

CRIMINAL LAW AMENDMENT BILL 2001

Second Reading

Resumed from 13 September.

HON PETER FOSS (East Metropolitan) [5.41 pm]: It is with great relief that I speak on this Bill today. This Bill has been on the Notice Paper for a long time. I have taken out the *Hansard* for 13 September many times and have cast my eyes over my previous remarks so that I can continue them, each time to be disappointed that we have not made it to this item. I am grateful that, on this occasion, my efforts to re-read my speech, pleasurable though they have been, have not been wasted.

Hon Ken Travers: Why don't you just table it?

Hon PETER FOSS: I am sure every member of this House is also keen to keep up with the currency of the debate, but I hope they have not been forced to read my last contribution.

Hon N.D. Griffiths: Eventually I will, but this Bill is about punishment, and I have the feeling that you are about to dish out some!

Hon PETER FOSS: No. One of the reasons that I have read my previous contribution to the second reading debate - if I may use the terminology used by Hon Dee Margetts; sometimes it is a bit much to say that we have contributed anything - is so that I will not repeat anything that I said on that occasion.

Hon Derrick Tomlinson: I would describe your contribution as erudite.

Hon PETER FOSS: I thank Hon Derrick Tomlinson and take that as a great compliment, because the person most given to making erudite contributions in this House is Hon Derrick Tomlinson.

Hon Derrick Tomlinson: Thank you!

The PRESIDENT: Order! The member seems to have driven the minister from the House!

Hon PETER FOSS: The last remark that was made during that debate was an interjection by the minister that he did not dye his hair; and that was interesting to know. We were dealing during that debate with whether 60 is the appropriate age at which a person can be considered elderly; and some personal interest appeared to be expressed by various members of the House about whether it was or was not. The Opposition indicated that it was prepared to go along with the Government's assessment that people who have reached the age of 60 are elderly - not that we on this side necessarily agree with it, but because that is the sort of thing that Governments are entitled to do when they set the policy of a Bill. The policy of this Bill is that people who have reached the age of 60 are elderly; therefore, crimes that are committed against those people should be punished more rigorously than crimes that are committed against people who have not reached the age of 60.

I mentioned also that the Opposition intends to put some teeth into this Bill. Nonetheless, we accept what the Government has set as the policy of the Bill, and we take greatly to heart the objections raised in the other place about a similar amendment that was moved in that place. We anticipated that that objection would be raised. Nonetheless, we believe we should stick with the policy set by the Government, because it picks out a number of offences and says that all of those offences, when committed against the elderly, should be punished severely. It does not differentiate between offences that are really bad and offences that are just bad. However, the objection that was raised in the other place was that some offences are not really bad but are just bad. We accept that objection, and we have willingly adjusted our proposition about how to deal with those offences in line with the statements made by the Government, with which we have considerable sympathy. Another criticism made in the other place was about the drafting of our amendments. We will be moving our amendments in the form that we have outlined and, when we get to that stage, I will explain why I do not agree with those comments.

The concept of this legislation is fine. However, it is a piece of window-dressing and posturing for seniors. The difficulty is that it conveys an impression about the victimisation of seniors that we know is incorrect. I would hate seniors to believe that they are being more victimised than they are.

Hon Kim Chance: Is that a fact?

Hon PETER FOSS: In the earlier part of the debate, I tabled an Australian Institute of Criminology bulletin - we receive those bulletins regularly in the mail - that confirms what we all know; namely, that seniors have a lesser victimisation rate than people of other ages. However, the problem is that seniors have a greater perception of victimisation.

Hon Kim Chance: I think the whole community has that perception.

Hon PETER FOSS: I gave some of the reasons for that. *The West Australian* has a lot to answer for, because it was irresponsible in refusing a request by three pensioner groups not to keep publicising attacks on the elderly. Those pensioner groups feared that that would leave elderly people with the impression that they are subject to greater victimisation than they are; and if they believe they are subject to victimisation, that is almost as bad as being victimised. They were also concerned about copycat actions. Newspapers restrict their reporting of suicides and hijacks, because some people will copy those actions. It is a matter of balancing competing public interests. Unfortunately, *The West Australian* virtually told those three pensioner groups to go jump. I also mentioned Western QBE Insurance Ltd, which had been using a full-page advertisement with a particularly nasty photograph of an elderly person who had been bashed during a robbery. Those groups said that it was having a terrible impact on elderly people when they opened their newspapers every day and saw this full-page photograph. They said that was not on, and Western QBE, to its credit, immediately withdrew that advertisement. That was a very responsible attitude, and Western QBE is to be commended for it.

Leaving that aside, we must be careful that in our political posturing we do not add to the concerns of seniors, because the effect of a perception of crime against the elderly is to virtually imprison the elderly in fear in their own home. Whatever may be our political situation, we should not, in the course of what I think is a political Bill, do anything that may impact on the perception of elderly people about their security, or otherwise. We do not want to increase that perception in any way. Nonetheless, people who prey on people who are disadvantaged and in any way vulnerable should receive a more severe penalty than if they were to pick on a person of their own size. Therefore, we support the concept that the penalties should be increased. However, we do not support the concept that the penalties should be increased to the maximum penalties, because the evidence is overwhelming that that has no impact whatsoever.

If the Government is serious about this, it will implement a minimum mandatory penalty. I know the Labor Party is not keen on minimum mandatory penalties. I do not believe they are the most delicate of instruments. That is why I, as Attorney General, introduced the matrix legislation, which was far too lightly dismissed by the Labor Party. The time will come when it will look for a more delicate instrument. The Attorney General has said minimum mandatory sentences would not allow us to have control over the prison numbers and provide limited ability to differentiate the people who should receive the full ire of the community from those who should not. The matrix has the capacity for the judge's own methods to be used to add the little tweak that Parliament might wish for. As time goes on, the Government will find that the matrix is a useful way of solving the problem that will be presented to it in the same way it was presented to me. The Government will also find the parts of the matrix that were enacted useful in letting it know what is happening.

One of the problems the Government will have is ascertaining the truth. The system as it is currently set up conspires to make sure that the Government does not know the truth. It will not be able to find things out. It is extremely difficult to get statistics, and it is even more difficult to get statistics that are reliable and useful. I will be interested to hear from Hon Nick Griffiths how the Government arrived at the interesting suggestion, to which I referred, that the amendments proposed by the Government will result in seven more people going to jail in a year than the 220 that were predicted by the amendments proposed in the other place. That is a fascinating statistic. Knowing the degree of accuracy of statistics available on these matters, I find this to be incredibly precise, but unbelievable. I look forward to hearing the precise calculations the Attorney General used to arrive at the figure of 227 extra people who would go to jail under the mandatory sentencing provision. I am tempted to say it is rubbish. If it is correct, I would like to know why the 227 people who commit serious crimes against the elderly should not go to jail. In fact, the suggestion that 227 people who commit serious crimes against the elderly will be free alarms me. All the Bill will make mandatory will be imprisonment for 12 months. That does not mean an offender will go to jail for 12 months. He will be sentenced to 12 months imprisonment, which means he will go to jail for less than that. That situation may have changed while this debate has been taking place, because some parts of the Sentencing Act that previously had not been proclaimed have now been proclaimed. I have received e-mails from the State Law Publisher that changes to the Sentencing Act have occurred, but I have not yet checked what they are. Large portions of the truth-in-sentencing legislation had not been proclaimed. I do not know whether they have now been proclaimed. That will have an impact on whether, under these provisions, people go to jail for four or six months. That proclamation may have occurred during the course of this debate. In any event, those changes will have an impact in the future.

I await with great interest the explanation of how many people would end up in jail if our minimum mandatory sentencing proposals were included, and the calculations used to arrive at such a precise number as 227, which I have no doubt Hon Nick Griffiths is fully briefed on and will be able to dissect with incredible precision. We will go into more detail about the consequences of the proposed improvements during the committee stage of this Bill. The Opposition supports the Bill, but it wishes to move some amendments to improve it and make it effective.

Extract from *Hansard*

[COUNCIL - Wednesday, 14 November 2001]

p5481c-5491a

Hon Peter Foss; Hon Ray Halligan; Hon Giz Watson; Hon Murray Criddle

HON RAY HALLIGAN (North Metropolitan) [5.54 pm]: I express my concern that the Government is somewhat hypocritical in its approach to this issue. Some history recorded in *Hansard* suggests that concern is justified. The second reading speech on this Bill rightly stated that members and the community at large should consider crimes against the elderly as reprehensible and inexcusable. We do; however, as Hon Peter Foss has already said, why should we stop at legislating for those aged 60 years and over? Many other vulnerable people within our society also require protection, such as those with some infirmity. I recall that someone was murdered in a toilet block south of the Swan River. He was unable to protect himself when set upon by an individual, obviously a coward. I do not believe that gentleman was over 60 years of age. He deserved some protection. Pregnant women are certainly vulnerable. Why should they not also be protected?

The second reading speech states -

This Bill sends a clear message to offenders. Just as importantly, it demonstrates the Government's commitment to protecting our seniors.

That is the hypocrisy. The previous coalition Government introduced the Criminal Code Amendment Bill 1999 to adjust what was known as the revolving door. All members would be aware, and it has been well publicised, that some young people have been before the courts hundreds of times. The legislation brought before this House in 1996 aimed to stop that revolving door. It was the "three strikes and you're in" legislation. Hon Nick Griffiths will look down his nose at my comments and tell me that I am wrong in detail, but in principle I am correct. The then Labor Opposition, in consultation with the two Australian Democrats members and, I am afraid, the Greens (WA), said that we could not slap those poor people over the wrist any harder. The Labor Party perpetuated that revolving door. Those young people who were thumbing their nose at the law and everything within the community were allowed to remain at large, to drive cars at high speeds through intersections and to kill pregnant women and their babies. It is my belief that had that legislation been allowed to go through, much of that would have been stopped.

Hon Peter Foss has already made mention of the matrix legislation. That Bill was split, and the matrix part of it was sent off into the never-never, and was not seen again. There are very good arguments for a matrix.

Hon N.D. Griffiths: That is not true.

Hon RAY HALLIGAN: The minister can argue his case, but I remember him standing in this place and arguing that we should not have a matrix.

It is most unfortunate that the Government is now telling the world at large that it is demonstrating its commitment to protecting seniors.

Hon Peter Foss: I think we will see the matrix back. The police powers Bill indicates that there will be stricter powers. Now that members opposite are in government, they understand the problem.

Hon RAY HALLIGAN: I sincerely hope so, because statistics prove the need for that matrix.

Sitting suspended from 6.00 to 7.30 pm

Hon RAY HALLIGAN: Prior to the dinner break I was talking about the hypocrisy of the Labor Government in not necessarily bringing this legislation forward, but making statements in the second reading speech about the clear message that it was said to be giving to the community at large about how it wanted to commit itself to and demonstrate that it was looking after the seniors in our community. As I mentioned at that time, there are more vulnerable people out there than just seniors. They appear to have been forgotten in this legislation. In particular, the hypocrisy revolves around what has occurred before. Some of that took place in May 1999 when certain legislation was before this House relating to amendments to what was known as the mandatory sentencing legislation. I will quickly quote Hon Peter Foss, who said it far more eloquently than I could. On that issue he said -

I sometimes despair of the attitude of people to protection of our community. When the Government -

That was the previous coalition Government -

drafted this legislation it did not, unlike the Northern Territory, merely pick out property offences. This legislation specifies the offence of home burglary. There is no such thing as a minor home burglary. It is an iniquitous offence because not only is it a property offence - the offender has invaded a person's home and stolen property - but it is an invasion of a person's life. People who have been burgled feel that their home has been desecrated and they no longer feel safe. There is a world of difference between a property crime as referred to in the Northern Territory legislation and home burglary. Home burglary strikes at the essence of people's perception of their safety in the community. Frequently what is taken is irrecoverable. A person's home should be one place in which he feels safe. A victim of such an offence would not see it as minor.

Extract from Hansard

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Hon Peter Foss; Hon Ray Halligan; Hon Giz Watson; Hon Murray Criddle

The court may take an attitude as far as the antecedents of the offender are concerned that it is not appropriate to impose a punishment. That is what the Young Offenders Act does. Although Hon Nick Griffiths talks about it being a minor offence, there is no such thing as a minor home burglary offence - it is a major offence. However, it is not always appropriate to throw the book at young people as a first response. It may well be appropriate not to record a conviction or impose any punishment.

The whole concept of the three strikes provisions is to give people a chance. We are not talking about three offences; in many cases we are talking about hundreds of offences. Sometimes these offenders have a list of burglaries as long as their arm. To get to a third strike, an offender must have been to court on a charge of home burglary and have been found guilty. He is then given a chance. He may have committed 10 or 12 offences. He then goes out into the community and commits another offence or a string of offences. That is often the case; it is seldom that these people come before the court having been accused of committing only one burglary. For the second time the court says that it is dealing with a child and, although the offence is serious because it is a home burglary, we give him another chance. It is only on the third occasion that he appears in court that it asks where is the balance. I do not have a problem defending the three strikes provisions because jail has been made the last resort.

We must take into account that we are also dealing with human beings who are the victim of home invasion. I am reminded of a famous New Guinea case that dealt with the question of "accident". A man was charged with killing his wife. He said he accidentally shot her with his rifle. The only problem was that it was a single-shot rifle and he shot her twice. We have gone beyond accident when a person comes before the court for the third time after being given two opportunities. The fact that he has been granted leniency previously is all the more reason he has exhausted the situation. On the third occasion something should be done, and it is appropriate that Parliament prescribe what should be done. I reject the idea of a minor home burglary. The Bill is perfectly consistent with the intent of the House. We certainly allowed for the fact that an offence should count as a strike even when there is no conviction. The Young Offenders Act even talks about punishment. It could be that people know that dad will give the kid a good belting, but the fact that the punishment has not been imposed by the court seems to be neither here nor there. If someone gets a belting from his father instead of a community service order from a court, it is not a strike. I am totally dismayed at the failure, particularly of the Labor Party, to support this.

The response by Hon Giz Watson two and a half years ago was -

This is not the correct approach to justice. It is inappropriate and I agree with Hon Helen Hodgson's remark that it is questionable whether it has achieved what it was claimed it would. The Greens (WA) were not in a position to vote on the Bill when it was first introduced. If we had been here, we would have opposed it outright. We do not support any extension of the three strikes provisions and will oppose them in the committee stage.

It is most unfortunate that the members felt as they did two and a half years ago. As I said, further offences took place, some of which, unfortunately, may well have been against some of these elderly people who are mentioned in the second reading speech.

This business of increasing the maximum penalties again gives rise to the thought in the minds of some - I am sure that is what the current Government is trying to do - that the Government is being hard on offenders. As a matter of fact, some of the recorded sentences over a period suggest otherwise. However, because the courts do not have to impose any minimum sentence, they decide the sentence that will be imposed. I will go through a number of those penalties.

The maximum statutory penalty for the crime of attempted murder is 22 years imprisonment. Six such offences occurred during the period to which I am referring. The maximum sentence imposed was 10 years and the minimum was two years. That meant the average was 6.33 years, which is nothing like the 22-year maximum. During this period there were 152 cases of the offence of robbery while armed. Again, that crime carries a maximum statutory penalty of 22 years. The maximum sentence imposed was 12 years and the minimum sentence was one year. The average sentence imposed for that crime was 3.9 years.

Hon N.D. Griffiths: Over what period?

Hon RAY HALLIGAN: I believe it was over 12 months.

Hon N.D. Griffiths: Which 12-month period are you talking about?

Hon RAY HALLIGAN: It might have been between 1997-98 or 1998-99. The three sets of figures presumably represent three different periods.

Hon Peter Foss: I think it was 1997-98, 1998-99 and 1999-2000.

Hon RAY HALLIGAN: As it is the last one on the list, it might be the 1999-2000 period. The lawyers here will know which offences the minister was referring to in the second reading speech when he spoke of acts intended to cause grievous bodily harm. That offence relates to the bashing of our seniors. Admittedly, there were only 14 cases. The maximum statutory penalty for that offence is 20 years imprisonment. The maximum sentence imposed was 12 years and the minimum was one year, which again is only an average of 5.25 years. The list goes on and on.

Although the maximum sentence can be continually increased, it does not, for one moment, mean that the courts will increase the sentences imposed on the perpetrators of those crimes. That is the reason the previous coalition Government wanted to bring in the sentencing matrix. I firmly believed that something of that nature was needed so that the elected representatives within this Parliament could show the people who elected them that they were thinking of what the community wanted done to the perpetrators of those crimes. They did not want it to be left to the judges, over whom the Parliament rightly can have no sway. However, it is incumbent upon us that just as the Parliament can impose a maximum sentence, it should impose a minimum sentence. Some flexibility could still be included so that judges could take extraneous circumstances into consideration. However, we are abrogating our responsibility unless we go down a path of that nature. Hon Peter Foss suggested that the Government might see the error of its ways and bring forward legislation to cover the sentencing matrix at some time in the future. I can only hope that occurs as soon as possible. That would be for the good of all those vulnerable people within the community who I suggest are tired of this revolving door situation in which young offenders, in particular, can get away with doing whatever they like, whenever they like, because politicians in this Parliament tend to bury their heads in the sand.

HON GIZ WATSON (North Metropolitan) [7.43 pm]: I will speak on this Bill on behalf of the Greens (WA) to indicate that the Greens will not support the Bill. What does this Bill seek to do? It was suggested in the second reading speech and in comments in the public arena that this is a simple Bill that seeks to increase the maximum penalties for certain crimes against people over the age of 60. It seeks to direct the courts to consider the vulnerability of the victim of the offence when sentencing. I draw the attention of members to a couple of lines in the second reading speech by Hon Nick Griffiths. He claimed that this Bill would send -

... a clear message to offenders. Just as importantly, it demonstrates this Government's commitment to protecting our seniors.

It goes on to say -

Western Australians should be safe in their community. This is particularly important for those victims who are least able to defend themselves.

Having read a large number of second reading speeches on a variety of topics over the years, I can say that this second reading speech falls into the category of being very heavy on political rhetoric. The Greens (WA), like everybody in this community, recognise and agree that attacks on vulnerable people are unacceptable and we do not, for a moment, question that the suffering elderly people have experienced is particularly horrendous and obnoxious. On a personal note, one attack, which I think was referred to in the second reading speech, was against my neighbours who live across the road from me. In that case, the offender attacked the two elderly people with a bar stool. It was a particularly nasty attack. One of the things that was particularly unusual about that case was that both victims expressed concern that consideration be given to the perpetrator of the crime. They were non-judgmental in their comments after the event, which is pretty extraordinary in this day and age. I am not saying that everyone will react like that, but that comment was certainly made.

As far as the Greens are concerned, we consider this Bill to be highly politically motivated and that it will not achieve what the second reading speech claims will occur. The Bill seeks to increase the penalties in certain areas for crimes committed against people over the age of 60: the penalty for the crime of grievous bodily harm will go from 10 years to 14 years imprisonment; for wounding it will rise from five years to seven years; for common assault it will rise from 18 months to three years; for assault occasioning bodily harm it will increase from five years to seven years; for assault with intent it will rise from five years to seven years; for robbery and assault it will rise from 14 years to 20 years, and 10 years to 14 years respectively; and for fraud it will rise from seven to 10 years.

The second component of the Bill is that the courts will be directed through the Sentencing Act. Judges will be required to consider the vulnerability of the victim in the sentencing of the offender. Why target crimes against the elderly and not crimes against other vulnerable groups in our community? Previous speakers have made similar points. If the principle of this legislation were to protect vulnerable groups, surely the way to address that would be to identify all vulnerable groups and systematically apply penalties to maximise protection to those groups. Organisations such as the Australian Institute for Criminology, the Australian Bureau of Statistics and the University of Western Australia Crime Research Centre provide information not only about vulnerable groups, but also about the main victims of the types of crimes described within this Bill. Vulnerable groups

within our community include disabled people, the young and women. Gay and lesbian people could also be included, as they are often the victims of violent attacks.

This Bill is in response to the political pressure exerted by certain seniors' lobby groups to get tough on crime. No-one is detracting from the fact that they have done a very good job in lobbying for some action from this Government and the previous Government to get tough on crime. The problem is that their arguments tend to be simplistic: they want these people locked up, which is about the level of the Opposition's argument. I could probably spend a good part of the evening explaining why locking up people would exacerbate the problem, so that people emerge from the prison system more alienated from society and, therefore, more likely to perpetrate crimes in the future.

Let us look at the proposition that offenders particularly target the elderly. If one took all one's information from *The West Australian* and the *Sunday Times*, one could be forgiven for thinking that the elderly were prime targets of most offences. One must also look at what is behind crimes that involve seniors as victims. Crimes such as housebreaking and bag snatching have been highlighted most frequently in the media. These crimes are often opportunistic and by far and away the majority of cases are related to drug use and drug addiction. Most housebreakers and bag snatchers, who are specifically after cash or easily saleable items, are affected by drugs and are irrational. The argument that increased penalties will deter these people does not stand up to questioning.

The other point I am sure that has been raised in the House before, but is worth reiterating, is that one of the key reasons the elderly are involved in incidents of bag snatching is that many bank services have closed, and are continuing to be closed. Elderly people, who do not like using automatic tellers, which are often in vulnerable locations, are the subject of opportunistic attacks while they are at those machines or have just used them; whereas a lot more security was afforded when the service was provided within a bank. Seniors in my constituency have told me that this is a big problem for them.

Hon Ray Halligan: They are often robbed in the car park, not at the ATM. It matters not whether they come from inside a bank or the ATM, when they are seen to be coming away from bank premises it is assumed they have money.

Hon GIZ WATSON: I take the member's point, but they feel a lot more vulnerable when they conduct their transaction in the open than in the bank. They argue that it provides an opportunity for them to be approached and for money to be taken. That is what I have been told of their experience with automatic tellers.

We could be forgiven for thinking there is an epidemic of crimes against seniors. However, I refer to questions that I asked earlier this year on statistics of crimes against seniors, in which the answers indicate a decline in those crimes. I refer to question without notice 397, which I asked the minister representing the Minister for Justice and Legal Affairs in this place on 9 August 2001. I asked -

- (1) On average, how many fewer offences a year have been calculated will be committed against seniors as a result of this proposal?
- (2) How has that figure been calculated?
- (3) How does the average prison term for such offences increase to result in the net increase of seven beds a year projected in answer to my question without notice of 31 July 2001?
- (4) How did the minister arrive at the increase of seven beds a year?

The minister's answer reads -

- (1) Changes in levels of reported crime are the result of a complex interaction of a number of factors, such as the effects of early intervention and crime prevention initiatives, changes in police practices, the effectiveness of treatment and rehabilitation programs, and the specific and general deterrent effects of sentencing, not to mention the vast number of social factors that influence crime. Given that it is not possible to state exactly what the impact of only one of these factors will be, the Government expects that the trend toward a decrease in the amount of crime committed against those aged 55 and over, as reported in two independent reports, will be maintained.

	1997	1998	1999	2000
Recorded crime *(1)		5.0%	5.3%	4.4% N/A

In the second report, which was called "Victimisation surveys", the figure in 1999 was 1.5 per cent, which dropped to 1.3 per cent in 2000. I can give members the references to those studies. The minister's answer continues -

Although changes to the counting rules and definitions across the surveys make direct comparison difficult, there is sufficient recent information - 1997 onwards - to suggest that the trend is towards a decrease in the number of elderly people being the victim of a personal crime.

I will not bother to read the minister's answer to the other questions, because that was the significant point in answer to that question. Why on earth are we pursuing this Bill if the trend indicates a decrease, which is anticipated to continue, in the number of elderly people being the victims of crimes against the person?

Hon Ray Halligan: It is call a deterrent.

Hon GIZ WATSON: I differ with the member on that point, and we can have a discussion on the deterrence argument in a minute. As I said at the beginning of my comments, if the argument is that we want to protect those who are vulnerable, we must first identify the vulnerable people who are currently the major victims of crime, and then target our response to those rather than pick a more populist approach that says seniors are somehow a special case. I argue they are no more a special case than people with disabilities, young people or Aboriginal people.

Hon Ray Halligan: Would you suggest amending this legislation to include that group ?

Hon GIZ WATSON: No. The Bill is fundamentally flawed in the way it is presented. When we talk about the crimes that this Bill seeks to address we should ask who are the major victims of these sorts of crimes. The major victims of crime against the person are young men. I will quote "Crime and Safety Western Australia" from the Australian Bureau of Statistics dated October 1999 under the heading "Personal Crime", which reads -

Victimisation rates for personal crime varied according to age and sex. Males were more likely to be victims of crime than females with a 6.8% victimisation rate compared to 4.5% for females. Younger persons experienced higher victimisation rates than older persons, with 13.3% persons aged 15 to 24 years experiencing personal crime. The victimisation rate progressively decreased with age to 1.5% for persons aged 55 years and over

In fact, it is young people who are most overrepresented in these types of crimes. The other substantial area of victims of crime is women in domestic violence. If members looked at those figures -

Hon Murray Criddle: It is a different area.

Hon GIZ WATSON: It is a crime against a person; it is assault. Unfortunately, it is still a major semi-hidden area within our community. Report No 124 from the Australian Institute of Criminology refers to trends and issues in crime and criminal justice. The paper is entitled "Femicide: An Overview of Major Findings". The extract reads -

On average, 125 females of all ages are murdered each year in Australia, with the greatest risk of homicide victimisation for females being between the ages of 21 and 23 years. Overwhelmingly, it is men who kill women - male offenders were responsible for killing approximately 94 per cent of adult female victims. However, the likelihood of a woman being killed by a male stranger is very slight - each year in Australia fewer than 14 women are killed by a man they do not know.

Nearly three in five of all femicides, defined here as the killing of women aged 15 years and over, occur between intimate partners, and nearly all of these are as a result of a domestic altercation. When a woman is killed, she is most likely to be killed in a private residence.

That section of the community should be given priority for resources and legislation to provide whatever protection can be provided.

Hon Peter Foss: Is that committee that I established continuing under this Government?

Hon GIZ WATSON: Not at this stage.

Other people who are most over-represented as victims of crime are Aboriginal people. The University of Western Australia Crime Research Centre crime and justice statistics for Western Australia 1999 executive summary reads -

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Hon Peter Foss; Hon Ray Halligan; Hon Giz Watson; Hon Murray Criddle

Aboriginal people continue to be over-represented as victims of violence. Based on crimes reported to police, the victimisation rate of Aborigines for violent offences in 1999 was 5,518 per 100,000 persons - more than five times the rate of non-Aborigines (1,072 per 100,000 persons).

Obviously related to Aboriginal victimisation, the Kimberley region was identified as having the highest rate of violence in 1999. It also had the highest rate of property crimes in 1999. The Perth metropolitan area had one of the lowest rates of violence compared to the other regions, but had a high rate of property crimes and the highest of robbery offences

Similarly, in Aboriginal communities, young male victims are even more disproportionately represented in these statistics.

A further paper from the Australian Institute of Criminology, titled "Abuse of older people: Crime or Family Dynamics" reads -

The prevention and control of violence is an important policy goal in Australia. Violence is an undesirable affront when seen as a solution to problems, but a particular affront when committed against vulnerable members of society such as elderly people.

This paper reports research which estimates that about 4.6 per cent of older people are victims of physical, sexual or financial abuse, perpetrated mostly by family members and those who are in a duty of care relationship with the victim.

The range of crimes that the Bill focuses on will not address some of the issues to deal with abuse that occurs within the family. Why focus on issues that have had prominence in the media rather than looking statistically at where the major offences against the elderly are occurring? They are often occurring when there is a duty of care relationship, when a member of the family is involved, and also when there is financial abuse. Obviously, the finance brokers' scandal has highlighted the vulnerability of elderly people to those types of crime.

The final report that refers to statistics is report No 212 from the Australian Institute of Criminology titled "The Victimisation of Older Australians", which came out in June this year. The report was commented on in *The West Australian* of 25 August of this year. The article reads -

Elderly Australians face a far greater risk of being swindled than falling prey to violent criminals, according to the Australian Institute of Criminology.

But their overall chance of becoming victims of crime is low - contrary to popular perceptions that they are grossly over-represented in crime statistics.

The institute's latest discussion paper, *The Victimisation of Older Australians*, reiterates that seniors have the lowest rates of criminal victimisation in the community.

For instance, the rate of robbery recorded among Australians aged 65 and older was about half that of the national average. And they faced only one-quarter the risk of the rest of the population of being assaulted.

But the paper noted the vulnerability of the elderly to fraud. Though they were still less likely to fall victim to fraudsters than younger Australians, the difference to the national average was smaller.

The survey of 3032 Australians, of whom 1246 were 65 and older, found 8.5 per cent had been victims of fraud during 1999. This fell to 3.9 per cent among the elderly.

"The findings suggest that consumer fraud is more of a problem among older people compared to other age groups," the report said. Commenting on the report, institute director Adam Graycar said fraud was an important part of older people's experience with crime.

"Among older Australians consumer fraud is 2.2 times more prevalent than assault, which is the most common of the violent offences," Dr Graycar said. "This contrasts with younger persons, among whom fraud is as common as assault."

The report found that the rates of offences such as burglaries and motor vehicle theft did not differ markedly according to the age of the victim.

And fear of crime among the elderly was strongly linked to their declining physical strength and fitness - rather than actual victimisation rates. Other factors which explained their victimisation rate were social habits and patterns of day-to-day behaviour and financial status, given about 74 per cent of older Australians relied on the age pension.

"The financial insecurity of some older people may make them attractive to get rich quick schemes," the report found.

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“On the other hand, a low income may mean that older people have less money to be stolen or to spend themselves in activities outside the home, which may contribute to a lower rate of victimisation.”

The second point that the Bill seeks to change is the requirement that a judge in sentencing must take into consideration the vulnerability of any victim of an offence. The existing provisions of the Sentencing Act 1995 state that the seriousness of an offence must be determined by taking into consideration any aggravating factors. Part 2, division 1, section 6(2) of the Act reads -

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

- (a) the statutory penalty for the offence;
- (b) the circumstances of the commission of the offence;
- (c) any aggravating factors; and
- (d) any mitigating factors.

We have over the years debated in this place the issue of sentencing. This Bill is another example of limiting the discretion that a judge can use in determining what factors he or she considers to be aggravating or mitigating circumstances in the commission of an offence. Based on my understanding of “aggravating factors”, they could easily include vulnerability of the victim, the age of the victim, and whether the victim had any previous experience of victimisation and therefore was more likely to be fearful of a particular offender. Currently, the Sentencing Act allows - quite properly in my opinion - a broad opportunity for a judge to do exactly what we expect judges to do; that is, to make a judgment about what is or is not an aggravating or mitigating factor. I am concerned that members are seeking to highlight a particular component, in this case the vulnerability of a person over the age of 60 years. Where do we go from there? Do we then prescribe other areas in which the judge will have to take into consideration factor X or Y? I have argued before in this place that I think the Sentencing Act adequately provides the discretion that is appropriate for the judge to be able -

Hon Ray Halligan: Why legislate at all if you believe the judge will do the right thing? Why bother to even have a maximum sentence? Why not allow the judge to make all those decisions?

Hon GIZ WATSON: The answer to the member’s question is that the Bill seeks to provide a deterrent to offenders. One must question that argument to which I just referred. It is always raised in debates about the need for harsher penalties for X, Y and Z. However, as I said initially, there is little evidence that a lot of these crimes, including assault associated with housebreaking and theft, are committed by people who are in a fit state of mind. Many people who carry out burglaries are under the influence of amphetamines.

Hon Ray Halligan: What should we do with them?

Hon GIZ WATSON: We should not give them longer prison sentences. One of the most telling comments that I ever heard in this Chamber was that we could not possibly keep drugs out of prisons. We must treat the issue of drug use and abuse as a health issue, and address the reasons those people break into premises or knock off handbags in order to feed their habits. Addiction is a health issue. This legislation will create more criminals and perpetuate the constant cycle.

Hon Ray Halligan interjected.

Hon GIZ WATSON: Why do we not give it a try? What we are currently doing does not work. Stiffer penalties have not worked.

Hon Ray Halligan: We do not want to create a revolving door, and leave young people in the community to perpetrate hundreds of crimes.

Hon GIZ WATSON: I disagree with the member.

Hon Derrick Tomlinson: How would we deal with offenders?

Hon GIZ WATSON: Their addiction could be treated as a priority outside of prison.

Hon Ray Halligan: Does the member want to turn the prisons into hospitals?

Hon GIZ WATSON: That is not a bad analogy. I will address the perception that crimes against the elderly are widespread. It has been suggested that anyone who had read *The West Australian* and the *Sunday Times* over the past couple of years would have thought we were in the middle of a crime epidemic against the elderly. I refer to the Australian Institute of Criminology trends and issues paper No. 44: “Fear of Crime and Fear Reduction Strategies”. The previous Government and this Government have cynically used the fears within the community to drive an agenda of getting tough on crime. This paper explains some of the issues of fear of crime in Australia. It states -

Females tend to report greater levels of fear, but males tend to be at greater risk of victimisation. This apparent paradox may be explained in part by the fact that those offences committed predominantly against women, such as sexual assault and violence in the family, are particularly likely to induce fear. One might also add that for a variety of reasons, many relating to the perceived efficacy and appropriateness of the criminal justice system, these very offences have been much less likely to be called to the attention of the police.

The report refers to media exposure. It states -

The Australian public appears to take an interest in crime news, and the supply of such news is abundant. Frequent exposure to news coverage of crime may lead one to overestimate the probability of personal victimisation, especially since the risk of becoming a victim of crime tends to be unequally distributed across Australian society.

Overseas researchers have concluded that the effect of newspaper coverage is complex, with some forms of coverage increasing fear and other forms of coverage decreasing fear. The effect of official crime rates on fear is also mediated through the newspaper coverage of crime. In Britain, readers of tabloid newspapers which have more sensational crime coverage reported higher levels of fear than readers of broadsheet newspapers, whose crime coverage is less predominant and less dramatic.

One of the side effects, or perhaps a direct effect of the heightening of fears within the community about crimes against the person and particularly home burglary, is the incredibly cynical exercise of selling more security screens by preying on the fears of elderly people. Advertisers of those products use images of elderly and vulnerable people to encourage them to turn their houses into fortresses so that they will not be victimised. I argue that in many cases that exacerbates the message that they should be in fear of their safety.

On 17 October during the Estimates Committee I asked a question about the Department of Justice and its major achievements for the 2000-01 period. The *Budget Statements* referred to a pilot project in the Town of Vincent to provide support for seniors who were victims of crime. The *Budget Statements* also noted that due to the low number of referrals and the lack of demand for the services, the project should not continue past June 2000. This pilot project interested me. I went to its launch in the Town of Vincent. At the time, I thought it was a very good initiative because it advised seniors about not only practical issues to make their houses more secure, but also how they could support each other and find support within the community to feel less vulnerable. That type of initiative is fantastic because it is about creating networks that provide support that, in the past, were more available within the community. For example, in the past people knew their neighbours' habits and would check on them. I was interested to note that the project had been wound down or disbanded due to a lack of demand for its services. Therefore, I asked -

Is the lack of demand due to a low number of senior victims?

The answer was -

Yes.

I asked also -

Why was there a low number of referrals?

The answer was -

The Town of Vincent has a relatively low level of crime in general and seniors are not a large representative group in that area.

I asked also -

Who was responsible for referrals?

The answer was -

The police and the Town of Vincent.

I suggest that, certainly in the Town of Vincent, this epidemic of crimes against seniors does not exist.

The Greens (WA) do not support this Bill, because we do not agree with the philosophy that underlies it. We do not agree that the way to reduce crime in a community is to take a populist approach to a certain sector and seek to introduce legislation that claims to address the concerns of that sector. The Greens (WA) argue that the incidence of crimes against seniors is declining. If the Government really wanted to take a sensible and comprehensive approach to crime prevention and deterrence, it should first do its homework and work out who are vulnerable and who are the major victims of crime in our community, and target legislation to effectively reduce the incidence of crime in those areas. Make no mistake: the Greens (WA) do not condone violence

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against any vulnerable person in our community, whether that person be elderly, young, black or gay. The Government claims that it is trying to make a difference. However, this legislation is a joke, and we will not be supporting it. The Government should go back to the basics and look seriously at the issues of drug use and domestic violence in our community, and at community integrity, and not introduce a simplistic political Bill such as this.

HON M.J. CRIDDLE (Agricultural) [8.22 pm]: Many points have been raised in the second reading debate on the Criminal Law Amendment Bill. Sometimes when a proposition is put forward, we knock it rather than try to suggest alternatives. This Bill may not go far enough. However, in saying that, we need to look also at other initiatives, and I will touch on that later.

The purpose of the Bill is to increase the maximum penalties that can be applied by criminal courts for certain offences and to require the courts to consider the vulnerability of the victims when sentencing offenders. The Attorney General claims that this Bill is consistent with the State Government's policy to protect our seniors. I notice that these days, a senior is a person aged 60 and over. Some of us are getting very close to that time

Hon Sue Ellery: Speak for yourself!

Hon M.J. CRIDDLE: The member will get there quicker than she thinks!

Hon N.D. Griffiths: Certainly in this place!

Hon M.J. CRIDDLE: These measures should be supported. However, that support should be qualified by recognising that although the Bill increases the maximum penalties that can be applied, the penalties that are applied are still at the discretion of the magistrate or judge. That support should be qualified also by recognising that the greatest rate of victimisation is among young people, particularly young men; and that point has been made by a few members tonight. The Bill does little to protect the vulnerable. It focuses only on seniors. I realise seniors are a vital element of our community and need to be protected. However, the criminological research does not support the policy that increased penalties will deter people from committing crimes, and that needs to be taken into consideration when these decisions are made. The Bill should not be rejected on that basis. However, the Government should acknowledge that the effect of the Bill is to encourage the courts to impose longer sentences that fit the severity of the crime. I believe severe crimes should be dealt with in that way.

I have always believed that a police presence is vital and that police numbers are an important factor in protecting the elderly and preventing crime, particularly when the police are visible. There is some debate about whether there are sufficient police numbers in rural and regional Western Australia. However, that applies everywhere. The police need to be visible to make it known to people that if they happen to step out of line, they will be caught. That applies to not only criminal offences but also traffic offences. The way to fix the problem is for the police to be visible on the roads rather than hidden behind a tree, because when we see the rabbit ears come over the hill behind us, we put on the brakes pretty quickly. That is a clear example of how we can carry out some form of law enforcement and make people aware that the laws must be obeyed.

We have investigated some of the comments made by the Law Society of Western Australia about this Bill. The Law Society is in favour of increasing the penalties for the more serious offences of robbery and wounding. It points out that the age of the victim is already considered by the courts; therefore, this legislation may be unnecessary. It points out also that this legislation may have some unintended consequences, because it will apply increased penalties to common assault and fraud, and those offences are often committed by someone who lives with or is well known to the victim. In such cases, if the victim is elderly, the offender may also be elderly.

Hon Giz Watson said that the Greens (WA) are not in favour of this legislation. It is all very well to say this legislation is no good, but we need to deal with this issue and find solutions.

Hon J.A. Scott interjected.

Hon M.J. CRIDDLE: I did not hear many practical solutions, but I will stand corrected if at some time Hon Giz Watson -

Hon Giz Watson interjected.

Hon M.J. CRIDDLE: Drug law reform is not the answer. We need to put in place a practical mechanism to solve the problem. A lot of people say that petrol sniffing is easily fixed. It is not easily fixed. It is a matter of either taking the petrol away, which is difficult in certain environments, but perhaps they should all have diesel land cruisers -

Hon Peter Foss: Then people would smuggle it in, which is quite legal.

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Hon M.J. CRIDDLE: We need to wake up to some of these issues. Perhaps if alcohol is a problem we should cut out the alcohol.

Hon Derrick Tomlinson: Or make a law to abolish crime; then there will be no crime!

Hon M.J. CRIDDLE: I am sure Hon Derrick Tomlinson always has a solution. At the end of the day, we need to have practical solutions. One practical solution that I had something to do with involved a man called Mr Martin, who was running a form of camp for Main Roads Western Australia and was teaching young people how to work and how to assimilate into normal community life, and that was quite successful. One of the real issues in our society these days is that many people are getting it too easy and have forgotten what it is like to do a normal day's work. We will have to face up to those issues in the near future to overcome some of the difficulties with regard to offences against people who are vulnerable. Decisions regarding that may have to be put in place to assist this sort of legislation. This legislation does not cover a wide enough area. It is very specific about older people, but that does not necessarily solve the issue that we are confronted with when it comes to crime in that area. I will be supporting this legislation as far as it goes.

Debate adjourned, on motion by Hon N.D. Griffiths (Minister for Racing and Gaming).