

**CRIMINAL CODE AMENDMENT BILL 2024**

*Second Reading*

Resumed from an earlier stage of the sitting.

**The SPEAKER:** I give the call to the member for Cannington, on the resumption of his remarks.

**MR W.J. JOHNSTON (Cannington)** [2.58 pm]: Yes, after having been so rudely interrupted! I must say that having sat here and watched question time, the opposition is still not getting any better. Opposition members have still not learnt anything about the purpose of question time or the approach that should be taken in question time. It staggers me that after all this time in opposition, they still do not have a clue what it is that they are doing. I used to try to give them advice when I was a minister and they never listened. They have learnt nothing and they have forgotten nothing. It is just appalling how badly served the people of this state are by His Majesty's loyal opposition.

*Point of Order*

**Mr R.S. LOVE:** This is a debate on a particular piece of legislation. The member is just meandering along with some political claptrap that has no relevance to the bill that is being discussed.

Several members interjected.

**The DEPUTY SPEAKER:** Members, thank you!

**Mr R.S. LOVE:** It has no relevance to the simple piece of legislation and I ask you to draw him back to the matter at hand.

**Mr D.A. Templeman** interjected.

**The DEPUTY SPEAKER:** Leader of the House, thank you! There is no point of order. The member has just commenced his contribution to the debate. Carry on, member for Cannington.

*Debate Resumed*

<019> T/5

**Mr W.J. JOHNSTON:** If members want a demonstration of the lack of understanding of the purpose of the Parliament, that point of order is it. This is a second reading debate. I am entitled under standing orders to roam over policy issues relevant to the legislation, which is exactly what I was doing. The member for Moore, the Leader of the Opposition, is a year older than me, but he has learned nothing at all in the time that he has been here! He is the first Leader of the Opposition who does not want to be Premier. Every other Leader of the Opposition has wanted to be Premier, but he does not want to be Premier! The member for Vasse perhaps wants to be Premier, but she will not be the Leader of the Liberal Party at the election. She is only the current Leader of the Liberal Party. There is somebody who is not a member of Parliament who is arrogantly telling people that he will be the Leader of the Liberal Party.

*Point of Order*

**Dr D.J. HONEY:** Point of order!

**The DEPUTY SPEAKER:** Order, members! Point of order.

**Dr D.J. HONEY:** Although the member for Cannington likes to lecture us on purpose, this has nothing whatsoever to do with the legislation. I ask the Deputy Speaker to bring the member back to the topic, as has been done to me on occasions when I have deviated from the bill that we were supposed to be discussing.

**The DEPUTY SPEAKER:** Thank you, member for Cottesloe. There is no point of order. Carry on, member for Cannington.

*Debate Resumed*

**Mr W.J. JOHNSTON:** In deciding whether we should support this legislation, we should carefully examine the performance of the opposition. This is very important legislation. It will protect retail workers—people I so proudly served for nine years. In doing so, it is absolutely relevant that we examine the performance of the opposition. The fact that the opposition does not want their appalling behaviour to be critiqued is an example of why we need to do it. As I say, the Leader of the Opposition does not want to be Premier and the Leader of the Liberal Party does not have the support of the party, and a person who is not a member of the chamber who arrogantly expects and takes for granted the votes of the community. It is just an omnishambles, if I can use that wonderful word from the judgement on Monday—a judgement that did not reflect so well on the Liberal Party, did it?

In examining whether we should support the policies underpinning this bill, members should think about what has happened in the Liberal Party. It says it now wants to have nuclear energy. We are here concentrating on issues that are important to the people of Western Australia like protecting retail workers, but what are Liberal Party members talking about? They are talking about nuclear energy. The member for Cottesloe has already outlined to this chamber why nuclear energy is a joke here in Australia, particularly in Western Australia. He knows the truth, but the Liberal Party leader is saying that Collie should have a nuclear power station. They are concentrating on issues that are irrelevant, while we are concentrating on issues like protecting retail workers. It is an embarrassment for this state to have an opposition that does not do its job and represent the interest of Western Australians.

I was very proud over nine years to serve the Shop, Distributive and Allied Employees' Association and its members. There are very few jobs in the community in which you can have such a big impact as a union official. The member for Bassendean, who is just leaving the chamber, is another person who proudly served as a union official. There are very few jobs in which your day-to-day work is just about helping people who work hard for a living and have no other resources than the ones that they receive. The Deputy Speaker, of course, is another person who rose from the tools to be a secretary of a union. He is another example of a person who greatly served the workforce. Unions do an important job. Their job is to provide the collective voice for people in an industry or a workplace. There are very few jobs that come with that privilege. I was very pleased to serve the union for that long period of time. Of course, the member for South Metropolitan Region Hon Kate Doust, MLC, was the longest serving female employee of the shop assistants union and was on the board of control; she was a member of the national council and worked both for the state branch and at various times the national office of the union. Of course, she is able to pick quality people; that is why she married me, I am sure! She should be justifiably proud of the work that she did on behalf of the union and with the union and its members and other organisations in the industry to bring the petition and other representations of workers to the Parliament. I was proud to stand with the SDA, the retail associations and the union members upon the steps of Parliament House when the petition was handed over.

I emphasise the fact that this is one of those examples of the union being able to work with the employer associations to bring forward reform. I note that there were many occasions when I was a union official that we worked together with other social parties to bring forward reform on behalf of working people. It is not always the case that unions have to be in conflict with employers. On many occasions, they can find common ground and work together. I know that all unions are able to do that. Unions are an important element of society. It is not so much talked about anymore, but it used to be the idea of social partners—that is, employers and their representatives and unions and their members. In other parts of the world, the social partners are much more clearly understood. Interestingly, we are the only country in the world where freedom of association is taken as a right not to join a union. Everywhere else in the world, it is a right to join a union. It is a strange interpretation. Even the United States understands that the idea of freedom of association is the right to join a union, not a right not to join a union. Indeed, people who do not join unions are not serving their own interests. When I was Minister for Industrial Relations, I often had people contact me regarding workers compensation. Had they been represented by a union, they would never have got into the circumstances they found themselves in, because they would have had an advocate on their side from the very moment of the injury. It becomes much more complicated when nobody is on your side. No matter how many times an employer says, "I'm on your side", the reality is that an employer always has a separate interest.

Nonetheless, on this occasion, the union was able to work together with employer associations to bring forward the need for reform, and the Cook Labor government was able to respond to that need. This is important legislation. I just make two comments about increasing penalties for people who are systematically involved in repeat offences of shops stealing. We cannot have a situation in which shop stealing becomes normalised. That would undermine particularly small businesses, as the member for Landsdale pointed out. Many retailers are self-insured and costs are simply borne by other consumers. The other point is that we need to ensure that there is not some sort of organised campaign of shop stealing because that would undermine society as a whole. Therefore, we need to ensure that proper accountability is available to the court so people can be properly held to account for shop stealing.

This is an example of a health and safety issue relating to workplace safety. Of course, health and safety legislation applies in the situation of a person being assaulted in the workplace, but it is not necessarily the only response needed. Therefore, the Attorney General has taken up the obligations to increase protections for retail workers as an example of a circumstance in which a broader perspective needs to be adopted.

<020> H

Health and safety legislation is important and it applies, but sometimes it is not the only response to a health and safety challenge, and we need to think about other responses.

I conclude by congratulating Ben Harris and the Shops, Distributive and Allied Employee's Association of WA for the work that has led us here. I note that other branches of the SDA have been working with other state governments to bring forward similar legislation. I cannot believe the change in the level of violence in retail workplaces over the last 30 years. In 1989, when I started in the union, it was almost unheard of to see any violence in the workplace. I do not know what has happened. The general level of crime has gone down, but we have had an increase in this particular crime. Right around the western world, crime rates are falling, including murder rates and serious crime rates, despite what sometimes gets talked about, but we have had this change in circumstances to the retail industry, so it is good that the government has responded. I congratulate the Attorney General and urge members to support the Criminal Code Amendment Bill 2024.

**MR J.R. QUIGLEY (Butler — Attorney General)** [3.11 pm] — in reply: I rise to thank the members for their thoughtful and considered contributions to the Criminal Code Amendment Bill 2024. I am pleased to note that the opposition will support this bill that will send a clear message that violence against retail workers is unacceptable, as well as provide a greater deterrence for repeat offenders who engage in shoplifting and petty theft. Members will have noticed an amendment on the notice paper that will be considered when we move into the consideration in detail stage of the bill. I will provide a more detailed explanation for the rationale behind the amendment in due course. I can briefly advise that the amendment seeks to ensure that sole traders are covered by the definition of "worker" in the bill. Our formulation will include all workers under the control and direction of retail businesses, even when their duties do not primarily involve working in an area of the shop that is open to the public. This will mean that unlike the legislation introduced in New South Wales and South Australia, a retail worker in Western Australia who steps in to perform duties on the shop floor will be covered, regardless of what their primary duties might be. We think this is a fair approach because the legislation in New South Wales and South Australia refers to it being their primary duty. In those states, if a person who works in administration fills in at the counter over the lunch hour, it is not their primary duty so they are not covered, whereas in Western Australia they will be covered on the passage of this bill.

Firstly, I thank the member for Moore for his and the opposition's support for the bill and for his contribution to this debate. He noted that violence is unacceptable in any context. The government wholly agrees with that and that is the reason for bringing forward this legislation. He highlighted the special assault provisions and the categories of public officer already protected under those provisions. I once again thank the member for highlighting the importance of including sole traders in the definition of "worker", which has led to the amendment being proposed today. That is the purpose of consultation. As I have mentioned before, I think the member for Central Wheatbelt said that during consultation we have to be openminded and take on board any little criticism or suggestion. The member for Moore also mentioned the exclusion of subcontractors and we will discuss that in consideration of the bill.

Another matter raised was whether or not other occupations such as schoolteachers, who are also subject to violence in the performance of their role, should be protected. I note that at this stage the schoolteachers employed by the state of Western Australia may be covered through the definition of "public officer", which includes "any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not". We suggest that they are covered. Public officers are captured by section 318 of the Criminal Code while performing a function of their employment on account of being such an officer, or performance of such a function.

The member raised the alarming rate of police assaults in the Kimberley, the effect of shop theft on small businesses and the importance of police presence to curb both the violence and shop theft. The member noted that there was no prescribed minimum penalty in the legislation, but a huge uplift in the maximum penalties under this bill. I note that when we come to public officers, like our police, who are assaulted, there is a minimum term of six months when bodily harm is inflicted. Before the introduction of that legislation, we challenged the former Barnett government to name a case in which police had suffered bodily harm and the person was not imprisoned, and most of them had been imprisoned for longer than six months. What is important to note is that the Western Australian Police Union is now saying that the six-month mandatory minimum is not enough because the assaults are ongoing, so it is calling for more mandatory sentencing at a higher level. It is proven that that has not been effective by reason of the police union's calls for increases in that area. We can keep on increasing it, but it will not necessarily slow down those assaults. But it is important that the courts are sent a clear message by this Parliament that assaults on retail workers are to be treated very, very seriously.

Retail workers perform a public function. During the COVID-19 pandemic, this society could not have survived as a community if retail workers had stayed at home and locked themselves down. They put themselves out there to stack shelves, serve the public and make sure that families had food and supplies. They are very, very important workers in our community and they are public facing, so their risk of exposure to violence is greater than many other workers in our community and why they need special protection.

When people work in retail spaces, which can include restaurants that sell merchandise, food and the like, they need protection from unruly people who go in there with bad attitudes. I refer to an incident reported in *The West Australian* on Tuesday, 16 April, which was yesterday. It reported that in Scarborough, a 33-year-old man walked into La Capannina restaurant on Scarborough Beach. He was drunk and when asked to leave, assaulted Mr Chew, the highly regarded restaurant manager, who fell back and cracked his head on the floor. We can see from that how public facing workers in restaurants and other shops are exposed to these types of assaults, which is what this legislation is directed at. In uplifting the maximum penalty, the courts do get the message. When we uplifted the maximum penalties for the possession of methamphetamine with intent to sell or supply, there was a significant uplift in sentencing in the Supreme Court for people who were subject to a very heavy life penalty and maximum. As soon as a life penalty and maximum is introduced, it causes an uplift in all the penalties.

<021> A/G

I think that we should move into consideration in detail to see whether we can hopefully deal with this this afternoon, get it off to the other place and get some real protection in there for retail workers.

I commend the bill to the house and we will go into consideration in detail.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

*Consideration in Detail*

**Clauses 1 to 3 put and passed.**

**Clause 4: Section 318B inserted —**

**Mr J.R. QUIGLEY** — by leave: I move —

Page 3, after line 8 — To insert —

***contractor***, of a business, includes —

- (a) an employee of a contractor of the business; and
- (b) a subcontractor, and an employee of a subcontractor, of a contractor of the business; and
- (c) a person, and an employee of a person, with whom a subcontractor specified in paragraph (b) contracts;

Page 3, lines 17 to 28 — To delete the lines and substitute —

***worker***, for a business, means a person who performs duties for the business, other than as a contractor of the business who is not subject to the control and direction of the operator of the business in the performance of their duties.

**Mr R.S. LOVE:** Could the Attorney General explain the impact of both the amendments? I do not think there is a definition of “contractor” in the legislation currently, but it does refer to a contractor. The definition of “worker” for a business will also be changed. Perhaps the Attorney General can explain why this definition of “contractor” is being inserted and what clarity it will bring to some of the discussions that I referred to in the second reading debate about why contractors are captured under section 318 in some circumstances but not in others.

**Mr J.R. QUIGLEY:** I am going to touch on both amendments at the same time because they are a bit interlinked. I want to acknowledge, as I did in my reply to the second reading debate, that the member had constructive input during the briefings on this bill. He raised the situation in which the owner of a business is the person who is assaulted in a retail trading operation.

**Mr R.S. Love:** I’m glad that after three and a half years of sitting in this seat, somebody has finally listened!

**Mr J.R. QUIGLEY:** I have listened to the member for three and a half years. I have not always agreed with him, but I thought we had a good working relationship in consideration in detail. This is the law. This is not ideology.

I thank the member for his constructive input. The issue was duly investigated and I made a decision to amend the bill to avoid any doubt that small business owners and sole traders will also be covered by the new offence. This will include, for example, sole traders like those at the Fremantle Markets, who might be just stallholders. They will all be covered. It is the government’s intention that all retail workers, including business owners and sole traders, will be protected by the new offence. The amendment seeks to redefine “worker” as a person who performs duties for the business, other than as a contractor of the business who is not subject to the control and direction of the operator of the business in the performance of their duties. The contractor will not be subject to the control of

the business. This new formulation requires a definition of “contractor” to be added to the bill to ensure that employees and subcontractors of contractors are also included. The new definition of “contractor” therefore states —

- (a) an employee of a contractor of the business; and
- (b) a subcontractor, and an employee of a subcontractor, of a contractor of the business; and
- (c) a person, and an employee of a person, with whom a subcontractor specified in paragraph (b) contracts;

We have tried to cover the field of every worker; whether they are a sole trader, a contractor, a subcontractor or a worker for the subcontractor, they will be covered. Together, these amendments will align with our policy aim to ensure that all retail workers are protected in this reform. If a person is performing duties for a retail business either as an owner or under the control or direction of the business through a contract of labour, we are ensuring that they will be covered.

**Mr R.S. LOVE:** The amendment to the definition of “worker” seeks to delete lines 17 to 28, which refer to the provisions for a contractor but without defining “contractor”, and inserts a new definition. Just to clarify to try to get to the bottom of which contractors will be covered, currently the definition has some conditions to be met by the person who performs the duties, including that the duties are performed as part of the day-to-day operations of the business and that the person is subject to the control and direction of the operator of the business in the performance of their duties. The definition will now be a little different, will it not? Let us go back to the discussions that we had in the briefings. If a contractor from one of the soft drink companies is stocking the fridge at a business, that person may not be covered depending on whether they were under direction. Will that be different or the same now? I am talking about people who could be sales representatives or who do the rounds with meat pies or whatever they sell to the shop. Could the Attorney General explain whether there will be any change to the people who will be protected by this provision, other than, realistically, the sole trader situation?

<022> I/5

**Mr J.R. QUIGLEY:** It remains the same. The contractor will generally not be subject to the control and direction of the operator of the business, for the purpose of the definition, if they are running their own business. This means they would usually provide services to the shop to further their own business. We have to choose how, when and where their work is done. Is making meat pies done on the premises or is it done on the contractor’s premises? They have to be free to delegate to others to complete the work on their behalf. They have to provide tools and equipment to complete the task and be free to provide services to multiple clients. They are contractors who will not be covered. If they are running their own business, they are not subject to direction. A person who hires such a contractor would also generally not be subject to the control and direction of the operator of the retail business for the purpose of the definition. They have to be subject to the direction of the business. Even if they are a contractor, or a subcontractor to that contractor, or even if we drill down to an employee of the contractor’s subcontractor, we have drilled right down to make sure all those people are covered. We are not changing it; if they are not subject to the direction of the retail business, they are not covered.

**Mr R.S. LOVE:** Again, what is the definition of “subject to the control of the business owner”? If someone is a rep or a provider in a shop, they would be subject to some level of control because they can only come at certain hours and they can only put their product in certain parts of the shop. They will probably be directed as to what they will supply. What level of direction is the test?

**Mr J.R. QUIGLEY:** There is no definition of “under the control or direction of the business”. It will ultimately be a question of fact for a court to determine on a case-by-case basis. The court might consider whether the business has the legal right to control how, where and when the person does that work and whether the person is required to perform the work as a representative of the business. For example, a person who is employed under a labour hire arrangement may be contracted by a labour hire agency, but nonetheless be under the control and direction of the business to whom the labour hire was contracted.

**Amendments put and passed.**

**Mr R.S. LOVE:** Looking at clause 4 on page 3, lines 14 to 16 hold the definition of a “shop” —

... means the whole or any part of a building, place, stall, structure, tent, vehicle or yard in which goods are sold by retail, including by auction;

When we examine the explanatory memorandum, it explains the definition of a “shop” on page 2. It reads —

The definition of ‘shop’ is intended to capture any place where goods are sold, regardless of the quantity of goods sold or the predominant purpose of the business.

I am interested to look at the last example, which is about —

a part of a place if that part sells goods, such as a candy bar at a theatre, merchandise shop at a hotel, food outlet at an attraction, cellar door at a winery a florist in a hospital, etc.

When we look at a hotel, are we referring to the accommodation being separate from the bar area? What about if there is a pool area where a few drinks are sold? What is the definition meant to mean in the case of a hotel or some other place that is offering accommodation but also has areas that sell merchandise? Also, is any person who is involved in the occupation of selling alcohol covered by this legislation?

**Mr J.R. QUIGLEY:** Thank you, Leader of the Opposition. The answer is yes because the definition of place is “part of a place that sells goods” such as a candy bar and those things he pointed out from the explanatory memorandum. If we take a hotel, the bar area where they are selling retail drinks is part of the place. All the workers in that part of the place will be protected by this legislation. However, they are not upstairs where they are renting out rooms. There will be areas that will be up for factual finding as to what took place in a particular area and whether there was retail sale or retail provision of food and drinks. It is a factual thing. When you enter a theatre, there is nothing for sale; you are there for viewing. Before you go in, like down at the Crown theatre, there is a bar where you can buy alcohol or light refreshments.

**Mr R.S. LOVE:** To be considered a retail worker, a person has to be in a business that sells goods. It cannot be a business that sells only a service. For instance, a hairdresser is covered only if they sell product, as well as if they —

**Mr J.R. Quigley:** If they sell?

**Mr R.S. LOVE:** If they sell product—shampoo or whatever.

**Mr J.R. Quigley:** Hairspray and the like.

**Mr R.S. LOVE:** Yes, whatever it is, even though they will consume some of those things incidentally in the provision of their service, that does not make them a retail worker of itself. Is that the case?

**Mr J.R. QUIGLEY:** That is correct. It has to be the provision of the goods to the customer. If I go to the dentist, the fillings he might put in my teeth is not the provision of a retail service. If we add in reception where I can buy dental care products, they will be.

**Clause, as amended, put and passed.**

**Clause 5 put and passed.**

**Clause 6: Section 426A inserted —**

**Mr R.S. LOVE:** Clause 6 talks about the other part of the bill—the theft section. Line 21 on page 5 starts —

... has committed, and been convicted of, at least 2 offences that are also stealing offences (each a previous stealing offence) within the period of 1 year before the person’s conviction for the current stealing offence.

<023> F/5

I am just wondering what the time line is here. We are talking about “has committed, and being convicted of, at least two offences”. Presumably it takes some time for a person to go through a court process. Given that the courts are under such stress thanks to the Attorney General’s chronic underfunding, is there a likelihood that there could be a period of quite some considerable or indefinite time during which the person is not actually subject to the sanction because they have not been convicted? For example, if I steal from Woolworths on 14 March and from IGA on 15 March and at some point the police grab me, put me in front of the court and I get a conviction —

**Mr J.R. Quigley:** It’s unimaginable, but, yes, go on.

**Mr R.S. LOVE:** It is unimaginable, but it could happen; you never know. The cost-of-living crisis is affecting everybody!

What length of time does it generally take at the moment for someone to go through that sort of process? How long is the piece of string before this person is actually caught up? If they have committed crimes in March and then go through the process and are convicted, but then commit a crime in July but have not yet been convicted at that point, do they then automatically get caught up because they now have three convictions that are already there or do they have to have the conviction recorded before this provision can take any effect?

**Mr J.R. QUIGLEY:** There are a couple of questions there. One is the time to trial, and that will depend upon the number of witnesses and court availability, but if they are pleading not guilty, they are looking at six months in the Magistrates Court, but that is a guesstimate. I do not have those figures in front of me, but I will during the

estimates hearings, so the member can question me further then, but it is from the date of conviction. Everyone who is charged is presumed to be innocent. Let us say they plead not guilty to the theft in March and the trial is put off until the first available date—in October. In July they are charged again, and on this occasion they plead guilty. That will be a first offence, unless they have previous, but I am looking at this on the scenario put forward by the member that the person otherwise has a clean record, so we do not have to worry about stealing offences from last year. Have I made that clear for the member? In other words, in March they have no prior convictions. They are charged in March, they plead not guilty and it is off to October. They are charged again in April or May and they plead guilty. The trigger will not be applied, because they have not been convicted of two offences, only one offence.

**Mr R.S. LOVE:** There is something at the back of my head that does not seem able to come to the surface to explain exactly what I am thinking here. This provision applies when the sentencing is made, not when the commission of a crime occurs—is that correct? If I have already potentially committed two crimes and I have not yet been convicted but when I come to be convicted, this provision will be triggered only when the conviction for the third crime occurs, not when the other two crimes are committed?

**Mr J.R. QUIGLEY:** It is from the date of conviction. At the time they are convicted, the court will look to see whether they have had two prior convictions in the preceding 12 months. If they have not had two prior convictions over the previous 12 months, they will not be captured. Just to clarify for the member, to go back to his example: they steal in March and plead not guilty, and they are put off until October. They then steal twice in April and they plead guilty to both offences. They do not have any prior convictions. When they are tried and convicted in October, they will have two priors. It is from the date of conviction. The first offence they ever committed —

**Mr R.S. Love:** That's what I was trying to get at. That's exactly what I was thinking about.

**Mr J.R. QUIGLEY:** Thank you, member.

**Mr R.S. LOVE:** Proposed section 426A(4) states, in part —

For the purposes of subsection (2)(b) —

- (a) convictions for 2 or more previous stealing offences committed on the same day are to be treated as a single conviction;

I am wondering what the purpose of that is. It could be at two separate locations or they could be completely different offences. Why are they treated separately?

**Mr J.R. QUIGLEY:** Across the statute book there are a number of offences—I am thinking of restraining orders at the moment—where there are counting rules for subsequent strikes. We want to get consistency across the statute book, so for restraining orders, it is whether they are committed on different days. A person can go into a newsagency and steal *The West Australian* and then go next door and steal a coke, all on the same day. That is one strike. That is the same as for the Restraining Orders Act and other legislation. It is the date: how many offences have been committed on that day?

**Mr R.S. LOVE:** I do not know whether there are any other examples of the two-strike matter the Attorney General was talking about, other than a restraining order, but I would have thought that a restraining order would be the commission of some sort of offence against, probably, the same person or of the same order, so there are two occurrences of the same thing, if you like, whereas in the Attorney General's example, they go into shop A and steal a product and then go into shop B and steal a completely different product. They are clearly two separate offences; they are not at all against the same person. I could understand it if the Attorney General were saying that they went to Woolworths and stole a coke and then stole a newspaper from the counter as they left. That would make some sense, but I am not really seeing from the Attorney General's example that the two things should necessarily be treated in the same way.

**Mr J.R. QUIGLEY:** If they take a product from counter A and a different product from counter B within the one store, it is one act of stealing; they are not charged with taking it from two separate counters. It is one act of stealing.

<024> J/3

We are trying to aim at the course of conduct. If on a day he takes something from the deli and then goes next door and takes something from the newsagent, it is a course of conduct on that day. If the next day he gets out of bed and embarks on the same course of conduct after he has got two of those minor convictions and is caught, he will be at risk of imprisonment. I do not want to cast an opinion, but do members remember the case on television of a gentleman who looked mentally challenged who said, "I'll take a bottle of liquor. I don't pay the fine. I drink it and when that's gone, I'll just go take another bottle of liquor, because you don't go to jail for not paying a fine." We are trying to capture that and say, "No, you're liable to go to prison after two of those." If he just does it on

one day and it is a course of conduct on just one day, and then on the next day and the day after that he continues that course of conduct—like the gentleman I witnessed on TV saying, “It doesn’t matter; I can keep on doing this”—sorry, sir, but no. If he keeps on doing that and already has minor convictions for stealing and comes up again on a third offence, he will be at risk of imprisonment.

**Clause put and passed.**

**Clauses 7 to 9 put and passed.**

**Title put and passed.**