CRIMINAL LAW AMENDMENT BILL 2001

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: Section 297 amended -

Mrs EDWARDES: This clause proposes to amend section 297 of the Criminal Code, which deals with grievous bodily harm, by inserting the words -

> If the person harmed is of or over the age of 60 years, the offender is liable to imprisonment for 14 years.

The maximum term of imprisonment for the offence of grievous bodily harm is currently 10 years. The amendment proposes to increase that maximum term to 14 years if the person harmed is of or over the age of 60. As I indicated during the second reading debate, we have increased many maximum sentences. For example, the maximum term of imprisonment for violent offences has been increased from seven years to 10 years. I indicated also, with regard to the sentences imposed for the offence of grievous bodily harm, that the maximum sentence imposed was five years, the minimum sentence imposed was six months, and the average sentence imposed was 2.07 years. The point of that exercise was to indicate that those increases have had no impact whatsoever. The Attorney General indicated that we should have compared the statistics for when the term was seven years and when it was 10 years. If the Attorney General is to continue with that line of thought, he should also compare those statistics with the statistics for offences committed against persons over the age of 60, and he should then report to this Chamber on the impact of those changes. As we said during the second reading debate, even though these statistics do give us some indication of what is happening, if we do not have some indication of the mitigating factors, the types of offences and the types of individuals, then they will not assist us in determining how sentencing law should be changed in the future.

If the Government wants to claim that the sections that are proposed to be amended today are of a serious nature, because they deal with offences that are committed against people who are vulnerable and are aged 60 and over, then it should give us some statistics. If the Government does not approve of the matrix, and if it does not intend to proclaim the Sentencing Amendment Bill which was passed by this Parliament last year and which will provide the Government with some reporting requirements and benchmark guidelines, then the Attorney General should tell this House that he will not proceed with that matter. All the Attorney General has said so far is that the matter is under consideration. The Attorney General should also tell the House what the Government will put in place to ensure that this House has further statistics and information at its fingertips in the future.

It is proposed that the maximum sentence will be imposed for serious offences. However, at the end of the day, we will not know that, because we will not have that information. If the maximum sentence is 10 years but the average sentence that is imposed is only two years - and parole must also be taken into account - then this Parliament will have no indication and will not be able to give the community confidence that the courts are taking these sorts of offences as seriously as they are being taken by this Parliament. I ask the Attorney General to tell this House what he will do to provide more detailed information than is currently available so that we can give the community that confidence, because the community will not get that confidence from the way that maximum sentences have been used in the past.

Mr McGINTY: What the member for Kingsley said is correct, and I find it a cause of some frustration that the statistics that are kept on these matters are deficient. The Government made the point during the second reading debate that it is obviously not sufficient to simply draw attention to the maximum penalty that is allowable under the Statute, then the maximum that has been awarded in recent times, and then the average. The maximum penalties for many of those offences were increased during the term of the previous Government. One penalty which will not be dealt with as part of this package is that for home burglary, which is one of the offences that most distresses members of the public. The maximum penalty for that crime was increased to 18 years in 1996. A before-and-after analysis of penalties imposed could be constructive in attempts to determine whether the proposition put to the House today by the member for Kingsley is correct.

Mrs Edwardes: The advice from the former Attorney General - he had some information on this matter, but it was left in the office he has since vacated - is that penalties have increased not only for those on three strikes, but also generally for home burglaries. Therefore, a trend has begun to show. It would be useful to have that information brought back to the House.

Mr McGINTY: Is the trend that the courts have been awarding greater penalties?

Mrs Edwardes: It appears that having put a mandatory aspect in that section, the tariff for home burglary has increased. Of course, the former Attorney General does not have that documentation. It would be useful for that information to be brought back to the House at some stage.

Mr McGINTY: He must have left it well secreted. I have not found it.

Mrs Edwardes: I understand that he used it for a speech in Sydney. Something should be there.

Mr McGINTY: Assuming the comment by the member for Kingsley is correct, it becomes somewhat difficult to identify the cause of that increase in sentencing. It could well be that the judiciary was directly responding to Parliament's increase in maximum penalties. It could be that the introduction of mandatory sentencing on the third strike for home burglary had that effect. It is difficult to ascertain the cause. There is still a problem with the deficiency of statistics, which leaves the analysis simply with the highest and average penalties that have been awarded. That has proved somewhat deficient. It does not establish that the judiciary is unresponsive to Parliament's increase in maximum penalties. The member for Kingsley indicated that while it is far from conclusive because of the complication of the mandatory sentencing component, there is an indication that the judiciary has been sensitive to the issue of home burglaries and has increased sentences in that area. The other matter which makes it difficult to carry out a proper analysis is that while one may have the maximum penalty in the statute and the highest and average penalties that have been awarded, one does not know the number of first offenders or the mitigating circumstances in each case. I made the point in relation to the crime of wilful murder that someone of the calibre of the Birnies does not come along every year or month, if that is taken as the most extreme case.

Mrs Edwardes: There is a band even at that top level in which the Birnies might be at the extreme end. There are variations.

Mr McGINTY: Nonetheless, I appreciate that there is a need for statistics. The limited statistics available show an increase in offences against seniors. That has been borne out by anecdotes. That is the purpose of this legislation. It is true to say that in this particular case, the statistics are simply not available to back up the case that the member for Kingsley has put, which is that the judiciary is unresponsive and, therefore, an amendment is required to include mandatory minimum sentencing. The member will move her amendment in a few minutes.

The ACTING SPEAKER (Mr Dean): I bring to the attention of the House that the member for Kingsley has an amendment on the Notice Paper to clause 12 of the Bill.

Mr QUIGLEY: I support the clause. I have been concerned during debate on this Bill. The opposition spokesman raised a matter concerning a reference to statistics and an argument that the average penalty has not reflected the maximum penalty. Having practised in the courts for 26 years, my concern is that this argument does not take account of the number of first offenders who come before the courts, nor the other provisions of the Sentencing Act 1995 by which this Parliament requires the judiciary to impose a sentence of imprisonment as a last resort. There is a graduation of severity in sentencing in both fines and non-custodial dispositions before custodial terms are imposed. If there are a large number of first offenders, that cannot be the average. The member for Kingsley mentioned during debate the other day the need for a mandatory minimum sentence. The effect of this could be to make the elderly victims in cases such as domestic violence. I notice that the member for Kimberley has joined members in the Chamber. There has been a problem with domestic violence in some indigenous communities. A mandatory minimum sentence would mean that if a 65-year-old person committed a minor assault on his -

Mrs Edwardes: It is section 297 on grievous bodily harm.

Mr QUIGLEY: It is on grievous bodily harm. If a 65-year-old used a bottle or something like that to hurt his spouse, he would be given a mandatory term, whereas if such an offence occurred between spouses of a younger age, a mandatory term would not be imposed. That is my concern. The member for Nedlands mentioned the other day that the courts do take notice of what transpires in this Chamber. That is evidenced by the arguments and comments that fall from the sentencer's mouth. I have every confidence that for serious offences, the increasing of the maximum penalty by up to 50 per cent will be reflected in the sentences. While reference has been made in this Chamber to statistics, reference has not been made to sentencing judgments in which, in my experience, judges continually refer to what has transpired in this Chamber and try to give expression to that in their sentences. At the same time they try to bring into the balance of the sentencing equation the other criteria that this Parliament has asked the judiciary to address in the Sentencing Act, including imposing a sentence of imprisonment as a last resort and other mitigating circumstances. Judges perform a difficult task given the number of criteria that this Parliament requires they address. The simplistic solution of a sentencing matrix with a mandatory minimum will not address the overall problem, because that will only come into play once

offenders reach the requirement for imprisonment to be imposed. The whole of the sentencing laws must be changed.

During my speech the other day, I said that I looked forward to the remarks of the member for Nedlands, who is an experienced prosecutor. I was pleased to note that she said that, in her experience, sentencing judges do heed what takes place in this Parliament and take increased penalties into account. They try to reflect that in their sentences. Just to look at a statistic and say that an average is a long way from the maximum does not take into account how many people were first or second time offenders and when the maximum penalty should be imposed. I support the clause, which increases the penalty by 50 per cent.

Ms SUE WALKER: I came in part way through the member for Kingsley's comments. Perhaps I could assist this debate by making a few comments. The member for Kingsley is concerned that the judiciary is seen to reflect the views of the Parliament. A system is in place that might assist the Attorney General. When I first arrived at Crown Law, I started a resource file index, which is now housed at the office of the Director of Public Prosecutions. If one wants any statistics on any cases, such as those involving robbery, they can obtain them almost immediately on the computer. It may be worthwhile for the Attorney General, in conjunction with the director there, to map this out over the next few years. In my experience the court does take account of what Parliament says. An example of that, in which the member for Innaloo might bear me out, was a case of stealing motor vehicles and driving dangerously; the case of Bropho. This is a classic example of the court taking note of what this Parliament says, and increasing the penalties quite severely to reflect those sentiments. In relation to the current sentencing pattern of the judiciary, a print-out can be obtained from the Director of Public Prosecutions of the range of sentences. I do not know what members have been quoting from in the House, or what status that has. Parole, of course, is part of the sentence. The system is that, if an offence carries a six-year sentence and two years are lopped off, two years are served in prison and two in the community. The two years served on parole in the community is part of the sentence. I am not sure in which Act that is contained but, if an offender breaches parole, he will go back to jail, and serve not only the rest of the parole period in custody, but also the one-third which was originally taken off. It is possible to find out how the judiciary is responding through the resource file index held at the office of the Director of Public Prosecutions. The comments of the judiciary are transparent because the transcript resides in the office of the Attorney General, and is there for him to see and use to determine whether the judiciary is taking note of what the House says.

Mr McGINTY: I thank the members for Innaloo and Nedlands for their comments. If things are taken at face value, the superior courts in this State say that they are responsive to what takes place in the Parliament. In the Court of Appeal of the Supreme Court of Western Australia, the case of Fisher v the Queen was heard in 1999, before the Chief Justice Hon David Malcolm. It was a case of home burglary, and the head note of the case reads, in part -

> Criminal law and procedures - Sentencing - Appeal against sentence of 2 years' imprisonment for burglary and two counts of obtaining money by deceit - Need to firm up sentences in light of increased prevalence of home burglaries - Increase in maximum penalties by Parliament . . .

I draw to the attention of the House a couple of very brief comments from the Chief Justice's judgment in that case -

> 13 Notwithstanding the fact that the offence was committed during the day, it fell into the category of offences for which the maximum penalty was increased in 1996 by Parliament from 14 years to 18 years.

On the next page, the Chief Justice quotes from the case of Heferen v the Queen in 1999 as follows -

> "I do not consider it is open to the Courts now to regard home burglaries as anything but very serious offences. The Courts in this State have recognised for some time now that the offence has become prevalent, and is causing considerable community concern. Quite apart from that, which would in itself be reason for the Courts to continue to firm up sentences in home burglary cases, Parliament has recently singled out the offence for special treatment. Prior to 1996 the maximum penalty for burglary was 14 years' imprisonment. In 1996 amendments were made which increased maximum penalty for domestic burglaries by 28.5 per cent from 14 years to 18 years. It is of course the duty of the Courts to give effect to the policy behind this change: . . .

Reference is then made further on to other decisions in the late 1990s by the Court of Criminal Appeal, quoting Justices Franklyn, White and Kennedy. The Chief Justice continues -

> The Courts have taken this view because of both the increased prevalence of the offence and the need to protect the community on the one hand, and the fact that Parliament has increased the penalties for the offence, on the other hand.

The sentence in this case was two years imprisonment. The Chief Justice says further on in his judgment -

> The subject of this application is a sentence of 2 years' imprisonment. The difference is one which is readily accounted for by two factors which I have mentioned; namely, the need to firm up the sentence in the light of the increased prevalence of the offence and, secondly, the impact of the increase by Parliament of the maximum penalty to one of 18 years' imprisonment.

Essentially, the Chief Justice was saying in that case that a sentence of 12 to 18 months would have been appropriate, except for those two factors that have just been referred to, including the clear policy statement by the Parliament. That case resulted in a proportionate increase in the penalty, and the penalty of two years imprisonment was upheld by the Court of Criminal Appeal, although in the absence of those factors, 12 to 18 months would have been the appropriate penalty. There are quite a number of cases of this nature. I simply referred to Fisher v the Queen as one example which illustrates the point of the responsiveness we would expect from the judiciary on this point.

I return to the point made by the member for Nedlands. I will talk to the Director of Public Prosecutions, because a way needs to be found to arrive at a greater understanding of cases, such as the one I referred to, and of whether the courts do respond. A proper statistical basis for that analysis is needed. I have had occasion recently to go to the database to which the member for Nedlands has referred to try to determine the incidence of charges laid under section 322A of the Criminal Code, dealing with sexual activity by males between the ages of 16 and 21. I have been able to get statistics for only the past two years, but in the light of the broader public debate on the question of the gay and lesbian law reform, particularly the age of consent, about which we spoke earlier today, those figures will become very important.

Ms SUE WALKER: The Attorney General could look at two areas. First, a case in relation to threats to kill, which I believe is the case of Green, and secondly, a case of stealing a motor vehicle and driving dangerously, that of Bropho. Both of those cases contain strong judicial comment about what happens in this House.

There is authority that the courts will never impose a maximum penalty, because there is always a worse scenario that can be thought of. There is a clear line of authority for that. I return to what the member for Kingsley said. She wants to know, particularly in relation to this legislation on elderly citizens, that the judiciary is, in fact, taking notice of this. That is right and proper. From what I have outlined, the Attorney General could follow up that matter in the coming months.

Mrs EDWARDES: The requirement to produce statistics is not just for me or for this House, as the Attorney General will know. The reason he has brought into the House legislation to increase the penalties for those who harm people over the age of 60 is for the community. It has been a long time since I have been in court, and I recognise the more recent experience of the members for Innaloo and Nedlands on both sides of the court. Although judges' words might be nice before they hand down their penalties, they do not always sit well with the community, particularly in violent offences in which the community wants to see a far more responsive judiciary. Unless it can be demonstrated to the community that factors such as first time offenders or other significant factors act in mitigation, the community will never be convinced that the penalties fit the crime. That is the reason the Government brought in the legislation. I would like to hear how the Government will provide this Chamber with the information on the question of responsiveness to the community's concerns and also how it will implement parts 1 and 2 of the Sentencing Amendment Bill passed last year which dealt with two parts of the matrix system.

Mr McGINTY: Statistics work to assist in the public understanding of what takes place in the courts. If the statistics indicate that the courts are not as responsive as the Parliament requires them to be, some informed criticism can then be made based on those statistics. Although statistics are important, we should not lose sight of what we are doing here; that is, we are drawing a distinction between the offence of grievous bodily harm on one hand - which is a serious criminal offence - and grievous bodily harm when a victim is at or over the age of 60. I am talking about heinous crimes in which the victim is a vulnerable person because of his or her age. Regardless of the responsiveness of the judiciary, I detected a measure of criticism, from not only the member for Kingsley but also other members who participated in the second reading debate, of which I hope the judiciary will take note. If a significant section of the Parliament makes those criticisms of the judiciary, it is important for it to be aware of that and to respond to those criticisms.

However, the message we want to send with this clause is that it is worse to inflict grievous bodily harm on a senior citizen and that offence must be punished more severely. Statistics are important but we should not lose sight of the message that underpins these amendments to the Criminal Code.

Clause put and passed.

Clause 4: Section 301 amended -

Mr OMODEI: I am not a practising lawyer, I am not even a bush lawyer -

Mr Kobelke: You are a very modest man.

Mr OMODEI: There is no doubt about it, I am an honest spud farmer. However, I represent elderly people in the Parliament and this amendment to the Criminal Code is important. My primary concern is for the safety and welfare of elderly people. I too am concerned about the way in which the judiciary applies penalties to offences. However, this Bill is also about the Parliament making laws that have credence in the community.

The maximum penalty for wounding is five years. The maximum penalty imposed for that offence was three years in 1998-99 and two years in 1997-98. Members have talked about averages. I take the point made by the member for Innaloo about first offenders and the whole spectrum of offences. However, my concern is that yesterday the Government brought legislation into the Parliament that was introduced by the former Government last year - the Animal Welfare Bill. Clause 19 of that Bill refers to cruelty to animals if a person tortures, mutilates, maliciously beats or wounds, abuses, torments, or otherwise ill-treats an animal. The clause goes on to refer to a person using inhumane devices, intentionally or recklessly poisoning animals and so on. However, the clause refers to wounding.

In this Bill the penalty for wounding a person over the age of 60 years is imprisonment for seven years, and in any other case imprisonment for five years. The animal welfare legislation provides for a minimum penalty of $2 000 and a maximum penalty of $50 000 and imprisonment for five years. This Parliament could well be accused by the general public of treating an offence against a human being as a lesser offence than the offence of kicking or tormenting a dog or cat.

I examined these matters in fine detail when I was the Minister for Local Government responsible for the Animal Welfare Act to ensure that there was a connection between crimes against mankind and the kinds of offences that would apply in relation to the fines and imprisonment terms to be allocated. In the animal welfare legislation, which will be debated later this year, an offence of cruelty to an animal will attract a higher penalty than an offence of wounding a person. That concerns me greatly from the point of view of my credibility as a member of Parliament and us collectively as members of Parliament making laws to protect elderly people.

Mr McGINTY: One aspect that both sides of politics strive for when they are dealing with matters in the Criminal Code is consistency within the code itself. It would be a bizarre situation if we ever got to a stage where animals were treated as more special or more important and were offered greater protection than humans were offered.

Mr Omodei: That is what I am trying to say.

Mr McGINTY: I do not disagree with the member's sentiments that the priority must be, first, to deal with offences against the person as the area in need of greatest protection; then offences against property; and then animals. I am unsure whether one regards animals as a third category or as part of the property category. The protection of human life and human existence should remain at all times the number one priority of the law.

This clause refers to particular people who, because of their age, should not be the subject of attack. Section 301 of the Criminal Code, deals with a person who unlawfully wounds another or who unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered or taken by any person. The current penalty for that is imprisonment for five years. This clause states that the penalty should be greater when the victim is a person of or above the age of 60 years.

I pause in passing to observe that the penalty for offences against seniors is higher than that referred to in the Animal Welfare Bill. We as a Parliament must debate in the context of that other Bill whether those penalties are too harsh. In my view there is a correct proportion in the acknowledgment of the fact that the wounding of a senior citizen must be treated more seriously than the wounding of other citizens who do not suffer from the difficulties of age. I am aware that some seniors are far more agile and able to defend themselves than are others. However, I return to the question of internal consistency in the Criminal Code. The age of 60 was chosen as the dividing point because it was a pre-existing provision in the Criminal Code. We could have chosen 70 or 55. There is already a provision in the code in relation to sexual assaults that states, essentially, that the rape of someone over the age of 60 must be treated as a circumstance of aggravation and a heavier penalty imposed. It is easy to see why that is the case. The penalty is increased proportionately. Essentially we are increasing the penalty in the same proportion. If someone wounds someone who is over the age of 60, the maximum penalty will be increased accordingly. I do not disagree with the essential proposition the member for Warren-Blackwood is putting that people are more important than animals.

Mrs EDWARDES: Apart from inserting a new section dealing with persons over the age of 60 who are harmed, the clause changes the offence from a misdemeanour to a crime. The coalition increased the penalty for the offence from two years to five years imprisonment; it is now being increased from five years to seven years when the victim is over 60 years of age. The penalty remains at five years imprisonment in all other circumstances. The clause also creates a summary conviction penalty, if the victim is over 60 years of age, of imprisonment for three years or a fine of $12 000, and in all other circumstances the penalty is two years imprisonment or a fine of $8 000. What are the reasons behind those tariffs and can the Attorney General give me a break-up?

Mr McGINTY: The advice of the Office of the Parliamentary Counsel was that maintaining consistency and proportionality in the Criminal Code is of overriding importance. The penalty for an offence under section 301 of the Code - wounding and similar acts - that is tried on indictment is imprisonment for five years, and when it is a summary conviction the penalty is imprisonment for two years or a fine of $8 000. We have retained that proportionality that we have applied in each of the other sections, in which we go from five years to seven years, and 10 years to 14 years.

Mrs EDWARDES: The Government has not increased the penalty; it has taken the base and increased the penalty when the victim is over 60 years. Is it maintained at the same rate as it was before for all other offences?

Mr McGINTY: We have not changed the tariff when the victim is under 60 years. If the matter is dealt with by indictment, the maximum penalty is five years imprisonment; if it is dealt with summarily by the magistrate, the penalty is two years and a fine of $8 000. We have maintained that proportionality. When it is dealt with summarily the penalty is increased from two years to three years and the fine from $8 000 to $12 000. We are maintaining that proportion, while appreciating that this is one of those either-way offences that can be dealt with by a magistrate or the District Court on indictment. If a magistrate deals with it, the offence will be of the lower order, and will often result in a fine being imposed. We have simply increased the proportion of the fine in the same proportion as we have increased the imprisonment penalty.

Mrs EDWARDES: On what information did the Government base that? The Attorney General says that he tried to be consistent. What was the commonality?

Mr McGINTY: It is to increase the penalty by one-third. For example, an increase from two years to three years in a summary conviction and from $8 000 to $12 000 in a fine, which is the same proportion. It is maintaining that proportionality. It is rounded out and increases from five years to seven years.

Mrs Edwardes: And the fine?

Mr McGINTY: It is the same. It is roughly that proportion and it is rounded out. There is no particular science to it other than maintaining proportionality.

Mrs EDWARDES: I was attempting to find the commonality. What is the base line? In Victoria, for instance, it is much easier to determine because it has unit penalties. They are easy to increase. For example, if the fine is 50 000 unit penalties it is equivalent to two years imprisonment. That makes it much easier to determine the commonality. However, the Government is breaking this up into a crime and summary conviction penalties, so how did it determine that? It is easy to say that it is proportionate, but where is the commonality across the board? If we are talking about a range of sentences, we are referring to minimum and maximum sentences. That covers the range of actions of that offence, which will vary to some degree. Does the Attorney have an example of the types of offences under section 301 that would fall within the summary conviction category as against the crime category?

Mr McGINTY: I may be missing the point that the member for Kingsley is making, but I will attempt to answer the question she has posed. The Government has not created this as an either-way offence. It is part of the existing Criminal Code and can be dealt with either by indictment or summarily by the magistrate. Let us look at the amendment to section 301 of the Criminal Code that is now before the Chamber. I refer to new paragraph (b), which is the existing provision in each case, whether it be a matter tried on indictment or summarily; that is, imprisonment for five years, or imprisonment for two years or a fine of $8 000. We have added to that the circumstance in which the victim is over the age of 60 years. We have increased the penalty in roughly the same proportion as every other penalty that is subject to this Bill - in this case from five years to seven years. As I have indicated, penalties that are currently at the 10-year mark have generally gone to 14 years. It is an increase of roughly 30 per cent to 40 per cent in most cases. We have simply factored in 30 per cent to 40 per cent, which in this case translates from five years to seven years, which I believe is 40 per cent.

Mrs Edwardes: Is that the way it has been calculated? Has the parliamentary draftsperson picked the figure of 40 per cent?

Mr McGINTY: I refer the member for Kingsley to the existing regime in the code. In the case of indecent assault, which is section 323 of the Criminal Code, the penalty is five years imprisonment. We have brought into the code the circumstance of aggravation and the proportionality of aggravation. Under section 323 the penalty for indecent assault is five years. Section 324 deals with aggravated indecent assault, for which the penalty increases from five years to seven years. That is the proportionality that we apply.

There are circumstances in which that proportionality is greater; however, that will give the member an idea of what is already in the Criminal Code and the proportion that we take into account. Generally speaking, we are looking at the circumstances of aggravation, to use the old language, and the proportion by which the penalty is increased in cases of aggravation, and then regarding an assault or an offence against a senior essentially as a circumstance of aggravation. In the early stages of drafting of this Bill, we sought to add senior citizens to the class of people against whom a serious assault, as defined in the Code, is committed. The advice from parliamentary counsel was that it would be better to include that as a particular offence in each category of offence rather than to deal with them generically, in the sense that serious assaults are dealt with generically. Those are roughly the proportions outlined in the Code in relation to circumstances of aggravation, and we have carried those forward by specifying that when a victim is at or over the age of 60 years, it should be treated as a circumstance of aggravation.

Mrs EDWARDES: It would be appropriate to split crimes and summary convictions, which would provide another valid reason for benchmark guidelines. There is some consistency, and we have seen how that has been determined in sexual assault offences. How does the court determine that in a breakdown between crimes and misdemeanours? Is it consistent or does it again vary? For instance, are courts less lenient in their maximum or average sentences imposed for summary convictions than when they deal with offences with higher penalties? The theory might be that if an offence carries a lower maximum sentence, a greater sentence would be imposed proportional to one that carries a higher maximum sentence. Again, we will not know whether that is true until we develop some of the data about which we have been talking.

Mr McGINTY: Offences under section 301 can be dealt with summarily or on indictment. Section 5 of the Criminal Code allows for an election. When a matter comes on for an initial hearing before the magistrate, the defence may elect for the matter to be dealt with summarily or to go to trial on indictment. The Law Reform Commission dealt with these issues in a report prepared by Wayne Martin QC. It proposed a review of all the classifications of offences in the Code. We are giving consideration to altering section 5 and the election process in each-way offences to ensure that the minor level of offending is dealt with more expeditiously before a magistrate rather than unnecessarily occupying the time of the court through indictment and trial by jury for something that most people in the community would regard as being at the less serious end of the offending scale. We will have that extensive debate when further legislation is introduced into the Parliament on that basis. At this stage, I think there is a measure of artificiality in allowing the defence to elect whether a matter goes to the District Court on indictment or is dealt with summarily. I do not know whether magistrates deal more harshly in a proportionate sense with summary matters, given that they generally are at the lower end of the offending scale, than would District Court judges when imposing a sentence for an offence at the more serious end of the scale.

Ms SUE WALKER: The court can and does apply the maximum summary conviction penalty. There is a case in which it has gone to the maximum, although I am unable to recall the name because I am a bit rusty.

Clause put and passed.

Clause 5: Section 313 amended -

Mrs EDWARDES: Clause 5 also deals with common assaults. We increased those penalties.

Mr McGinty: I do not think your Government increased the penalties under section 313.

Mrs EDWARDES: No, I do not think we did. The penalties under section 313 is 18 months imprisonment or a fine of $6 000, which will be increased to three years if the offence is committed against someone over 60. If that was not increased when our Government increased the penalties for a range of other violent offences, and given that the Attorney General and the member for Rockingham were the other day somewhat flippant in some of their comments about section 313, why has this been included?

Mr McGinty: We occasionally have relapses.

Mrs EDWARDES: That is most unlike the Attorney General nowadays. When we drafted amendments to impose the 12-month minimum sentence, we considered section 313 very carefully because of its somewhat minor nature. Why did the Attorney General include it as part of the package of offences to be regarded as more serious offences against seniors?

Mr McGINTY: When we were in Opposition and brought in the crimes against seniors Bill, which was ultimately defeated in the House, we at that stage proposed to amend section 318 of the Criminal Code, which deals with serious assaults. Section 318 increases the penalty for an assault against someone generally described as a public officer by classifying it as a serious assault or, to use the old terminology, an assault in circumstances of aggravation. The penalty for that offence jumps dramatically from 18 months to 10 years, which is enormous. When we discussed this with parliamentary counsel, he asked if we really wanted, in a case of a relatively minor assault, such as a tap on the shoulder, a hip and shoulder, a shove -

Mrs Edwardes: My information is that the penalty is five years and it was then increased to 10 years.

Mr McGINTY: What section is that?

Mrs Edwardes: Section 318.

Mr McGINTY: That would probably be right. The Liberal Government would have increased that.

Mrs Edwardes: You were talking about 18 months? Is that in your legislation?

Mr McGINTY: Yes, it was in the legislation we introduced while in opposition. One of the defects in the legislation that Parliament defeated last year, to which we are now happy to admit, was the notion of increasing the maximum penalty to 10 years for a simple assault of the nature described by the member for Rockingham, and maybe others, because the victim happened to be a few years older. For example, if we had proceeded with that and the member for Dawesville were given a hip and shoulder, it would have been considered a serious assault.

Mrs Edwardes: Did you include a penalty of 10 years under section 313 in your legislation last year?

Mr McGINTY: Yes; that is my recollection. We again suggested it when we came into government. Parliamentary counsel said that we should not do that because it is disproportionate to subject an assault of the nature of the one I just described to a maximum penalty of 10 years. The second point parliamentary counsel made was that the serious assaults section of the Criminal Code states that an assault on "a public officer who is performing a function of his office or employment or on account of his performance of such a function" attracts a 10-year maximum penalty.

The second circumstance is -

> (e) assaults any person who is performing a function of a public nature conferred on him by law or on account of his performance of such a function;

The third circumstance is -

> (f) assaults any person who is acting in aid of a public officer or other person referred to in paragraph (d) or (e) or on account of his having so acted; or

The fourth circumstance is -

> (g) assaults the driver or person operating or in charge of -
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> (i) a vehicle travelling on a railway;
>
> (ii) a ferry; or
>
> (iii) a passenger vehicle as defined in paragraph (a) of the definition of "passenger vehicle" in section 5(1) of the *Road Traffic Act 1974*;

A Rottnest ferry operator or captain of a ferry would be caught by that definition as would taxi drivers who are, not in a strict sense public officers, but they do perform a service to the public. There is consistency within section 318 dealing with aggravated assault and serious assault whereby a person is either a public officer or performing a public function. The second argument put to us by parliamentary counsel is that seniors are not performing a public function. It introduces a new concept into the notion of aggravated or serious assault. Counsel told us to take it out for two reasons: the penalty is too high and there is no public component when the qualifying condition is that a person is a senior. The Government has gone through every form of assault and put in an additional penalty when the assault - whether grievous bodily harm or simple assault - is perpetrated against a senior citizen. For the sake of consistency, the Government has inserted this provision relating to common assault. I suspect it is the most common form of assault on seniors.

Mrs EDWARDES: The Attorney General made a throwaway remark that he thought common assault might be the most common form of assault against seniors. I have no documentation on how many common assault cases have gone before the courts over a 12-month period. Does the Attorney General have those figures? Was there any disaggregation of the data to determine the number of attacks on seniors? In the media release, the Attorney

General identified the numbers of and the percentage increase in assaults. Were the figures disaggregated for the various sections?

Mr McGINTY: No, because the problem is back to that at the start of this debate, which is the availability of statistics and the extent to which they are broken down for the various sections of the Criminal Code and then further broken down by the identity of the victims. Those statistics are not available.

Mrs Edwardes: Where did the statistics that were the subject of the media release come from? Were they based on anecdotal evidence?

Mr McGINTY: No, they came from information on offences reported to the police.

Mrs Edwardes: It would be nice if we could get the various authorities and bodies using the same databases and using the same computer language.

Mr McGINTY: It would be extremely helpful. I share the member's frustrations about statistics. It would have been very useful to present a comprehensive document showing all the relevant statistics relating to this area, but we were not able to do it.

Clause put and passed.

Clause 6: Section 317 amended -

Mrs EDWARDES: Section 317 deals with assaults occasioning bodily harm and section 317A deals with assaults with intent. The penalty for assaults occasioning bodily harm remains at five years imprisonment for all offences, except when the assault is on a person over the age of 60 years. The penalty is then increased by an additional two years imprisonment. A summary conviction penalty has also been introduced. The former Government did not increase the maximum penalties under section 317. I do not know why that was left out. The former Government was concerned with certain more violent offences than with what would be regarded as more serious offences. During 1998-99, there were 54 assaults occasioning bodily harm. The maximum statutory penalty is five years imprisonment. The maximum sentence imposed was four years imprisonment and the minimum sentence imposed was six months. One can see that when a maximum sentence is lower, the proportion of imprisonment is higher. The average sentence imposed was 1.8 years imprisonment. From 54 cases, only one case was near the maximum penalty. There is no more data available on this. The following year 58 cases were recorded, and the highest penalty was three years imprisonment, of which there was only one case. The average sentence was 1.6 years imprisonment and the minimum sentence imposed was six months. Does the Attorney General have any more information about the types of offences under section 317 and how they have impacted on senior citizens?

Mr McGINTY: No, I do not. This amendment is based on advice from parliamentary counsel to take the penalty for assaults against seniors out of the serious assault provision that is contained in section 318 and to amend each form of assault to maintain consistency. That is why the changes being made to sections 317 and 317A are identical, and they are consistent with the earlier change made to section 301, which refers to wounding. The amendments allow for a separate expression on each occasion of what we originally sought to do with the section pertaining to serious assaults. Because of the reasons given to us by parliamentary counsel, it was inappropriate to proceed down the path originally intended.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Heading to chapter XXXVIII amended -

Mrs EDWARDES: The changes are extensive, not to the outcome, but to the penalties. I wonder whether the Attorney General will explain why he has proposed a new section and changed it in the way that he has with the -

The ACTING SPEAKER (Mr McRae): Is the member referring to clause 8, dealing with the change to the title?

Mrs EDWARDES: I am dealing with the title being changed from "stealing with violence" to "robbery". The Attorney General deals with all of those individual sections in clause 9. I wonder why he has gone down that path before we have got to clause 9.

Mr McGINTY: This change was made on the advice of parliamentary counsel. For a long time he drew attention to the recommendations in the Murray report -

Mrs Edwardes: It goes back some time.

Mr McGINTY: It does go back some time.

The ACTING SPEAKER: Order! I understand that conversations will take place, but will members try to keep their voices down a little. It is very difficult to follow this debate.

Mr McGINTY: In 1983, the Murray report made recommendations to simplify the offences of armed robbery and assault with intent to rob. As members are aware, the former Government and the previous Labor Government progressively moved through the implementation of the recommendations made by now Mr Justice Murray to reform the Criminal Code. I suspect that the implementation of the recommendations will be ongoing for some time.

We raised the matter of robbery with parliamentary counsel, and the need to be consistent. Originally we identified four generic classes of offence that we wanted to target in which the victim of crime was a senior: assaults, burglary, robbery and fraud. We did not proceed with burglary offences because they are offences against property. They are not offences in which there is an identifiable victim. The victim might very well be a tenant, an owner or an occupier. If a place were vacant, for example, how would the victim be identified as being over the age of 60? The nature of burglary is really an offence against property. Although that was part of what we said we would do before the election, we did not proceed with it for the sound reasons I have mentioned. It would have given rise to all sorts of difficulties that would have been imposed on the court.

However, robbery is clearly an offence against the person. Parliamentary counsel told us that he would like to use this occasion to give effect to the recommendations of the Murray review of the Criminal Code in 1983, given that we were amending the sections dealing with robbery. Consequently, the Bill does that in a new way rather than in the way it has traditionally been expressed in the Criminal Code. This is a new dimension to the argument, rather than dealing with only crimes against seniors. The member for Kingsley would be aware from her time as the Attorney General that, when a section of the code is up for review, the master plan is brought into play and changes are made to those sections.

Originally, parliamentary counsel desired to include blackmail in this Bill. I said that that would go too far beyond the scope of what we wanted to do. I am happy to have the code amended to give effect to the Murray report, but we should not use this as an occasion to deal with everything that has been the plan of parliamentary counsel for years. That is the explanation of the underlying purpose of these changes. Otherwise, and this is the import of what we are doing, apart from simplifying the nature of the offences, this Bill will give effect to the broader thrust that robbery, in its various guises, committed against senior citizens will incur increased penalties.

Clause put and passed.

Clause 9: Sections 391 to 394 replaced -

Mrs EDWARDES: Given the Attorney General's comment on the previous section, thank goodness parliamentary counsel keeps an eye on a report that goes back almost 20 years. It is great that Mr Justice Murray is still remembered. It was quite an outstanding report and was far ahead of its time.

Mr McGinty: Not many other reports could be put in that category.

Mrs EDWARDES: Absolutely not. It was not only far ahead of its time, but also considered many areas of the code that were very much outdated. I look forward to receiving some comprehensive legislation that reflects some of those changes, because they add some light-hearted humour to the debate. I am not too sure that many sections are left that are really old and destined to disappear. However, it has been a long time since I have read the report from beginning to end.

I will highlight the changes in this clause. Section 391, which defined robbery, is being deleted. Section 392, which defined loaded arms, and section 393 are also being deleted. Section 390, which defines the penalty for robbery, will be dealt with later. Section 390 imposed penalties for persons who committed crimes of robbery. Those persons were liable to imprisonment for 14 years. Those who were armed were liable to imprisonment for life, and those who wounded or used any other violence against any other person were liable to imprisonment for 20 years.

Section 394 dealt with assault with intent to commit robbery. It outlined the penalties that could be imposed against any person who had shown intent to steal anything, and during the assault or immediately before or immediately after the assault had used or threatened to use actual violence against any person or property in order to obtain what he was after. That person was liable to imprisonment for 10 years. If the person was armed with any offensive weapon or instrument, the sentence was 14 years. For the use of any loaded arm, the sentence was imprisonment for life.

On advice from parliamentary counsel, the Attorney General has added new section 391, which deals with the definitions for sections 392 and 393. They refer to the circumstances of aggravation. The circumstances of aggravation are ones in which, immediately before or after the commission of the offence, the person, in

company with one or more other persons, does bodily harm to or threatens to kill any person. The new circumstance of aggravation is when the person against whom violence is used or threatened is of or over the age of 60 years.

Proposed new section 392 is headed "Robbery". I do not know why robbery was considered to be a more appropriate term to use than "stealing with violence". I tried to ascertain where that might have come from. The Attorney General might have that information available. I never thought to look at the Murray report, and I will keep it in mind for future occasions. Why was the term "robbery" considered more appropriate than the term "stealing with violence"? Robbery is a very old term. It goes back to the sixteenth or seventeenth century. I wonder why that has been brought back.

Picking up on clauses that will be replaced, proposed new section 392(c) says -

> . . . after the commission of the offence the offender is armed with any dangerous or offensive weapon . . .

The offender does not necessarily have to be armed with a weapon for this paragraph to apply. The second aspect of that is that if the offence is committed in circumstances of aggravation, which are defined in proposed new section 391, it carries a maximum penalty of imprisonment of 20 years. In any other case, the offence carries a maximum penalty of imprisonment of 14 years. Therefore, when considering proposed new section 392(c), which provides a penalty of imprisonment for life, I am questioning why the circumstance of aggravation does not cover the whole of the clause. It is probably to do with the penalty in itself, because if the penalty were life imprisonment, it could not be increased. Has the Government actually increased the penalty for this proposed new section? I cannot pick up, from the sections that are to be replaced, whether the penalty has been increased. Proposed new section 393 is titled "Assault with intent to rob". I raise the same question. What difference is the Government trying to establish between paragraphs (c) and (d) of proposed new section 393?

Mr McGINTY: The Murray report was implemented, to a significant degree, by Hon Joseph Berinson when he was Attorney General. I noticed that during its eight-year term in government, the coalition made a number of changes to the Criminal Code, which were underpinned by that report. I expect that while the Murray report may have a little life left in it until it is fully implemented, it will be substantially overtaken by the Martin report, which was the Law Reform Commission's work on the civil and criminal justice system. The commission recommended putting all offences into one of five categories - a complete review of the Criminal Code again. One of the issues I am keen to press ahead with is to do exactly that. It will not be done overnight, but I hope that those Law Reform Commission recommendations will begin to find their way into the Criminal Code as well. It might well be that the Murray report will have a 20-year life and then the Law Reform Commission will take over.

I will do my best to describe what has happened with the various penalties and offences, because some new classes of offence appear in proposed new sections 391 to 393. I will deal first with the two groupings of robbery and, secondly, with the group concerning assault with intent to rob. The penalties have essentially been preserved. Under the offence of aggravated robbery, if the circumstance of aggravation is that the person was armed, the maximum penalty remains the same - life imprisonment. When the circumstance of aggravation is that the offender was in company, the maximum penalty remains at 20 years imprisonment. There was no equivalent under the old regime for a circumstance of bodily harm. This offence now attracts a maximum penalty of 20 years imprisonment. If someone is wounded, the old penalty prescribed a maximum of 20 years imprisonment. There is no new penalty, because that offence has been picked up in other descriptions of offences as part of the reclassification. When the circumstance of aggravation was the use of personal violence, the old penalty was 20 years. There is no directly comparable new offence, although the circumstance is covered by the reclassification. There is a new category of robbery with a threat to kill, which will attract a maximum penalty of 20 years imprisonment. Similarly, when the circumstance of aggravation in a robbery is that a victim is over the age of 60, the offence will attract a maximum penalty of 20 years imprisonment. That was not covered by the previous legislation. The maximum penalty for the basic offence of robbery with no circumstance of aggravation remains at 14 years imprisonment.

Mrs Edwardes: Where is the increased penalty in circumstances of aggravation if the victim is over the age of 60?

Mr McGINTY: The previous legislation regarded this offence as robbery, which attracted a maximum penalty of 14 years imprisonment. There was no circumstance of aggravation, if I can describe it that way.

Mrs Edwardes: The maximum penalty is 20 years imprisonment under proposed new section 392(d).

Mr McGINTY: Yes, because it is a circumstance of aggravation. That is the changed structure dealing with circumstances of aggravation and robbery, which is a description of the old compared with the new regime. That is reflected in the Bill before the House.

Mrs EDWARDES: I think the Attorney General ran out of time and I would like to hear more from him, particularly about proposed new section 393 and the difference between paragraphs (c) and (d), and how that relates to the section that will be deleted.

Mr McGINTY: Proposed new section 393 deals with assault with intent to rob. Again, the old and the new regimes are similar, with certain changes made to reflect the Murray report recommendations. When the circumstance of aggravation is that a person is armed, the maximum penalty remains at 14 years imprisonment. When the circumstance of aggravation is that the offender was in company, there is no change in the maximum penalty of 14 years imprisonment. When a person is armed and there is also another circumstance of aggravation, that offence will attract the maximum penalty of life imprisonment.

Mrs Edwardes: Can you tell me which it is?

Mr McGINTY: It is paragraph (c).

Mrs Edwardes: That is armed, under the circumstance of aggravation.

Mr McGINTY: Yes.

Mrs Edwardes: What is the difference between paragraphs (c) and (d)?

Mr McGINTY: It is the conjunct of "and" at the end of paragraph (c)(i) and the disjunctive "or" at the end of paragraph (d)(i).

Mrs Edwardes interjected.

Mr McGINTY: It is simply the combination that gives rise to that. In each paragraph, subparagraph (i) deals with the person who is armed or who pretends to be armed. In paragraph (c), if another circumstance of aggravation is present, as defined earlier, the offence will attract a maximum penalty of life imprisonment. In the case of paragraph (d) -

Mrs Edwardes: Paragraph (d) refers to stealing with a threat of violence while armed, and the aggravation is that the victim is aged over 60, for which the sentence is now 14 years, whereas previously it was 10 years.

Mr McGINTY: No, it was previously 14 years. The difference between paragraphs (c) and (d) is essentially that in paragraph (c) two circumstances of aggravation are required, one that the offender is armed or pretends to be armed, plus another; while in the case of paragraph (d), only one circumstance of aggravation is required - that is, the offender was armed, or another circumstance of aggravation was present.

Mrs Edwardes interjected.

Mr McGINTY: In paragraph (c), being a senior is a circumstance of aggravation, so that is what gives rise to -

Mrs Edwardes: The circumstance of aggravation is in proposed new section 391(b). I understand paragraph (c), but I do not understand paragraph (d). I understand that the circumstance of aggravation of being over 60 years of age can give rise to the offence, but I do not see that the penalty for that circumstance has been increased. This differs from the rest of the Bill.

Mr McGINTY: The reason is that the penalty cannot be increased beyond life imprisonment.

Mrs Edwardes: I am talking about paragraph (d).

Mr McGINTY: I will explain. Section 394, under the heading of "Assault with intent to commit robbery", reads -

> If the offender is armed with any kind of loaded arms, and at or immediately before or immediately after the time of the assault he wounds any person by discharging the loaded arms, he is liable to imprisonment for life.

This section is to be repealed under this proposal and expressed in different terminology. This is the circumstances which gives rise to life imprisonment.

Mrs Edwardes: That is the same as proposed section 392(c)?

Mr McGINTY: Yes, but it was also extremely limited, because the offender actually has to fire the gun.

Mrs EDWARDES: Part of the current section 394 provides for imprisonment for 10 years, and that is increased, under these amendments, to 14 years, which was the second part of the current section 394. That has not been

changed, because under paragraph (d) it is still at 14 years. I am suggesting that the penalty for that offence has not been increased, with the circumstance of aggravation that the victim is over 60 years. With all the other clauses there has been a common offence and a term of imprisonment, and then extra years have been added for offences committed against persons over the age of 60. With this one it appears that that has not been done. It is a bit hard to pick up because of the deletions and the rest.

Mr McGINTY: In proposed section 393(c), a combination of subparagraphs (i) and (ii) means that two circumstances of aggravation are required: if the offender is armed, and the victim is over 60 years of age. In this case, the penalty is imprisonment for life. In proposed section 393(d), only one circumstance of aggravation is required, which may well be that the victim is a senior citizen, in which case the imprisonment is for 14 years. Under the current law, the gun needed to be fired in order to attract life imprisonment. What is changed here is that now there is only a need to be armed with a gun, but not necessarily to have fired it, and to have any other circumstance of aggravation to attract the life imprisonment penalty. The question the member for Kingsley is posing is: where is the increase in the penalty under paragraph (d) when the only circumstance is that the victim is over 60 years of age?

Mrs Edwardes: If it is linked up with another aggravation, then the penalty is increased?

Mr McGINTY: In the case of proposed paragraph (c), it is because the victim is over 60 years of age when an offender is armed that will automatically trigger the provision, because it constitutes an additional circumstance of aggravation. I think the answer to the member for Kingsley's question is that, if there is an assault with an intent to rob, which is what this section is about, and the only circumstance of aggravation is that the victim is over 60 years of age, the current penalty for assault with intent to rob is 10 years. Under paragraph (d), if there is only one circumstance of aggravation, and the only circumstance of aggravation is that the victim is over 60 years of age, the penalty will be increased to 14 years. That, I think, is the point we have been meandering around for some minutes now. The proportionate increase is the same. It is expressed quite differently from the rest of the code as a result of the restructuring of this provision.

Clause put and passed.

Clause 10 put and passed.

Clause 11: Section 409 amended -

Mrs EDWARDES: Proposed section 409 is the section which is unlike the others, in that it deals with the issue of fraud, while the other proposed sections deal with violent offences. The Opposition supports this clause wholeheartedly. The increase in penalty is from seven years to 10 years, if the victim is over the age of 60. The Government has also proposed to insert a new summary conviction penalty, which the Opposition supports absolutely. Also, if the value of the fraud is more than $10 000, the charge is not to be dealt with summarily. I do not know where the $10 000 has come from - whether it is in keeping with the code, or is a lower figure imposed in an endeavour to ensure that anybody who rips off a senior person in that way deserves not to be treated lightly.

Mr McGINTY: The experience most recently with the finance brokers issue brought home to me the extent to which fraud can warrant a much heavier maximum penalty than seven years, regardless of whether it was against a senior citizen or otherwise. This is also, quite interestingly, an area in which the courts from time to time impose quite hefty penalties. I was at Casuarina Prison recently, and while I did not meet up with him personally, a finance broker who had been recently sent to prison had his cell there. He was sentenced to 10 years imprisonment. I know that this was a cumulative penalty involving a great number of offences totalling some $5 million defrauded from clients of this broker, but this case illustrates the inadequacy of that maximum penalty, when significant frauds were committed which had enormous impact on the individuals. I thank the member for Kingsley for her comments of support for the thrust of this clause, but in my view this is unlike a number of the areas dealt with earlier, in that there was a need to review the basic penalty in any event, particularly in the light of the 10-year penalty handed out to Graeme Grubb.

Mrs EDWARDES: An age-old argument comes to mind. Often the community hears of penalties for crimes against property handed down by the courts that are often much greater than crimes against persons.

Mr McGinty: I think Robin Greenburg would agree.

Mrs EDWARDES: The Mickelbergs similarly. There are obviously a number of high-profile candidates but there would be a large number of others too who would say they were treated in a harsher way for a crime against property. I could go back to the historical argument of the value of property to the community, which has long been argued going back to the early days of the establishment of Australia. If we were also able to get

benchmark guidelines, we would probably be able to see the balance much more clearly between the penalties handed down for crimes against property and those for crimes against persons.

Mr McGinty: That comes to the point the member for Warren-Blackwood made.

Mrs EDWARDES: Absolutely. We have talked about minimum sentences; I shall refer to that matter later. The Opposition agrees that people who carry out acts against dumb animals - as some people might refer to them - deserve to be dealt with appropriately. However, the penalties for cruelty to animals are not comparative with serious and violent acts against vulnerable senior members of our community.

Clause put and passed.

New clause 12 -

Mrs EDWARDES: I move -

Page 9, after line 27 - To insert the following -

12. Minimum Sentence to be imposed

(1) If a person is convicted of an offence against sections 297, 301, 313, 317, 317A, 392, 393 or 409 committed in respect of a person who at the time of the offence is of or over the age of 60 years, the court sentencing the person shall sentence the offender to a term of imprisonment which is 12 months greater than the sentence that the court would have imposed had that circumstance not existed and in any event shall sentence the offender -

(a) to at least 12 months imprisonment not withstanding any other written law; or

(b) if the offender is a young person (as defined in the *Young Offenders Act 1994*) either to at least 12 months imprisonment or to a term of at least 12 months detention (as defined in that Act), as the court thinks fit, notwithstanding section 46(5a) of that Act.

(2) A court shall not suspend a term of imprisonment imposed under subsection (1).

(3) Subsection (1)(b) does not prevent a court from making a direction under section 118(4) of the *Young Offenders Act 1994* or a special order under Division 9 of Part 7 of that Act.

This proposed new clause establishes a minimum sentence to be imposed. It has two limbs. Essentially, a court, in its discretion in sentencing a person, would be required to add a further 12 months to the sentence. In the second limb, if no sentence of imprisonment were imposed, the court would sentence the offender to at least 12 months imprisonment, notwithstanding any other written law. If the offender were a young person, the matter would be dealt with under the Young Offenders Act and the offender sentenced to a term of at least 12 months imprisonment or detention, as the court thought fit. As members know, in a home burglary case, the court can suspend a sentence and deal with the matter in a different way. This proposed new clause does not prevent a court making a direction or a special order under the Young Offenders Act. There are two limbs to this proposed new clause. One provides for a discretionary sentence to be imposed by a judge, taking account of all mitigating factors, with the imposition of a further 12 months. The second limb provides for a 12 months sentence to be imposed if it were initially intended not to impose a custodial sentence.

I know the age-old arguments about minimum mandatory sentences imposed for offences of a minor nature. Some examples were referred to by the member for Rockingham and the Attorney the other day. I recognise that was a lapse by the Attorney. I do not believe the police would charge anyone in those examples of minor offences, acknowledging that a little flippancy was used in the examples. However, they are points well taken. Often, circumstances must be taken into account in mandatory sentencing that would lead a court to the view that the offence is of such a minor nature that it is not appropriate to impose a term of imprisonment.

Reference was made to the proposed amendment to section 313 of the Act relating to common assaults. Common assaults can be minor by their very nature and definition. However, this legislation is as a result of the community's concern at the increasing number of assaults against elderly people. The research conducted by the member for Churchlands indicates that compared with all other categories of victims, seniors are least likely to be victimised. That may be the result of research, statistics and the like. However, as a community, we must eventually be concerned about seniors.

The House heard the stories in the second reading debate about the attacks on those in our community who are vulnerable. Although people are living longer and eating healthier foods, and medical attention is helping them to be less vulnerable as they get into their later years, many people in their later years are frail. Some of the perpetrators of crimes against more vulnerable victims actually wait until such time as they can be preyed upon. They watch, wait and see. They know such people are less likely to be able to defend themselves. We have heard of circumstances in the past when some brave souls have defended themselves, but what does that do to those persons psychologically? The impact is enormous.

Mr JOHNSON: Madam Deputy Speaker, I am interested in what the shadow Attorney General has to say and I would like to hear more from her.

Debate adjourned, on motion by Mr McGinty (Attorney General).

House adjourned at 5.38 pm