

CRIMINAL CODE AMENDMENT BILL 2024

Second Reading

Resumed from 18 April.

HON TJORN SIBMA (North Metropolitan) [2.32 pm]: I rise on behalf of the opposition to speak to the Criminal Code Amendment Bill 2024. From the outset, I indicate our support for the bill. I would like to place on record my appreciation for the support and attentiveness of the Attorney General's staff in dealing with a range of issues that I and my colleagues identified in the bill, insofar as potential loopholes or protections that were not offered to certain classes of individual. I now understand that the Attorney General amended this in the other place so it is reflected in the bill that appears before us in this chamber.

This bill is effectively designed to achieve two main outcomes, that is, to introduce a new offence for assault on retail workers and to remove fine-only penalties for certain stealing offences. In essence, the issue here is to uplift the maximum penalties that would apply to an individual who assaults a retail worker to the degree that that assault is considered to be a serious assault rather than a common assault. The difference there is a maximum penalty of seven years' imprisonment versus—I will say the standard, although I am reluctant to use that phrase—a maximum penalty of three years' imprisonment for a common assault.

To the degree that I had only just dealt with the strategic overlay of the deplorable statistics for road fatalities and trauma in Western Australia in the previous bill, I probably have far more granular information about the way that those convicted of assault are dealt with through the courts. It was timely that I received an answer in the last hour and a half to a question that I submitted at the end of March concerning this very matter. For the benefit of the parliamentary secretary and others, I asked a very simple question in two parts. It is question on notice 1973, which states —

I refer to the *Criminal Code Amendment Bill 2024*, and noting the bill's intent to raise maximum penalties for assault on retail workers, I ask:

- (a) how many convictions for common assault were there in 2023; and
- (b) is the Attorney General aware of the penalties which the courts applied in these cases, and will he table these sentencing outcomes?

That is ostensibly quite a simple question, but there are some complexities in providing the information to the degree that one might be curious to obtain. Nevertheless, the Attorney General and his office have been very helpful in furnishing me with the following information: in Western Australia for the calendar year last year of 1 January to 31 December 2023, there were 3 919 convictions under section 313 of the Criminal Code. As members would anticipate, the circumstances of each offence differ in innumerable ways. With some indulgence, I want to read into the record what those sentencing outcomes are.

The reason I am doing this is because over time—frankly, it has not just been a “sin” of a Labor government; I have seen Liberal governments do this as well—when we have dealt with law and order by way of media release, we have come in with the promise of increasing maximum penalties for a specified class of offence. As I have observed more recently, when there is a reduction in the pool of dedicated political journalists there is a diminished understanding of how legislation works and of certain themes, preoccupations and stratagems over the years, and there is a reliance on effectively taking a minister's word for it when the policy is announced. That is before the bill has even been announced, briefed or debated in the chamber.

On the surface, what is being proposed here by the government—effectively providing greater protections for retail workers—is a laudable policy objective. I and the opposition have absolutely no problem with it. Of course retail workers should be protected as they go about their daily work. There is no argument. However, a level of curiosity piques in me when I think about what will actually be the likely outcome. Is it actually a reasonable expectation for me, any other member of the community, any retail worker in the state or any of the officials at the Shop, Distributive and Allied Employees' Association of WA? Again, I am an ex-shoppy union member. It did not hurt my preselection for the Liberal Party, but you know —

Hon Sue Ellery: Did you declare it?

Hon TJORN SIBMA: I will announce it now! Out loud and proud, I have been a shoppy!

Hon Sue Ellery: After you have been preselected.

Hon TJORN SIBMA: No. I have mentioned this in the chamber. It is a matter of public record.

The reason I think these measures are, to a degree, laudable is that many of us, irrespective of where we end up in our careers as adults, have probably spent some time in a retail environment, either during high school, university,

TAFE or whatever. It would be my expectation too that my children work at the McDonald's drive-through or whatever as part of the accumulation of skills, the ability to earn income and to deal with a sometimes, unfortunately, very unruly public with on occasion some spectacularly bad individual customers. But the sentiment is just not enough. Let us attempt to really understand whether the full breadth of the sentencing outcomes promised by this bill are likely, or probable, to be given to an offender. Last year, there were 3 919 convictions under section 313 of the Criminal Code dealing with common assault. Of those, 627 people of that nearly 4 000 were given a community-based order, 24 were given a conditional release order, 216 were given a conditional suspended imprisonment order, five were subject to detention, 1 684 were issued with a fine, 604 served a term of imprisonment as traditionally construed by the ordinary person, 193 went on an intensive supervision order, 75 went on an intensive youth supervision order, 18 were issued a juvenile conditional release order with a detention period specified, five were issued a juvenile good behaviour bond, five were dispensed no further punishment under section 11 of the Sentencing Act, one had no order made or penalty imposed, 85 were imposed no punishment under section 67 of the Youth Offenders Act, 12 were imposed no punishment under section 46 of the Sentencing Act, 16 were given no sentence under section 11 of the Sentencing Act, four were given partially suspended imprisonment, one was issued a responsible adult good behaviour bond, 145 were issued a suspended fine, 121 were issued a suspended prison order and 78 were issued with youth community-based orders. On occasion, I imagine there will be a penalty imposed in conjunction with another penalty, but this bill promises to protect retail workers by uplifting a maximum penalty of seven years' imprisonment, or, if dealt with summarily before a magistrate, a penalty of three years' imprisonment and a \$36 000 fine. The penalty might increase to 10 years' imprisonment if the offender was armed with a weapon or in the company of one or more persons at the time of the assault. I am very reluctant to compare apples with oranges and different parts of the Criminal Code with one another, but this is something that members of the community ordinarily do. Just taking this snapshot of people convicted under section 313 of the Criminal Code, we saw that there were nearly 4 000 convictions last year for assault of this type, and this eventuated in the imprisonment of 604 people. One-eighth, or thereabouts, of people convicted of an assault ended up serving a term of imprisonment.

Obviously, the object of this bill is not to establish any mandatory minimum sentence, and I understand in general the aversion to these means on behalf of this government, but not in every single case. The first issue I want to identify, or focus on, is that on occasion—and this is understandable—we campaign in poetry but we govern in prose. We often legislate in terms of the media statement or the second reading speech that attends these things and we build up a level of expectation that will in all likelihood never, ever be applied, except for probably the most egregious conceivable offences under this new level of offending. What am I to conclude from that as an individual? Frankly, a lot of false belief is built into these kinds of bills.

The origin of the bill is largely interesting. The Attorney himself has highlighted that since COVID-19, the dedicated state of emergency for which has now passed, violence against retail workers continues at unacceptable levels. I will make the obvious point, not as a parliamentarian, politician or opposition member, but just as a human being, that violence is always unacceptable, and there is no acceptable level of violent offending. I was curious to understand whether there was a tangible indication, a set of objective data, that demonstrates that there has been an uplift since COVID, continuing to now, of offences against retail workers for whatever reason. In the briefing I could not be given information about a particular class of victim.

This is the distinction that I think is being made here. In this bill the government has axiomatically identified—I do not mean this to sound pejorative—a special class of victim. That demands a special kind of protection to the means and the penalties that apply for assaulting that individual. That the bill has not come to the Parliament with the data substantiates that point. We can observe that there has been a general increase in violent crime in the community and against everybody in the last five years, but for a specified class of victim here, for the process of logic, I would like to understand where the escalation is, how it has been codified and how in all likelihood the government could expect a deflation in that kind of offending as a consequence of introducing these new penalties.

The political origin of this bill seems to be conjoined with whatever actual objective evidence there might be—and I am not saying for an instant, parliamentary secretary, that there is no such evidence, it is just that that evidence has not been amassed and made available to me. It has been very clear from the government that much of this originates from a survey conducted by my old union. I will quote directly from the second reading speech. It reads —

A 2023 national survey by the Shop, Distributive and Allied Employees' Association of WA —

This is a national survey though —

of its members showed that 87 per cent ... said that they had experienced abuse from customers in the last year. Reports of physical violence increased by 56 per cent when compared with the results of the 2021 survey. This is clearly unacceptable.

I agree; it is unacceptable. I do not for one moment dispute that there is an increase and I do not claim that self-reports from members conducted nationally are wrong. However, I would like to see how they correspond with recorded police statistics in this jurisdiction, because we are not introducing legislation to deal with a national problem; we are dealing with the situation as it exists in Western Australia. On the special measures included in this bill, to a degree the government cannot reflect on overall crime statistics, which are bad, for whatever reason, and it has not been able to identify, in a granular sense, the very special threshold or the compartmentalised series of offences conducted against Western Australian retail workers.

This bill will not necessarily provide retail workers with the presumed increased level of protection but, hypothetically, an increased penalty will potentially apply if they are assaulted in the workplace. There is a range of scenarios in which retail workers will be protected, but there might be a series of scenarios commonplace to a person being in the workplace, transiting to and from the workplace or being in an adjacent area or doing an adjacent activity in which they might not be afforded protection. I think this is due to the definition that a person is a worker so long as they satisfy a test that the person performs duties that are part of the day-to-day operations of the business and in performance of these duties, the person is subject to the control and direction of the operator of the business. Furthermore, proposed section 318B(2) states —

A person commits a crime if the person assaults a retail worker —

- (a) while the worker is performing their duties, as a retail worker, in an area of a shop open to the public; or
- (b) in consequence of, or in response to, anything done by the worker while performing their duties, as a retail worker, in an area of a shop open to the public.

During the briefing, the parliamentary secretary might recall that we hypothesised a range of potential scenarios in relation to the open-to-the-public test, for example. There are some grocers, whether it is Coles, IGA or another independent grocery market, whereby, perhaps due to the configuration of the shops or the car park, the loading dock is effectively open to the public because access cannot be restricted for whatever reason. There may be a local government by-law or it may be because of the way the shop space interacts with the surrounding environment. Will this proposed protection apply to an individual, a big burly sort of chap, who normally works on the checkout but who has been asked to unload the Steggles chicken truck because somebody is crook that day and the loading dock is partially enclosed and partially open to the public but there is absolutely no public thoroughfare? That worker would be exposed to the broader environment as they undertake a task as directed; however, they are not employed in an area that would ordinarily be construed as being open to the public. To what degree will these protections be task and scenario specific? A person, during the ordinary toing and froing of a day, may in the course of a shift go from undertaking activities for which they are protected to doing something that is ancillary duties for which they may not be afforded protection. I hope that is not the case, but one may contemplate there could be any number of wicked scenarios in which someone moves from a period of protection to non-protection depending on where they are on the floorspace of the individual business and the duties they perform in a shift. Is this too granular a concept to throw out? I do not necessarily think so. Due to staff shortages and the high employment rate, people are multitasking and people call in sick. People might do something they do not ordinarily do and have to walk out.

There is also a dimension that is captured in the second reading speech, the bill itself or the explanatory memorandum. I want to find it. The second reading speech elaborates on the following point —

Firstly, a person will commit a crime if they assault a retail worker who is performing their duties as a retail worker in an area of a shop that is open to the public.

I wonder whether a shop with areas that are half and half would be protected in all instances. The second point is the one that I want to focus on and seek an answer from the parliamentary secretary. In the second reading speech, the Attorney General said —

Secondly, a person will commit a crime if they assault a retail worker in consequence of, or in response to, anything done by the worker while performing the worker's duties in an area of a shop open to the public. This will capture assaults that occur in a location other than a public area of a shop, or—

This is a potential part answer to the first question—

when the worker is off duty, provided the assault was incited by something the worker did while performing duties in a public area of the shop.

I am genuinely curious how that might be interpreted. I might posit a series of binary yes or no questions about this point.

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My teenage neighbour catches the bus to work at Coles. He is wearing his Coles uniform. He gets clocked by somebody on the bus and that person makes some kind of derogatory remark about the employer. Would that young worker be considered to have provided the offender with a form of incitement? He is off duty; he is going to a shift. It is not something that that individual has done; it is the association between that worker and Coles. I could make the same claim about Woolworths. In fact, I could change these things around. To what degree must the presumed incitement or provocation be on behalf of the victim of the offence? Perhaps this is just cumbersome legalese, but I find that curious. I dare not do it; I will not insult anybody. I cannot speak for the union movement, but as an observer —

A member interjected.

Hon TJORN SIBMA: Please let me finish. I would say that there is a general ethic that the unions want to protect their members from the moment they leave home to get to their workplace until they are home again—the full daily cycle of the worker, including all the things they need to do to get to their place of employment and back again safely. That would be a fair assessment and a fair perspective. To what degree is an individual retail worker protected from the time they leave their place of abode to undertake their shift? Are they protected in the food court on their lunch break? If someone who works at Woolworths at a major shopping centre, perhaps Karrinyup, has a lunch break and wants to go upstairs to the fancier food court to meet their friends—perhaps they are doing a shift in the school holidays—and they are assaulted there, will the protections afforded under this bill apply to them on level 1 or 2 of Karrinyup shopping centre as compared with when they are working on the shop floor of Woolies on the ground floor? I am attempting to contextualise to find when in time and where in space this law will apply. Will there be gaps?

Another issue that the parliamentary secretary identified early in the briefing—unfortunately this gets a bit definitional—is the definition of “shop”. I think it is kept definitionally broad. Can a retail worker be a service provider, or a service provider be a retail worker? There might be protections afforded to a mechanic so long as that mechanic is also selling an item behind the counter.

Hon Kate Doust: Have you been to a tyre shop lately?

Hon TJORN SIBMA: Yes—tyres, jacks, whatever! Will these protections apply to a mechanic in the pits who comes out to deal with an aggrieved customer who wants to dispute the cost, the time taken or a problem with the car seats? Must he be at the shopfront at the counter point where there are items for sale to receive the protections afforded under this bill, or will he or she also be afforded these—quote, unquote—protections when they are in the garage section of that business?

When we first discussed this bill in the briefing, it seemed to occlude or write out a class of worker who was not subject to direction, being the owner–operator of a business. I think that the original clientele in mind when this bill was drafted was not the proprietor of a store, a franchisee or sole trader. I understand that as I alluded to previously, an amendment has now been moved by the Attorney General to ensure that sole traders will be covered under the act. I want to ensure that every class of worker who is likely to operate in a retail space or retail shop, however that is defined, will be covered by these protections, in the hope that they might indeed be protected.

I move to the second dimension of this bill, which deals not so much with assaults in the workplace, but with the manner in which stealing offences will be dealt with. Ostensibly, the purpose of this part of the bill is to introduce greater deterrents for repeat offenders who engage in shoplifting and petty theft and to ensure that an adequate range of sentencing options will be available to courts when dealing with these offenders. It escapes my immediate recall, but I recollect that earlier this year a magistrate reflected upon the fact that he considered himself hobbled in the potential sentencing options that he could apply to those who plead guilty or are found guilty of these kinds of offences. That leads me to these questions: With whom did the government consult before, not after, this bill was introduced? Who had visibility of these provisions in a draft version of the bill before it was introduced to determine whether these measures would be reasonable and effective and consider all the possible options? That is not to say that I have been the recipient of overwhelming criticism of the bill. I think that the general view of retailers whether organised or unorganised is that this is a step in the right direction, but I think it is important to understand the range of likely outcomes and appreciate the exact definition of a repeat offender.

The bill will remove the fine-only penalty for a person who is convicted of a stealing offence—this includes an attempt at stealing, which I think is an important inclusion; I want to double-check that is included—and has two or more prior convictions for a stealing offence in the past 12 months. These repeat offenders will instead be subject to the higher maximum penalty of two years’ imprisonment and \$24 000 when dealt with summarily, providing more effective deterrents by opening up the full range of sentencing options to the court, including a potential term of imprisonment. In situations in which repeat offending is related to an underlying problem such as drug or alcohol addiction, this will ensure that the court can order the offender to engage in treatment programs with an improved

likelihood of compliance. If offenders do not engage, the court will have the ability to resentence them with a higher sentencing option, such as a suspended sentence or immediate imprisonment.

From that, I ask a number of questions. I leave aside the threshold value of stealing, which I think is set at \$1 000. I want to set that aside. On whose advice was it considered the right landing point to determine that two or more prior convictions for a stealing offence should be the threshold for a repeat offender? On whose advice was it determined that the time period of that level of offending should be over the course of 12 months? I think that this gets to the way that repeat offenders are categorised and what constitutes a repeat offence. My unlearned interpretation of this is that an individual might undertake a series of similar offences on multiple occasions on the same day, and that would count as only one strike. There might be some consistency with the way that that is counted across the statute book, but I think it demands greater examination. An ordinary person would think that if a person conducted two, three, four or more like offences on the same day, they would accumulate the corresponding number of strikes, but that does not seem to be the case; that would count for only one. Additionally, a person with a history of offending prior to this bill receiving royal assent could be taken out of the last 12 months of history. Why is the government only focusing on a pattern of behaviour, theft, that occurs in a 12-month period? Why would it not broaden that, particularly in the case of adult offenders? I can see an argument being made to restrict that narrow window to 12 months for juveniles, but for an adult in possession of their senses, one who should know better, why is that period not being extended? Were other options considered and, if so, what were those options?

The phrase that the Attorney General has relied on suggests that the Criminal Code Amendment Bill 2024 will open up a range of possible sentencing options for people who are repeat shop stealers. That invites an examination of the present suite of options. Referrals will effectively be made to a therapeutic service for drug or alcohol counselling. Presumably, financial counselling will be an adjunct to that. To what degree is the parliamentary secretary aware of the judiciary having those kinds of referral options and how many such referral places are there in the state to which such people can be referred?

In summary, the opposition supports the bill. We acknowledge that retail workers should expect to get to work safely, work safely and return home safely, free from assault, but perhaps this represents a missed opportunity to strengthen or uplift the potential sentencing options for common assault across the entire community, because if this bill is designed to provide protection to a certain class of worker, I would argue on the basis of recent crime statistics that the rest of the community requires protection as well. Why was no consideration given to increasing the application across the board? The second of my series of questions about repeat offenders is: why would we not want to clamp down on people who rampage or commit multiple offences on the same day, rather than effectively giving people a leave pass or being very generous in the way we count them?

With that, and with confirmation about the treatment of either sole traders or owner-operators of businesses being defined as a class of worker protected by this bill, I look to the parliamentary secretary's response.

HON MARTIN PRITCHARD (North Metropolitan) [3.14 pm]: I have been in this place for nine years, and it is great that a bill has come before the house on which I might have more expertise than most. My main career before joining the Shop, Distributive and Allied Employees' Association of WA and coming to this place was as a shop assistant. I worked on a shop floor for some 16 years in retail outlets such as Aherns, which was a department store, Woolworths and Coles. I have seen the gamut of major retailers. Aherns was a department store based in Western Australia. The Coles at which I worked was part supermarket, part variety, and the Woolworths store at which I worked was all food. I have some expertise within retail, and I see myself as a retail worker. I was not going to get up and speak, but the previous speaker asked a couple of questions about which I thought I could shed a bit of light for other members in the house. I thought I would take this opportunity to make a short contribution to the Criminal Code Amendment Bill 2024.

Theft within retail has always been a thing—during COVID it got a lot worse—but it has never been as prominent or in the public arena as it is now. When I worked at Coles variety, there would be an announcement that Mr Brown was required at a particular location in the store, and all the young men in the store would run to that location. That is the way we dealt with shoplifting in the past. The employer never said that we had to put our lives on the line to save a particular product. Retail is an area in which many young people get their start; it has a major junior component. It is predominantly a female place of work, although that is certainly changing a lot these days. There had to be some system in the past to deal with the incidents that occurred. Back then, employers would ultimately say that we were not meant to chase a person who had shoplifted down the street because that could open up issues, such as whether we were covered. That is how shoplifting was dealt with in the past. During COVID, we saw—it was highlighted on TV—some horrendous instances of abuse towards retail workers when stock was not available or someone wanted to purchase a pallet load of toilet paper. Ultimately, shop assistants had to face that abuse. During COVID, supermarkets were not closed like all other places, because they were deemed a necessity; people had to eat. Even during lockdowns, we were allowed to go to the shop to buy food because it was a necessity. During COVID, retail workers were considered essential workers and, for that reason, they put themselves on the line on a daily

basis, often dealing with abuse. As I said, that kind of abuse has always occurred but certainly not to the extent that it occurred during COVID. The severity of incidents certainly grew because of perceived or genuine desperation. Some people were prepared to go to extraordinary lengths to intimidate retail workers to get their own way, whether they left the store without paying or purchased more than the allotted allocation given by the employer. To make sure that people did not stockpile items, Coles and Woolworths often put limits on toilet paper and other essential items. As I said, retail workers were the ones who bore the brunt of that because they were required to work. This legislation reflects that. As a shop assistant who has ended up in this place, I am very pleased to see the recognition.

The previous speaker spoke about his Shop, Distributive and Allied Employees' Association membership, and I am glad to hear it. The member is absolutely right in saying that most workers, especially at some point in their early lives, will go through retail, whether it be in fast food, a supermarket or, indeed, other places. It is a good training ground, but it also needs to be recognised that juniors are vulnerable. This legislation is to protect those who are most vulnerable.

I am a proud member of the SDA still. I was a member all the way through my retail work, at whichever store I went to. In this case, the SDA has been working closely with employers. I am very pleased to say that this legislation is supported by all the major employers as well, not just by the union, but certainly the SDA supports it. I am very proud to say that it agitated for some remedies to what it perceived as more violence to its members. The major employers are on board as well, and that is always good to see. They are working jointly. Of course, it needs to be recognised that any real improvement that happens within retail is driven by the SDA and, in this case, supported by the employers. Not just SDA members and major retail places get the improvement; it also spreads across all retail workers within Western Australia. That is good to see.

A couple of questions were raised by the previous speaker. Drawing on experience, I would like to comment on them. The member was talking about the "facing" part of the shop—in other words, whether the person would be covered if they were working in the dock or the place where they receive goods. I ensure the member that all the places that I have seen and worked at are either a very small operation and receive their stock through the front door, which again would be the public area, or they are larger stores and receive stock through the dock, which is deliberately kept away from the public.

Hon Kate Doust: Unless, of course, it is a receiving dock, and you have to collect your product.

Hon MARTIN PRITCHARD: Of course. Actually, that is an innovation after my time, at IKEA and such. Yes, indeed, that is a very valid point, but I would say they would be retail workers in the delivery of goods, just that the counter is at the back of the store instead of the front.

The SDA has agitated for this change. The previous member spoke about the effectiveness of increased penalties. I have to admit, personally, I do not believe a person thinks of the penalty when they perform the criminal act. This bill is part of a general approach and a general education of the public that retail workers should not be taken for granted. They are essential workers, just like other people who are required to work during periods like COVID. This is a situation in which people generally understand that they have to treat shop assistants better. Increased penalties for that purpose are a worthwhile approach. I congratulate the government for taking this on board. I know it is sort of a self-congratulation, but it is a very genuine approach to a real problem that certainly has become more prominent at the current time. Heaven forbid we have to go through another situation like COVID in which shop assistants are again called upon to provide that essential service. I hope that never happens. At least we know that people may now respect shop assistants for the work they do and the things that they assist our community with.

HON KATE DOUST (South Metropolitan) [3.24 pm]: I am really pleased today to comment on the Criminal Code Amendment Bill 2024. It is quite fortuitous that we are actually debating it today; on Saturday, I was shopping in David Jones in Booragoon and saw a man start to berate a shop assistant. He was standing there with his wife and having a red-hot go at the poor woman. I hovered around her, and he walked off and was obviously going to lay a complaint. I could see that she was trying to do everything she could to calm the situation, work through it and try to do her best work in customer service, and he was not having any of it. I went over to her once he and his partner had walked away, and I said to her, "Are you okay?" She was a senior shop assistant at David Jones. Hon Martin Pritchard knows the kind of member who works there. They are very good. She said to me, "Actually, I'm shaking. I'm really upset." I said to her, "Do you think he has gone off to make a complaint?" She said, "Yes." I said to her, "Here is my card. I watched it all. If your manager comes and has a word to you, I am happy to back you up." Sometimes you cannot walk away from those things. That was just a reminder to me about the types of issues that retail workers have to deal with all the time. My colleague Hon Martin Pritchard and I are probably best served, having dealt with that at the coalface. We both started our working lives in retail. Hon Martin Pritchard obviously stayed a lot longer than I did. Unfortunately, I was sacked by Coles in my first six months. That was because a manager was stealing from the company and covered it up by sacking a number

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of staff. He lost it all in the last race, I think, on a Saturday and decided he needed to cover himself. I have always thought retail workers are significant workers. They certainly stepped up and demonstrated their importance to us as a community during COVID. When everything else was shut down and locked up, they had to continue working to ensure that we could have access to food and services. The McKell Institute did research that demonstrated that, during COVID, the incidence of violence towards retail workers rose by 38 per cent, which is a significant amount.

During our time, Hon Martin Pritchard and I spent lengthy periods of time as officials with the SDA. I was there for 17 years. Hon Martin Pritchard was probably there for longer in the end.

Hon Martin Pritchard: Twenty-four years.

Hon KATE DOUST: It was 24 years. I will put this on the record because I may not get the opportunity in due course: at the start of the member's career as a delegate for the union, the member was one of my best delegates around, and I was so pleased that the member stepped up and rose to where he did in the union. Like Hon Martin Pritchard, I have been a very proud member of that union and have worked for it both at a state and a national level over my time with it. I am still a member. I have held positions on the executive at state and national levels. I think the work that it has been doing throughout our state branches to afford better protection in legislation for retail workers has been significant and well received by the membership. There will be very few people who work in front-of-house retailing, if you like, who have not experienced some sort of violence, intimidation or harassment in their job from a customer. I know that there are probably others in here who have experienced that. When I worked on the tills in Coles at the age of 16, I had a very significant incident that I still remember very clearly, as though it only just happened. When a customer comes up to you when you are just trying to do your job, and they just let loose, and they are bellowing at you, threatening you and calling you names, it is really hard to shake that, particularly if you are a young worker. I left that day and was very distressed about that. It is something you always remember.

In our working lives as union officials in that sector, we had to deal with some pretty appalling verbal and physical attacks on members. Sadly, not just here in Western Australia but also in other states, it has not been just verbal interactions; we have lost workers due to physical assaults, stabbings and other interactions that never should have happened. Every worker should be able to go to work, feel safe and come home in a safe manner. Unfortunately, because of the role retail workers play, they are often at the coalface in dealing with people who are in a heightened state of stress and frustration, as we saw during COVID. Quite often, the shop assistant at the till or on the store floor might have been the only person they could vent at, so we saw an escalation. I have sometimes seen this in my local Woolies. I remember one night hearing from another aisle a customer having a go at a manager because they did not think that they had received appropriate service.

This legislation is really one step to try to change people's awareness of retail workers' roles and the importance of their work to us. Hopefully, it may act as a deterrent before individuals verbally or physically abuse or intimidate workers. I think that the government has taken the appropriate steps. Some other states have put forward variants of this legislation and how they have tackled these issues, but the Western Australian government has found fairly solid ground with the approach it has taken.

I know that workers in the industry are very pleased that the government has responded to their needs. Part of that is because they feel that they have been listened to. Members will recall that—I think it was earlier this year—I tabled two petitions with several thousand signatures of people working in and around the industry; one was an e-petition and one was a hard-copy petition. As my colleague said, the petitions were fully backed up by some of the major retailers, who presented here at Parliament to demonstrate their support for their employees on this issue. They want to see change. They do not want people coming into their workplaces and causing harm to their employees. At the end of the day, employers know the cost to them if, as a result of this type of action, one of their workers is injured on the job, has to take time out or has a stress-related outcome and cannot function in that role because of what has happened. I must say that I have been very impressed with a number of employers that have stepped up, particularly companies like Woolworths, where retail staff in their stores are predominantly on the floor, have direct customer contact and take the risk of having to cop the brunt of a disgruntled or aggressive customer or somebody who just feels that they want to have a red-hot go. As I understand it, the petition has been finalised because this bill is before us, which is a very legitimate reason to finalise it. I am very pleased that the union had the opportunity to petition on behalf of its members. Ben Harris, the state secretary of the Shop, Distributive and Allied Employees' Association of WA, was the principal petitioner, and he put in a substantial petition to articulate the data for the number of incidents that have occurred traditionally and since COVID to demonstrate the problem and the concern of people working in the sector.

I imagine that very few people in this place do not have a family member or friend who either has worked in or currently works in retail. We already heard from Hon Tjorn Sibma, who started his working life in retail and hopes his children will work in that space. It is an entry point for the vast majority of people before they start in their more formal or structured working life. People start working in retail in high school and, in some cases, continue

through university or whatever form of study. I have a good friend who stayed on as a night filler at Woolworths for about 10 years while they were studying. It can be a very good job. It is a good career. A lot of people underestimate it, but at the end of the day, workers are fully exposed to customers and how they feel on the day. It can be a very quick flick of the switch in how they relate to workers. Their demeanour can change and go from being fairly calm to either verbally abusing them or laying on them with fists. Hopefully, this bill will provide some deterrent. If it does not, it will see penalties imposed for those types of negative actions, so I think that is a very positive change and I commend the government for that.

The second part of the bill deals with repeat shoplifting offenders, and that is a significant scourge in the industry. People become very creative in how they steal from shops. They do not think about the consequences for the retail worker or the retailer. They can also become extremely aggressive during the process of stealing from the shop, and a retail worker could be assaulted in an attempt to prevent theft. I know that we saw that from time to time. I remember being on the top floor of the old Boans store in Cottesloe back in the 1980s and talking to union members. It was the floor on which Boans had the very nice tableware and crockery, and I saw somebody lift a box of crockery and hike it out of the store. It got to the point that retail workers were told not to chase them. It was not worth their while chasing them because they might get belted. Because the workers were women, it was just too risky. They could get done. The trick was—we had to deal with this on a number of occasions—that if a shop assistant or staff member tried to stop the person stealing on their way out of the workplace, they could be done for assault if they laid their hands on them. There were some real problems with that. This bill will try to tighten up the arrangements and act as a deterrent to those activities.

It is a very difficult space. Sometimes when stock is taken from stores, it is not just the little things. Sometimes it is quite substantial, it is very well structured, and it can cost large or small businesses many tens of thousands of dollars. In some cases, it can cause small retailers significant financial damage in how they operate their business. These are some very positive changes.

I am particularly keen on this. Retail workers have probably been a bit overlooked over time. People know they are there and deal with them all the time, but they do not take into account the customer service skill set and think anyone can be a shop assistant, but that is not always the case. People have to have some very good skills to be able to deal with the variety of people who come through retail outlets' doors, deal with their different mannerisms and manage how they interact.

It has not always been the case that specific legislation has been passed to address a need or concern of retail sector workers. Of course, their needs and concerns get picked up under general industrial relations, workers compensation or health and safety legislation. They certainly get discussed when we deal with trading hours debates because their work is at the heart of that, but I think to have something like this is very important. The government has isolated an amendment to deal exclusively with this subset of workers in our community and has picked up on what is happening in other states.

I have spent 40 years in this area. In fact, 16 May will be the fortieth anniversary of my first day as a trade union official. It makes me feel so old! I can still recall going into Coles in Forrestfield with my good friend Bill McIntosh and our new official at the time, Joe Bullock. That was my introduction to organising. I watched the abuse of a shop assistant on the floor that morning, and one of my colleagues deal with it, perhaps not in a manner in which we would in the modern age but at that point in time it was quite interesting. Both Hon Martin Pritchard and I have had substantial work experience in this space. We both have experienced these types of situations in our working lives, and we both have had to represent members who have been distraught, stressed and unable to return to work in some circumstances because of the nature of the action taken by a customer to bully and harass them and lay hands upon them in assault.

I pick up on Hon Tjorn Sibma's comments about "Where does it start and end?" I have always taken the view as a trade union official that everything from start to finish with a working person is the business of a trade union. It is its job to look out for the best interests of that worker from start to finish. The honourable member is correct: quite often, if a person is in the uniform of their company, going to and from work or during their lunchbreak, they can be seen as open game. We just recently saw the incident that tragically happened in the Westfield shopping centre in Bondi in the eastern states where shop assistants going about their business of the day were stabbed. I am not sure whether any passed away, but I know that shop assistants were involved in that very tragic and awful incident. They are different from other workers. They are not tucked away in an office. They are not on a mine site. They are not away; they have full-on customer engagement. They never know who they are going to deal with. A Perspex screen, as was put up during the COVID pandemic, was a welcome barrier for a lot of shop assistants because they could not be spat on. They could not be pointed at and verballed. It gave them some sort of sense of security and protection that had not necessarily been previously available.

This legislation in front of us today will also provide a substantial level of protection and will send a clear message to our community in Western Australia that shop assistants deserve to be treated with respect. They should be looked after. They should not be assaulted in any way, shape or form, and they should be allowed to get on with their job. This bill means that people who do not abide by those ground rules will cop a deserved penalty for not treating people with respect.

I am really pleased that the Shop, Distributive and Allied Employees' Association has taken the initiative on behalf of its members to pursue this matter vigorously with the government. It has taken some time. It has been an issue of importance to the members because it is something they have engaged with in their workplaces. They have talked about it. They have had people sign the petition. They have had people turn up to a range of events to push this issue along. They have talked to members of Parliament about the issue. I think the government has responded in a very timely manner and has made a proposal that, hopefully, will provide comfort to retail workers and demonstrate support and respect for the role that they play in both the industry and our community. I thank the government for bringing forth this bill, and I look forward to its swift passage.

HON DR BRIAN WALKER (East Metropolitan) [3.43 pm]: I do not think there will be a single person in this chamber or in this Parliament who would conceive of the concept of permitting disrespect to retail workers. That is without question. It was pointed out earlier in the debate on the second reading of the Criminal Code Amendment Bill 2024 that we have made this a special requirement for retail workers, and I can see why; they have been singled out and they feel unprotected. Indeed, they are unprotected. Anyone can walk into a premise where goods are being sold and behave in the most despicable manner; it is absolutely clear. It is also true that we are seeing, anecdotally, more and more in the way of violence in society.

I think, in a similar vein, about my colleagues in the emergency departments. For them, it is not unusual to have bottles of urine thrown at them, to be smeared with faeces, to be threatened with needles and, if a scalpel is nearby, to be threatened with a scalpel. I personally have experienced windows in an emergency department being broken and the broken glass being used to threaten me. I have been sworn at in the most vile manner. I will not repeat those words not only because they are unparliamentary, but also because they would implicate the whole group of people who would feel comfortable using such language, and there is a lot of them.

I also think about the healthcare workers who are being bullied and assaulted not only physically, but also verbally, mentally and emotionally by those who employ them, including the health bureaucrats who demand that they work twice as hard because they have cut the FTEs. The patients keep flowing in, and when healthcare workers fail to do the work of two, they are then blamed and made to feel small. Again, from personal experience, I refer to a male ex-soldier who was promoted, as they usually are, into a place of incompetence and was able to reduce to tears any nurse who dared to come to him for help in managing the difficult burden of working in the healthcare industry on a ward with patients whose lives were at risk. The response was not to help but to bully them, reduce them to tears, make them afraid to come into work, make them cower and reduce them in status to the level almost of a subhuman—a slave working on the ward to meet “my demands”. Such action remains entirely unaddressed.

I am thinking about my friends, paramedics, who attend the most horrendous scenes. They try to pick up a dead baby and feel the wrath of a parent who might actually have killed that baby, attacking them with bricks, with knives—occasional weapons. We might expect it of the police who go into the most difficult situations and are assaulted on a regular basis. Then we have the scourge of domestic violence, which is absolutely wrecking the morale of people who accept the need to feel safe in their own home and with their family but who somehow find themselves being attacked physically and verbally in the most vile manner. They are trying to put food on the table for children and being beaten while that happens. When they call for help, no help is forthcoming. But the coronial inquest might well give a few words of advice. Wash and repeat. Wash and repeat because it happens with terrifying frequency.

We see the effect on retail workers. Let us take a bottle shop worker. I think, universally, bottle shop workers are assaulted and abused by the people coming through. Alcohol does that to people. I cannot really understand why it happens in a children's toyshop, but it does with distressing frequency. It is excellent that a bill such as this is being brought in, but I ask myself at the same time: why do we need a bill such as this for a particular group of people? There were words Hon Kate Doust spoke that I entirely agree with. We must treat people with respect. Everyone must be treated with respect. That patently is not really the case, but the number of cases in which we are having disrespect and violence shown to ordinary members of society seems to be increasing.

My colleague Hon Tjorn Sibma asked what the data was. We perceive it. Maybe it is just the media holding onto this and making it appear more frequently in our faces. The sense I get is that such things are increasing, are they not?

Here we have yet another classic example of closing the stable door after the horse has bolted. Someone has actually assaulted someone, and now we are putting in place legislation that may or may not be applied. An example of legislation not being applied is the firearms legislation. The last few cases in which firearms were improperly used were by persons whom, according to the current legislation, should not have had firearms in the first place!

They were either on bail or had been apprehended for their violent behaviour, and still, they were allowed to keep weapons. With those weapons, they then committed crimes. We are now seeing legislation brought in to hamper people who legitimately and legally own firearms, obey the law and treat them like a tool. Those people who are illegally accessing and using weapons appear to be immune from legislation. It is shutting the door after the horse has bolted.

The question I put to the government is not that this bill should not be passed, it should; I support it entirely. Let us not look at the superficial problems that we have; there is violence in retail settings, emergency departments and on the general streets—people are walking down the streets and being beaten because someone took an unhappy look at them. We need to look at the underlying causes. I cannot imagine how anyone could think or feel the need to take a knife and enter a shopping centre. I am sure I speak for all in this chamber and Parliament that not a single one of us would conceive of the idea of taking a weapon with us to go shopping. It is abhorrent! It is unnecessary! And yet, we find people doing it. Why? If we could find the cause of why people feel the need to arm themselves and go out threatening other people, rather than dealing with the symptoms after the horse has bolted, perhaps we could then get a reduction in community violence. Would it not make sense to attack the underlying causes from which arise all the other problems?

Would members call me a fundamentalist? I would call myself a fundamentalist. It seems perfectly reasonable and sensible to deal not with the outliers of the problems that are increasing, but to go down to the very source of the problems and deal with those. I am putting out a call here for the government. Yes, it is a good bill, but let us deal with the fundamental underlying problems afflicting our society in which violence is simply another way of expressing oneself. It is a form of communication, is it not? Perhaps clearly expressing one's feelings with words of more than one syllable in an environment in which people are supported and helped could be used instead of someone getting a knife, gun, brass knuckles, iron bar or anything to give them a bit of power over someone else with whom they disagree and can then beat into senselessness or indeed to death to express their distrust, hatred or dissatisfaction with that person or indeed the general feeling that the world is a bad place and that they just want to strike out. Members might then say that is very well a mental health issue, and I would agree entirely.

Bear in mind, I have been accused many times of making philosophical contributions, but I feel I need to do this because there is a philosophical aspect to this, is there not? We need to look at what is actually causing this. If the problem, as I proposed, is one of poor communication, then perhaps we ought to encourage people to learn how to communicate with one another and also with the self. The worst example of that is actually in Parliament, where people shout at each other across the chamber. That is entirely the wrong way of doing it. We need to work together to find solutions to problems, not fight each other. Even the very names in here like “the opposition”—no! We should be working together to serve the people. It is a nice theory. What we see manifesting in this place, albeit in civil terms, is an extension of the problems in society in which confrontation is the norm.

For example, I look to the people who are also being continually assaulted and have no protections whatsoever. I am, of course, talking about teachers. These are people who are trying to teach our children how to actually live in this world, understand what is going on and live as human beings who can respect each other. These people, who are the backbone of the future, are being assaulted: 60 per cent of headmasters have been physically assaulted by parents. Teachers are being attacked by pupils with knives. Violent words are being used online to bully other students. This has become the norm in our society and we must recognise the underlying cause. Although it might take a generation to address, if we do not start addressing it now, in another generation they will be saying, “It will take another generation to fix this”, and so on. We must do something now because pressure is increasing in our society. If we fail to recognise the underlying causes as the ones with the responsibility to address the needs of society, then we, colleagues, are in part to blame.

Without casting any aspersions, I simply raise this point: this is an important and sensible law, but it does not go far enough, does it? It does not go far enough, because it leaves swathes of our population unprotected after the horse has bolted. I put it to members that although the bill may be admirable in its intent and I support it, it is but a shadow, a pale imitation, of what needs to happen to keep our society, children, retail workers, healthcare workers, teachers and all of us safe, so that no-one feels the “comfort” of taking a knife with them into a shopping centre for whatever purpose, ever. It is a big task. This bill will not address that. We know this. Each one of us knows this. It is a good start, but colleagues, we must take this further.

HON BEN DAWKINS (South West) [3.57 pm]: What I will say in this debate on the Criminal Code Amendment Bill 2024 is that we have gone to another category of worker for whom we need to protect from assault. The nub of the issue is that all assault is unacceptable. I do not know that we should be breaking it into further categories. This category here of retail workers has arisen because of the Shop, Distributive and Allied Employees' Association of WA—the shoppies union, is it, Hon Tjorn Sibma? I think we are effectively creating categories for which assault is apparently more unacceptable based on political grounds. In other words, because the Shop, Distributive and Allied Employees' Association is aligned with the Labor Party, it now has its own category of assault.

Really, as I have already said and we all know, all assault is unacceptable. Therefore, we should not be doing it any further. The bill suggests that some assaults are worse than others. We already have nurses and police, who have been put into their own categories.

Hon Martin Pritchard: And you don't agree with that?

Hon BEN DAWKINS: Well, I suppose I do not know the history behind those ones, Hon Martin Pritchard. They would appear to be more unique than retail workers.

As I think Hon Dr Brian Walker referred to, once we go to retail workers, we can probably go infinitely through all the occupations. I see this as an unnecessary political distinction. I will vote against the bill, but not because I think retail workers should not be protected from assault —

Hon Sue Ellery interjected.

Hon BEN DAWKINS: They are obviously already protected from assault, Hon Sue Ellery, so this bill seems unnecessary. The bill may score additional points for the Labor Party with its aligned unions, but the distinction does not seem to be valid for the purposes of the law, or of any use to this Parliament. I think the distinction for serial shoplifters is good, so I support that part of the bill.

I will go back one step to the politicisation of the Criminal Code—that is, protecting certain union groups with a specific part of the Criminal Code. Some young person will potentially have the book thrown at them because of an almost political motive in the Criminal Code. The danger here is that with any kind of mandatory sentencing or over-punitive interpretations of, or additions to, our Criminal Code, a person will be over-punished because of these provisions and now there will be hysteria around retail workers. Really, every category of worker is already protected. It will not have any impact on the passage of the bill, but for the principles I have outlined, I will vote against it.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [4.02 pm] — in reply: I rise to give the government's reply to the second reading contributions made on the Criminal Code Amendment Bill 2024. I thank members who have put their views on the record. It is disappointing that Hon Ben Dawkins cannot bring himself to support the bill. I think he has completely misunderstood what it will attempt to do and he is caught up in his animus towards the Shop, Distributive and Allied Employees Association of WA and its members. In any event, that is his right, and I do not intend to spend a great deal of time on his contribution.

I thank Hon Tjorn Sibma, who gave a substantial contribution and indicated that the opposition intends to support the bill. I thank the opposition for its support of the bill. For obvious reasons we think this is an important, albeit modest, reform in this area, and it moves the dial towards this Parliament putting on record its disgust and disdain towards people who assault retail workers in their workplace or in connection with their workplace.

I thank Hon Dr Brian Walker for his contribution. As always, he entered into a higher plane than perhaps some of the other contributors, but I will address some of his more specific concerns. I always enjoy the contributions of Hon Martin Pritchard and Hon Kate Doust, my comrades from another union, the SDA. They can only be ex-union officials. They come into the chamber with the passion and care that came from their years of commitment to try to make the working lives of the members of the SDA better. I thank them for their contributions and insights.

I will deal with the issues that have arisen. I understood from most members behind the chair that they do not require us to go into Committee of the Whole House on this bill. I will try to deal with the matters they raised in as much detail as I can. Without being disorderly, they can feel free to interject if they feel I have missed the point they think needs to be specifically addressed, although I have some detailed notes here.

Hon Tjorn Sibma wondered whether the full breadth of sentencing outcomes would be utilised in practice once the bill passes. He noted that around one-eighth of offenders sentenced in 2023 under the common assault provisions in section 313 of the Criminal Code were sentenced to imprisonment. I note in response that a charge under section 313 of the Criminal Code does not require any injury to be caused to the victim. The point I am making here is that what would constitute common assault is quite a spectrum, and therefore a proportion of those people dealt with in the information provided to the member in the question on notice that he read into the record would involve circumstances in which there was no injury caused to the victim. Therefore, we need to be cautious about making a conclusion about the proportion of convictions under that provision and the number of imprisonments. As I say, those imprisonments would have been related to the more serious spectrum of common assault. The honourable member also wondered whether there had been any ongoing increase in assaults against retail workers following the COVID-19 pandemic. In the second reading speech reference was made to an SDA survey. I have a copy of that survey in my file. For the benefit of the record I seek leave to table that survey. That will help provide context to people who might follow the debate at a later date. This document is titled *No one deserves a serve: Survey report 2023* provided by SDA National.

[See paper [3125](#).]

Hon MATTHEW SWINBOURN: That will provide some context. Some further context for the evidence base for retail workers was alluded to in the contribution from Hon Kate Doust. I will also bring the member's attention to published data from the Australian Bureau of Statistics showing that over the period from 2014 to 2022, violence on retail premises increased by 38.8 per cent in Western Australia. That is quite a significant increase in reported violence on retail premises. When we did the briefing, we might have alluded to the fact that in the statistics that have been provided to us by the courts and police, the status of "retail worker" is not one they keep records of, so it is difficult to provide a level of detail on the breakdown of the proportion of assaults on retail workers that have been charged and successfully prosecuted. One outcome of this bill, and a new provision, I think it is proposed section 318B, will be a new category under which we can look at the number of charges and convictions made under the provision. That is because it relates specifically to retail workers. Going forward, we will have quite good data on this, but it is acknowledged that, for the reasons I have explained, we do not have a clear database of court and police records.

Hon Tjorn Sibma also stated that there were a number of work-adjacent activities that a retail worker might undertake for which they are not protected by the provisions of the bill, and he gave the example of his neighbour's child who was assaulted on a bus while transiting to work in their Coles or Woolworths uniform. In that instance, it is important to understand that the mere fact that someone wears a uniform or works in a retail outlet does not protect them holus-bolus against assault. It is not a complete circle, if I can put it that way. The nexus is that someone is working in a place that is accessible to the public, and that is the real key here. The retail worker on the bus travelling to work in their Coles uniform would not be afforded the additional protections, if we are calling them that, of the higher penalty that arises from assaulting a retail worker.

I think we need to understand that if we flipped that and there was a circumstance in which that same retail worker had an interaction with a person in the retail space, if I can call it that, covered by this bill and subsequently got on the bus to go home and that person then assaulted them because they saw them on the bus, and that assault was connected to what happened on the floor, then they would be protected by the bill. If we look at the second of the limbs, proposed section 318B(2)(b) states —

in consequence of, or in response to, anything done by the worker while performing their duties, as a retail worker, in an area of a shop open to the public.

That assault happened on the bus as a consequence of something that the retail worker did in an area of the shop open to the public. There is a connection there, but there is a point at which that nexus is broken and then what is available in terms of dealing with the abhorrent behaviour of a person who assaults another person is covered by a provision that already exists in the Criminal Code. Depending on the nature of the assault and the surrounding circumstances, it could be a charge under proposed section 313 for common assault or the more serious assault provisions if there are aggravating factors or the level of injury goes beyond the lower end dealt with by common assault into wounding et cetera. I think it is important to understand the previous member's contribution that there is a baseline of protection in place already in the Criminal Code for assault. Here we are dealing with a specific range of circumstances for retail workers and we have made a policy decision to ratchet up the penalties. I hope that gives an understanding.

The member gave the example of the back dock. I worked for my nanna in her bookshop, but that might have been called "love work" rather than retail employment. She ran a bookshop in Armadale and did not make a lot of money out of that. I worked for several years as a driver delivering milk to places like Coles and Woolworths. I am very familiar with the back dock. Things have changed in the retail space in the more than 20 years since I delivered milk. Most back docks are not open to the public. The public may gain access to them, but they are not a public place. I would suggest that, with the passage of the work health and safety laws a couple of years ago and their commencement, occupiers of retail-type spaces have become more careful about who gets access to those places because they are not meant for the public. There are hybrid-type situations in which shops receive their goods for sale in the shop and may also dispense goods from the back dock. In those circumstances, if the nexus is that it is a place that is open to the public, then yes, the additional penalty will be available if that worker falls within the definition of a retail worker.

The definition of retail worker is not self-ascribed. For example, it is not a shop assistant who works under the retail trades award, or whatever it is called these days.

Hon Kate Doust: It used to be the old shop and warehouse award 1976.

Hon MATTHEW SWINBOURN: That particular award—being classified as a shop assistant. It is probably the award that the member worked under back in the day.

That is not how that is worked out. Whether someone is a retail worker comes within the definition section of the bill that we have here. I think the member mentioned task and duty. The key issue is whether they are working in a shop and whether they are in a place that is open to the public. As the member said, we could go through granular

detail and iteration upon iteration of particular circumstances. I think the fairest thing to say about the possibilities, and later realities is that it will depend on context and circumstances. The police will initially make an assessment before they charge someone, then the courts will make determinations on it. I am not saying that to kick the can down the road or to avoid the answer. Retail spaces are some of the most common places in our society. There are many different set-ups and it will become a question of fact and circumstance of which the courts, and initially the police as the charging authority, will take into account. I can say, “What about this, that and the other”, but it will come back to particular circumstances. What else did the member cover? I do not mean that flippantly; I am trying to find my place in my notes.

Hon Tjorn Sibma: If I may assist, the definition of worker is now more comprehensive.

Hon MATTHEW SWINBOURN: I will get to that. I will read in what we have said when we introduce the amendment in the other place to get it on the record here.

The member asked whether service providers will be covered by this offence. The answer to that is a qualified yes. If they are only service providers and do not provide the sale of any goods, then they would not be covered. For example, lawyers and staff who work in a shopfront law firm in a retail space would not have additional protections because they do not sell goods. A more common service-type example in a retail or shop-type setting is a massage parlour. If staff only provide a massage service and do not sell goods, then they would not be covered; however, if they sell oils or gift certificates, then they will be covered. I think it is unlikely that people would not onsell additional products to supplement a service-based business. I am trying to think of other examples. A real estate agent does not sell goods; it sells properties. Agents would not be captured.

The member asked about mechanics or tyre fitters, where there may be a retail space at the front where mechanics sell whatever mechanics sell these days—they might sell a pine smelly thing that goes in the car. We do not see many people selling fanbelts anymore. Fanbelts used to be everywhere you went. They obviously sell tyres. They fall within the category of selling goods, but then there is a space out the back where the servicing is done. In my experience, servicing areas are no longer open to the public. There used to be a time when kids got to ride on the vehicle lifter at the tyre shop or mechanic. None of that happens anymore. They are very cautious; however, there may be circumstances in which the public does enter. If there is an assault on the mechanic, the key question is, is it a space that is open to the public? If it is, they would be covered. There is a tyre place around the corner from my electorate office. Although it is accessible, there is a chain across the driveway that says no entry to the public, but it does have a retail space at the front. If an interaction happened in the retail space, that would be covered, but if a member of the public walked in through the back, into the non-public space and assaults someone, then that additional penalty will not be available. Again, it comes back to the point I made before that context is really important here.

I think that the member also had some questions about the amendment. We thank the opposition for raising the issue in the briefing. We have reconciled from that. The issue was identified. We went back and had a look at those provisions. It was clear that there was a gap in that a sole trader or other business owner might not be covered by this legislation. We formed the view that they would not be covered under our previous drafting. We went back to the Parliamentary Counsel’s Office for further drafting and an amendment was tabled and moved. Again, we thank the opposition for that. It might be worth noting for some other members who say that we never amend our bills that that happened. Of course, it was a government amendment, not an opposition amendment, but we got ahead of members opposite; I suspect that if we had not done anything about it, we would be talking about an amendment to the bill at some point. But the issue was investigated, and a decision was made to draft an amendment in the consideration in detail stage in the other place to clarify the policy position, which is that business owners should clearly be included in the definition of “retail worker” for the purposes of this offence.

The amendment redefines “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.

This new formulation required a definition of “contractor” to be added to ensure that employees and subcontractors of contractors would also be included. The new definition of “contractor” is —

- (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;

Taken together, these amendments align with our policy aim, which is to ensure that retail workers are not excluded from the definition by reason of their type of engagement. If they are performing duties for the retail business either as an owner or under the control or direction of the business through a contract or labour hire arrangement, we

have ensured that they will be covered. This has resulted in our definition being a little more complicated than that of New South Wales or South Australia, but we think it ensures the fairest outcome.

I think the other issue here is to make a distinction between contractors who are within the control of the business and contractors who are providing services to the business. A refrigeration mechanic going to fix a broken fridge in a local IGA would not be covered by this bill because they would not be a retail worker. That is not the mischief we are trying to deal with here. A refrigeration mechanic is clearly not there to engage with the population at large. They are not there to provide retail services; they are there to do a job. This legislation will not cover them or other contractors in that situation. But we need to make a distinction and bring in those contractors who might work at Myer or David Jones on the perfume counters. They are often not employees of those department stores; they are representatives and employees of the particular —

Hon Kate Doust: House.

Hon MATTHEW SWINBOURN: They are employees of the particular house; thank you, Hon Kate Doust.

Hon Kate Doust: We call them impartial contractors.

Hon MATTHEW SWINBOURN: Yes, but they are retail workers. We understand that they are providing services on behalf of Myer or David Jones, for example, to sell things to the public at large, and under our definition they will still be covered by the additional penalty provisions that we are providing in this bill. I think it is important to make that distinction between different types of contractors—a term that is broadly used—to show where we are going with that.

I am keeping an eye on the time because we are hitting up against question time.

I feel I might have covered off most of the matters that the member raised on retail workers. I will now move on to the part of the bill that deals with stealing. I think the member asked who was consulted on those provisions of the bill. I do not have a temporal way of doing it. We did not consult post-the introduction. Before the bill was introduced into Parliament, the Director of Public Prosecutions, the State Solicitor's Office, the Western Australia Police Force, the Chief Magistrate, the President of the Children's Court and Legal Aid Western Australia were consulted. Obviously, I cannot go into the details of the feedback that we received from heads of jurisdictions about the \$1 000 threshold and those sorts of things. However, it would be fair to say that in general terms, the number of convictions and the time frames that are now included—this relates to another question the member asked—were based on the feedback we received from them, or at least some of them, but I do not have any further details about that.

The member also asked about the 12-month period and where that threshold came from. The sentencing options currently available for stealing an item valued at under \$1 000 include a fine or suspended fine of up to \$6 000, a conditional release order or a community-based order, and, of course, the person also stands to get a criminal record. In most one-off cases in which a person has stolen something of low value like a bottle of Coke or a piece of steak, a term of imprisonment is not warranted. I think that most people would agree with that. I always think about the great irony that our wonderful nation is established on the basis of many people being convicted and transported for petty crimes, so I think that, as a nation, we should always be wary of such a punitive approach. A term of imprisonment is not warranted. An existing range of sentencing options provide for an appropriate penalty to be imposed.

However, we know that some people are not deterred by the existing consequences and continue to offend with blatant disregard for the law and the rights of hardworking business owners. We are targeting those repeat offenders with a higher maximum penalty that includes a potential term of imprisonment. I think there was some publicity around a case early this year or late last year—I cannot remember the timing—whereby some individuals were stealing alcohol from liquor outlets, and a particular individual came before the media and said, "I'll keep doing it, because there's nothing you can do to effectively deter me from doing it." This measure is largely in response to that kind of behaviour and blatant disregard for people's entitlement to not have their property stolen from them.

The criteria of the repeat offender provision of two prior convictions in the last 12 months has been selected to ensure that the reform applies to prolific offenders. Based on 2023 data of those who would be deemed repeat offenders under the proposed amendment, 81 per cent had five or more convictions and 59 per cent had 10 or more prior convictions for stealing in the previous 12 months. I think that shows that we have captured the intended cohort. The reform strikes a balance between targeting cases in which a higher penalty may be warranted and mitigating the impact of the reform on courts, Corrections, legal services, prison populations and Closing the Gap targets, noting that stealing is a particularly high-volume offence, and that the majority of offenders are Aboriginal people.

Hon Tjorn Sibma; Hon Martin Pritchard; Hon Kate Doust; Hon Dr Brian Walker; Hon Ben Dawkins; Hon
Matthew Swinbourn

The member also asked about the sentencing options. I will cover those off. Sentencing options higher up the hierarchy that will now be available to the courts include an intensive supervision order, suspended imprisonment order, conditional suspended imprisonment order and imprisonment. Currently, 79 per cent of stealing convictions in the Magistrates Court result in a fine being imposed, and courts can impose a community-based order whereby a defendant has treatment needs requiring them to engage with a program, complete community work hours, be subject to supervision or all those things. However, courts are often reluctant to impose such an order in situations in which they know the person is unlikely to comply because they have little power to enforce them. If the person does not comply, they are brought back to court, whereby the options upon resentencing remain limited to a fine, conditional release order or another community-based order. Under the reforms, there will be a greater incentive for offenders to engage in orders such as community-based and intensive supervision orders because if they do not, they will be liable to be resented to a different option higher in the sentencing hierarchy, which could be a term of imprisonment. This, in turn, may encourage courts to impose more orders in cases in which the offender has identified treatment needs.

The member also queried why multiple offences committed in one day will be essentially treated as one strike. That is to ensure that we are capturing one course of conduct. It is consistent with the other repeat offender provisions across the statute book—for example, for restraining order breaches and home burglaries.

Debate interrupted, pursuant to standing orders.

[Continued on page 1756.]