in 1996 from 14 to 18 years.

An analysis of sentencing patterns pre-1996 and post-1996 would show whether an increase in the maximum penalty had any effect on the judiciary. It is not enough to simply point to the fact that the maximum penalty has not been awarded in recent years and that most of the penalties fit towards the bottom end of the scale, because it might well be that most of the offences of their nature were at the bottom half of the scale. It is not every year that people of the calibre of the Birnies come along, who were at the worst end of the offending scale for murder. I am not suggesting that they are related to the member for Kalgoorlie. The maximum penalty is reserved for the most serious offences. No-one suggests that that occurs every day or every year in each of these categories of offences. A more rigorous analysis would contain a before and after consideration and would also look at the circumstances of an offence and whether it was at the extreme end of the scale.

Mrs Edwardes: Again, the matrix system, even those first two parts, would provide the Parliament with that information.

Mr McGINTY: When I was in Opposition and was speaking on the sentencing matrix legislation, the member for Kingsley read out a quote for me. I described it as odious, particularly the third part. I have not changed my view on that. In a sense, that is flogging a dead horse because the Government does not want to revisit it. If the Government finds that there is no response to the clear message in this Bill, it must consider other measures, because the Government, the Opposition and the broader community want a greater level of responsiveness and a greater show by the judiciary of contempt for people who commit these sorts of crimes. The Government is at the beginning of its term and it wants to try a different approach to that which the coalition put forward when it was in government. That is where the Government sees itself going.

A number of other important contributions were made during the second reading debate. In closing, I comment on the amendment that this House will debate tomorrow or the next day. In the eight years that the coalition was in government, the question of minimum penalties was raised on one occasion and that was in respect of the three strikes mandatory sentencing legislation. If it was such a good idea, this House might have heard a bit more about it.

Mrs Edwardes: We brought in the matrix.

Mr McGINTY: However, the matrix did not impose minimum sentences.

Mrs Edwardes: No, but it would have given a greater level of control by this Parliament over the judiciary's decision making. I am suggesting that we do not believe that what you are proposing will actually be as responsive as you or we would like it to be. So, we are suggesting that until such time as you come up with an alternative to the matrix proposal, this is a better way to go to give some confidence back to those seniors and other members of the community.

Mr McGINTY: I conclude with some comments about the amendment. The member for Rockingham spoke about the nature of a -

Mrs Edwardes: Okay, it is a typo. I hope you never have one.

Mr McGINTY: I am not going to make that point. I accept that it was a typo. I am referring to another point. The member for Rockingham spoke about the nature of an assault. Under the member for Kingsley's amendment, if it occurred against a senior, it would attract a mandatory sentence of one-year's imprisonment. The definition of assault is contained in section 222 of the Criminal Code, and it relates to someone who applies force of any kind to another person. The term "applies force" includes the application of a gas or odour to such a degree as to cause injury or personal discomfort.

All members can think of examples of offences that they would not want to put someone in jail for a year for perpetrating.

Mrs Edwardes: Yes, but I think you are being facetious about it.

Mr McGINTY: Sorry?

Extract from *Hansard*
[ASSEMBLY - Tuesday, 31 July 2001]
p1720a-1743a

Mr Tony Dean; Mr David Templeman; Mr Matt Birney; Mr John Quigley; Mr Terry Waldron; Mr John D'Orazio; Dr Janet Woollard; Mr Paul Omodei; Acting Speaker; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable; Mr Bill McNee; Mr Mark McGowan; Mr Jeremy Edwards; Mr Arthur Marshall; Mr Max Trenorden; Mr Jim McGinty

Mrs Edwardes: You would be taken much more seriously if you looked at the examples of cases brought to court under that section, rather than tried to be flippant about it.

Mr McGINTY: The Parliament must prescribe for every situation when it is dealing with the Criminal Code. The point I am trying to make is that the member for Kingsley's amendment will impose a mandatory 12-month term of imprisonment. Everyone in this place will agree that it is not warranted. That is the only point I sought to make, by reminding people of the definition for which the member for Kingsley wants a 12-month mandatory imprisonment. I do not think that will work. I thank members for their contribution.

Question put and passed.

Bill read a second time.

House adjourned at 10.30 pm
