



# Legislative Council

## Crimes (Sentencing Procedure) Amendment (Assaults On Aged Persons) Bill Hansard - Extract

26/09/2001

### Second Reading

**The Hon. JOHN TINGLE** [11.06 a.m.]: I move:

That this bill be now read a second time.

There are all sorts of arguments about what is, or what seems to be, obscenity; and it arouses considerable heat and emotion. However there is a form of what I regard as obscenity which, in my opinion, is much worse than an X-rated movie or the use of explicit language in films and television—repellent as those things might be. To me, one of the very worst obscenities is a television news picture or a newspaper picture of a very old person in a state of shock, with blackened eyes, broken nose, pulped mouth, fractured bones, covered in blood and bruises, after being the helpless victim of a savage and unprovoked attack by somebody.

Unhappily, this sort of abhorrent crime is on the rise. There seems to be an element within our criminal community which views the old as fair game. They callously figure out that the old are often feeble, slow-moving, confused, and frightened, and will offer no resistance to an attacker. So they decide, cold-bloodedly and with cruel deliberation, that these people can be attacked and robbed of their possessions, their savings and their pension money without the slightest risk that the attacker will be injured or fought off in any way. That old bones are brittle, that old muscles are weak, that these people injure and bruise so easily, just adds to the attraction of this sort of crime for a certain type of gutless creature.

Some of the pictures we have seen of seriously injured elderly suggest, to me, at least, that their very helplessness arouses some sort of savage blood-lust in their attackers, and that they often indulge in a ferocity and a duration of attack which is driven by that feeling. And, as I said, this is a crime which is on the increase. Serious and violent assault against the elderly is common. Whether it is a handbag snatch, a home invasion, a knockdown, or a grab-and-run attack in a shopping centre, the consequences for the elderly victim are often quite devastating. Apart from the physical injury that may be suffered, the loss of a sense of security and confidence, of dignity and of personal safety that is experienced by old people is immeasurable. They might have been outgoing, confident, independent members of society before the attack, but afterwards they are seldom ever the same again.

This not a huge crime in terms of numbers. It is not a big statistic in comparison with gun crime, knife crime, general assault, murder or rape. But it is a crime whose numbers are increasing, and whose effects are getting worse. And I believe it is timely for us to take steps to curb it, as far as possible, because we are an ageing population, and as more of us get older the problem will become numerically worse. Let us quantify that argument. Figures from the Australian Bureau of Statistics show that in 1996 the median age of the Australian population was 34 years. Persons aged 65 and over were 12.1 per cent of the population. Projections for the year 2051 put the median age at 42.6 years, and the percentage of the population over 65 at 23.1 per cent—almost doubling in half a century or so.

Lately, the official organisations that look at crime statistics have been taking an interest in crime affecting older people, which indicates to me, at least, that they recognise this as a growing problem. There have been two interesting studies, one by the Australian Institute of Criminology, number 212 of June 2001, entitled "The Victimization of Older Australians". It commissioned a survey in April 2000 to examine this victimisation. It makes the interesting general point that older people have the lowest rate of crime victimisation when compared to the rest of the population. The Bureau of Criminology study also makes the observation that 74 per cent of older people derive their main source of income from Government benefits. It suggests that the relatively low income may expose them to more risk factors associated with not being able to afford residential security, or to deal with financial losses arising from victimisation.

The survey tends to show that while the incidence of assaults and thefts is lower numerically for people over 65, these offences still make up a substantial proportion of offences against older people. Also, while in the under-65 age group males were 9 per cent more likely than females to be the victims of petty crime, in the over 65s the incidence of these offences was the same—suggesting to me that the sort of criminal who would not be game to tackle a younger, fitter man would feel that an old and weaker man was fair game.

Another interesting feature was that older people who were separated or divorced had much higher rates of personal victimisation than the married—bearing out the idea that this sort of crime is aimed more at people who are not only feeble and defenceless but alone! These figures from the Australian Bureau of Criminology also largely agree with figures on offences against the over-65s provided by the New South Wales Bureau of Crime Statistics and Research. Those figures show that between 1995 and 1999 the incidence of attacks on elderly people almost doubled. These are not big numbers, true. But we have to offset their relatively low numbers against the type of victim who has suffered them, and the vastly increased and lasting traumatising of these older people.

As an example, in 1995 there were 794 attacks—that is, offences against the person—against people aged 65 and over. In 1999 that figure rose to 1,502—almost double. It also means that every day in New South Wales four elderly people are being attacked, bashed, robbed and subjected to hurt and fright from which they never recover. The number of deaths of elderly people resulting from these attacks rose from 15 in 1995 to 20 in 1999—still not big numbers in the overall picture of crime and murder, but a big increase in incidence. And are we content to say that the agonising deaths of 20 elderly people does not really matter, because many more people are killed on the road and in general crime? Are we content to say that 1,502 elderly people attacked in this State in 1999 should not really be a cause for concern, because the number is small compared to other crime? Surely the very vulnerability of the victims pleads the case for special consideration and a specific approach to trying to deter these crimes.

So often these attacks happen in the home. They happen in a home where the person may have lived for 40 or 50 years, perhaps with a spouse now dead, perhaps with children growing happily to adulthood, and where there has never been any kind of threat—any kind of danger—anything but peace and comfort and security. And suddenly, out of nowhere, in that familiar environment, perhaps while the person is asleep—certainly when they are alone—violence bursts in, threatening, torturing, stealing, and ransacking. The home will never feel the same again, and a lifetime of confident security is banished, in a matter of moments, by some worthless grub who probably enjoys the fright and injury he—or she—inflicts, who revels in the sense of power over a terrified, helpless old person, and who hurts them badly and robs them of their pittance—and for what? Drugs? Booze? Gambling?

The figures I mention from the Bureau of Crime Statistics and Research—which, incidentally, are largely supported by similar figures from the Australian Bureau of Criminology—are broken down into five-year spans, and show that the people most attacked are usually in the 65 to 69 years age bracket. But the figures show that the attacks, the injuries and the deaths extend upwards to the top category of 85 years of age and over. In fact, in that same period, 1995 to 1999, attacks on people aged 85 and over exactly doubled, from 21 in 1995 to 42 in 1999—a constant, in line with the general increase in attacks on the elderly.

I repeat that these are not large numbers of people, relatively speaking. But they are big numbers if you feel that one of the most helpless, vulnerable and unprotected groups of people in our community are becoming, increasingly, the target of thugs and thieves; and that they are entitled to expect us to do something—or try to do something—to give them a little protection and reduce the likelihood of further attacks. It would be wonderful if we could create some ring of protection around these old people and make them safe from attack. But we cannot. So I proffer this bill as one small step in trying to deter the potential attacker—in trying to make the attacks on these vulnerable people less attractive, by attaching seriously increased penalties to them; and so spelling out the message, loud and clear, that we, as a community, do not take these crimes lightly, and want them punished adequately.

If you feel this is a bit trivial, and a bit of a fuss about nothing, just close your eyes for a moment and imagine an elderly relative—mother, father, grandmother or grandfather, aged aunt or uncle—being the victim of one of these attacks. Imagine them with blackened eyes, a smashed nose, a broken jaw and fractured limbs—or, as in one case I have heard of, the fingers of both hands crushed by being jumped on. If you can imagine that and still feel that the sort of increased penalties this bill proposes are not worthwhile, then I am wasting my time; and I hope it never happens to an oldie of yours. It has been suggested to me in discussions about this bill with other honourable members that a thief cannot, necessarily, be expected to inquire about a potential victim's age before attacking. That is perfectly true.

But age is a fairly apparent thing, visually, and one of the things we had in mind in proposing this bill is to say to a would-be attacker, "Be careful when you think about attacking any apparently old person, because you will face stiffer penalties, and if you don't actually know how old they are, you run the risk that they might be older than you think, and the penalty might be even more severe." The purpose of the bill is to provide some deterrent to any attack on any elderly person. Sure, the sort of low life that would deliberately single out an old person to savagely beat up is probably too stupid to be able to work out the likely penalty—but that is no reason not to try to get that message through. I believe it is worth a try.

Let me turn to the bill. The Crimes (Sentencing Procedure) Amendment (Assaults on Aged People) Bill 2001 is not a big or a complex bill. All it does is add a new section 24A into the Crimes (Sentencing Procedure) Act 1999 to allow a court special, additional penalties for attacks on people over 65 years of age. Let me stress that this bill does not introduce mandatory sentencing, although I believe that in other circumstances mandatory sentences could probably be justified. This bill does not take away the utter discretion of the court in regard to the final head sentence, and it does not set down sentences in terms of specific periods of years, months or weeks.

Let me deal with the bill in some detail. Proposed new section 24A, to be inserted after section 24, provides that in the event of an assault on an aged person the court will have available to it a maximum penalty, which increases by a specified percentage for each extra five years of the victim's age. Subsection (1) sets out that section 24A applies to an offence involving assault, or any other offence against the person, occasioning actual bodily harm, where the victim of the offence is of or above the age of 65 years.

So the bill suggests that the threshold point—the starting point—for these percentage increases in penalty is when the victim is 65 years of age or older. That is when the higher penalties cut in. And, of course, there will be argument that this is arbitrary. There will be suggestions that somebody who is, say, a week short of their sixty-fifth birthday is discriminated against because the bill does not protect them. All those postulations can probably be sustained. But a proposed piece of legislation of this sort has to have a starting point somewhere. Sixty-five is still the generally accepted age for retirement from the active work force, and a deal of State and Commonwealth legislation—in areas such as social welfare for instance—is predicated on this age.

And let us not forget that while 65 is the generally accepted age at which people are likely to retire from the active work force, it also presupposes that they should be able to enjoy the remainder of their life in expected peace and tranquillity. Subsection (2) of section 24A sets out the levels of percentage increase of maximum penalty and parallels the five-year span age categories observed by the Bureau of Crime Statistics and Research. For example, an attack on a person aged between 65 and 70 years would attract an increase of 10 per cent in the maximum penalty available to the court. Then for each extra five years of age there is a corresponding increase of 10 per cent up to the age of 90 years. But for attacks on people aged over 90—which seem to me to be particularly disgusting—the increase in the maximum available penalty is 75 per cent. The actual table of proposed percentage increases is in the bill.

Subsection (3) makes a special provision that, if the offence occurs in the victim's residential premises and follows the offender's forcible entry into those premises, then the maximum penalty allowed is increased by a further 10 per cent. Subsection (4) provides that the section applies whether or not the offender knew when committing the assault of the victim's age, but does not apply if the court is satisfied that the offence was provoked by the victim. This reinforces the point that we are seeking to deal with unprovoked assaults on the elderly, and I am told that almost every such assault is in fact unprovoked, unexpected and unjustified. Finally, subsection (5) makes it clear that the reference to a victim's age in relation to an assault is a reference to the victim's age when the offence was committed.

As I have said, this is not a complex bill. It is not mandatory sentencing. It does not reduce in any way the court's discretion to apply a sentence that it considers to be appropriate, because this bill deals only with the maximum sentence which is available to the court if the court wishes to use it. However, I hope that it will result in courts taking this type of offence very seriously and, by imposing heavier sentences, at least trying to make these assaults less attractive. We must try to get the message through to the cowards who would prey on older people just because they are so vulnerable that we, as a community, detest this sort of crime and want it to be punished severely.

The bleeding hearts who think we ought to be kind to criminals will oppose the bill and say that it is unnecessary because there are not a lot of these crimes. The bleeding hearts will say that the criminals who attack the elderly ought to be counselled and rehabilitated. Well, this bleeding heart is not concerned with the welfare of gutless criminals or with their rehabilitation. This bleeding heart is concerned with trying to protect the old, the vulnerable, the weak and the frightened, who can hardly ever be rehabilitated after they have been savagely bashed by someone wanting to steal their pension money or their cherished possessions. This bill is simple, caring and necessary. I commend it to the House.