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## CRIMES AMENDMENT (MURDER OF POLICE OFFICERS) BILL 2011
## Second Reading

**Debate resumed from 26 May 2011.**

**The Hon. MICK VEITCH** [11.16 a.m.]: The Opposition opposes the Crimes Amendment (Murder of Police Officers) Bill 2011. We oppose the bill on many counts. However, there are two main reasons. First, mandatory sentencing is ineffective and removes the ability of the court to deliver an appropriate penalty based on the individual nuances and circumstances of each individual case. Second, the bill privileges the lives of police officers above others such as paramedics, ambulance officers, emergency service workers, nurses, social workers, prison wardens and many other professions who also face significant risk at work.

No-one sitting in this Chamber denies that the death of a police officer on duty is anything less than a tragedy. It is a tragedy for the family, friends and colleagues of the officer, but it is also a tragedy for the community. However, the proposals contained in this bill will not bring about justice; rather, they will hinder the judicial process. The Law Society of New South Wales notes that, "mandatory sentencing removes the experience, wisdom and balance of the judiciary from the sentencing process". Significant research suggests that juries are more likely to decide on a lesser charge when faced with a mandatory sentence. Mandatory sentencing also removes or considerably reduces the incentive for the offender to plead guilty, subjecting the family of the murdered officer to a full-blown trial.

Mandatory sentencing experiences from America show that mandatory sentencing encourages behind the door negotiating and plea bargaining as opposed to open court proceedings. There is no proof that mandatory sentencing will dissuade or reduce police murders. Current sentencing laws are not lenient. In an open letter to the Attorney General opposing the proposed legislation the New South Wales Bar Association clearly outlined the sentencing provisions contained in the current law. It stated:

> The current legal position regarding sentencing for the murder of a police officer may be summarised as follows:
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> a) Pursuant to s 61 (1) of the Crimes (Sentencing Procedure) Act 1999, a sentencing court must impose a sentence of imprisonment for life on a person who is convicted of murder "if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence".
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> b) Section 19A (1) of the Crimes Act 1900 provides that "a person who commits a crime of murder is liable to imprisonment for life", although a sentencing court may impose a sentence of imprisonment for a specified term … Pursuant to s 19A (2), a person sentenced to imprisonment for life for the crime of murder "is to serve that sentence for the term of the person's natural life"—a life sentence cannot be divided into a non-parole period and a residual period (the rest of the offender's life) during which he or she would be eligible for release on parole. Thus, a life sentence means what it says—a sentence of natural life—subject to the possibility of the exercise of the prerogative of mercy by the Executive. A significant number of persons have received that sentence in NSW in the last 10 years.
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> c) If a sentence of imprisonment for life is not imposed but rather a determinate period of imprisonment, the sentencing court must, pursuant to s 21 (2) (a) [of the] Crimes (Sentencing Procedure) Act 1999, take into account as an aggravating factor in determining the appropriate sentence that "the victim was a police officer".
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> d) Where a determinate period of imprisonment is imposed, the sentencing court must, pursuant to s 44 (1) of the Crimes (Sentencing Procedure) Act 1999, impose a non-parole period for the sentence (that is, the minimum period for which the offender must be kept in detention in relation to the offence).
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> e) Pursuant to the "standard non-parole period" provisions in the Crimes (Sentencing Procedure) Act 1999, the sentencing court must set a non-parole period of 25 years unless the requirements imposed in s 548 of that Act for imposing a different non-parole period are satisfied.

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The other message contained in the bill is the privilege of one life over another. This bill ignores the significant risk faced by other front-line public servants—paramedics, ambulance drivers, emergency service workers, nurses, social workers, prison wardens and many other professionals who are exposed to dangerous situations on a regular basis, not to mention civilian murder cases. I refer to an article in the *Sydney Morning Herald* of 26 May 2011 entitled "Making sentences fit the crime". It contains an interview with Bob McEnallay, the father of murdered police officer Glenn McEnallay. It states:

> Bob McEnallay says the life of his surviving son, Troy, not a police officer, should not be valued less than that of Glenn. He believes there should be a minimum sentence for murder, regardless of who the victim is. "I wouldn't like to think my son's case would attract more attention from the courts than some other citizens," he said. "I know the [government's] intentions are good, but I would rather see a system where the maximum possible sentences for murder are issued for any citizen who is murdered."

For these reasons the Opposition will not be supporting the bill.

**The Hon. NIALL BLAIR** [11.22 a.m.]: I support the Crimes Amendment (Murder of Police Officers) Bill 2011. The bill amends the Crimes Act 1900 to provide that mandatory life sentences are to be imposed by courts on persons convicted of murdering police officers. This reform has been necessary for many years, yet the former Labor Government refused to do it. It talked the talk but year after year it failed to deliver. The New South Wales Liberals and Nationals have been committed to this policy since 2002. In Opposition we introduced bills to bring about amendments to the Crimes Act to help protect our police from those who would seek to do them the greatest harm. A lack of will by the then Labor Government saw those bills defeated.

I am proud to be part of an O'Farrell Government that will stand up for our hardworking officers. The parameters in this bill are clear and unambiguous. A compulsory life sentence is to be imposed on the perpetrator where a police officer is murdered while executing his or her duties or as a consequence of, or in retaliation for, actions undertaken by any police officer. This legislation is essential and overdue. It is saddening to remember that since 1971 16 police officers have lost their lives as a result of the actions of offenders who have attacked them while executing their duty to protect the community. Members of our police force need and deserve this new law to deter anyone who would consider the murder of a police officer. It is important that as a community we provide protections under the law for police officers to protect us.

Police officers enforce the laws passed by our Parliament. An attack on our police officers is also an attack on our legal and parliamentary system. It is important to the fundamental peace and stability of our society that we protect the law and the officers who enforce it. There can be no mercy for a person who knowingly kills a police officer who is carrying out his or her duties or retaliates against an officer. Similarly, where a person is engaged in criminal activity that risks serious harm to police officers and, as a result, murders a police officer, that person deserves the full force of the law and the highest penalty that the law provides—imprisonment for the term of the person's natural life without release on parole.

The amendments are not draconian or unreasonable; they acknowledge that it is possible that an officer may be killed without the perpetrator knowing that the victim is a police officer. There may be circumstances where the perpetrator is under the age of 18 or is suffering a significant cognitive impairment. These extenuating circumstances have been incorporated in the amendments to ensure that only adult and deliberate murderers of police officers are automatically sentenced to life imprisonment. I believe that this is a well-balanced set of amendments, which will provide greater protection for both police officers and the community. In conclusion, I pass on my condolences to the family of the police officer in Queensland whose life support machine will be turned off today. It highlights the need to strengthen these laws. I pass on my condolences to the Queensland Police Force and to the family of that officer. I commend the bill to the House.

**Mr DAVID SHOEBRIDGE** [11.26 a.m.]: On behalf of The Greens I oppose the Crimes Amendment (Murder of Police Officers) Bill 2011. It is true that the Government has had this as a policy platform for a number of years. However, just because something is a policy platform and has been committed to for a number of years does not make it good law. Indeed, if this bill is passed—and it appears that the House will pass it—it will be a significant step backwards for justice in New South Wales. It will not produce what the Government asserts it will produce—and the Government makes that assertion without evidence.

It will not produce greater safety for police officers. It will produce more arbitrary sentencing, more unjust outcomes and almost certainly it will produce more trials and more suffering for family members of any police officer who tragically loses his or her life in the course of duty. Those family

members will almost certainly be required to sit through a protracted trial because there will be no incentive for any defendant charged under this law, if it becomes law, to do anything other than plead not guilty and seek to avoid a conviction.

I will deal with these matters individually. I am grateful for representations from the New South Wales Bar Association and the Law Society of New South Wales in putting together principled and cogent reasons why the bill should not become law in New South Wales. The first reason is that mandatory sentencing breaches basic principles of justice. Justice that is not refined to deal with the individual litigant defendant before a court is not justice; it is an arbitrary outcome imposed by a parliament. The Parliament is here to make laws and classes of laws but the implementation of that law and how that law applies in the circumstances of an individual citizen should be—and indeed our system of laws has said for hundreds of years that it must be—subject to the discretion of the judge when sentencing.

This bill will remove all judicial discretion where the defendant is found guilty of having murdered a police officer and some very threshold points are met under the bill. There will be no judicial discretion to do anything other than lock up a defendant for life. The Australian Law Reform Commission, when speaking on mandatory sentencing in its report of 2006, stated:

> The principle of individualised justice requires the court to impose a sentence that is just and appropriate in all the circumstances of the particular case. Courts have consistently recognised the importance of this sentencing principle. For example, in *Kable v Director of Public Prosecutions*, Mahoney ACJ stated that "if justice is not individual, it is nothing"... Individualised justice can be attained only if a judicial officer possesses a broad sentencing discretion that enables him or her to consider and balance multiple facts and circumstances when sentencing an offender. This broad discretion is required because sentencing is ultimately "a synthesis of competing features which attempts to translate the complexity of the human condition and human behaviour to the mathematics of units of punishment usually expressed in time or money".

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The principle of equality of justice has also been considered by the High Court in a number of matters, including by Justice Heydon, who is not what one would call a bleeding heart liberal. In 2010 in the cases of *Hili v The Queen* and *Jones v The Queen* Justice Heydon said:

> The circumstances of particular crimes and the "character, antecedents and conditions" of particular offences are so various, the combinations in which they can occur are so numerous, and the relationship between these factors and the purposes which criminal sentences are to serve can be so impalpable, that the application to them of discretionary judgment permitting a range of legitimate outcomes is inevitable.

I might unpackage that legal argument and try to explain it in somewhat more common parlance. Put simply, it says that Parliament when passing a law can have no foresight as to the specific circumstances in which that law will come before the courts. There is such an array of diversity in the human condition and the things people do on the spur of the moment—what they do as a young person, what they do as a middle-aged person, what they do as an elderly person, and how they find themselves in situations where they make split-second decisions that can have enormously telling consequences on the lives of others or their own lives. The human condition is so diverse, and human experience is so varied. The way this law will be applied in future is so unknown that the Parliament must provide judges with the discretion, when applying this law, to match sentences to the individual facts. Later I will speak about some of the unjust outcomes that the bill may well produce.

The Government says that the bill moves New South Wales laws forward; it puts the bill forward as some kind of modern reform. The last time New South Wales experimented with this folly of mandatory sentencing was in the 1800s. In 1883 New South Wales introduced mandatory minimum sentences for a series of offences. Within a matter of months after that, such a vast number of cases were raised as being unreasonable and inappropriate that there was a public outcry. Indeed, back then, 130 years ago, the then Parliament understood that mandatory sentencing was unworkable. The then Parliament revoked the laws in 1884, after the laws had been in effect for only a matter of a year and three weeks, because of the recognised unfair consequences of the mandatory sentence laws passed by the Parliament at that time. Yet here we are reinventing a broken wheel and putting in place a law that was rejected by the Parliament 130 years ago because of the unfair consequences of that law.

Mandatory sentencing will lead to unjust outcomes. Examples may well be given of cases where the imposition of a life sentence is entirely appropriate. The premeditated assassination of a police officer would surely be a circumstance where, but for some extraordinary extenuating circumstances, a life sentence would likely be appropriate. But there are other circumstances where this law will impose a life sentence that are deeply troubling. For example, a 19-year-old

drug-addicted offender—who is just two years out of high school—may be engaged in a criminal act of dealing drugs on the streets of Kings Cross. Because the offender is involved in a criminal enterprise, he or she may well be armed with a knife. The offender may then be confronted by a police officer. In the course of such confrontation a scuffle may ensue, and on the spur of the moment in a terribly mistaken criminal act the young offender may stab the police officer. No premeditation is involved in such an offence. The offender carried the weapon not with the intention to harm a police officer; he or she had no intention of harming a police officer. But, of course, in the example I have cited, a deeply culpable decision is made by a 19-year-old—that is, to kill a police officer. It is the kind of decision that this Parliament and any court would condemn, if a police officer were killed in those circumstances.

But those circumstances are greatly different from those associated with the premeditated assassination of a police officer, or a premeditated attempt to kill a police officer. If we are to have a system of justice—not just a system of criminal laws—there should be a way of distinguishing the spur-of-the-moment, unpremeditated act, albeit appalling act, by a young offender from the types of premeditated acts about which I spoke earlier. This law, if it is passed, will allow no distinguishing between those kinds of acts. Once the facts are proved, once an individual who was aware of the person being a police officer has killed the police officer, regardless of any mitigating factors—regardless of remorse, a guilty plea, the age of the offender, or the lack of premeditation—a life sentence will be imposed. That is not in any sense criminal justice; it is this Parliament seeking to override hundreds of years of legal practice providing judicial discretion.

The current applicable sentencing law is not unduly lenient. It is not as though there is not the capacity to impose a life sentence on a person who has murdered a police officer. Indeed, section 61 (1) of the Crimes (Sentencing Procedure) Act 1999 provides that a court must impose a sentence of imprisonment for life on a person who is convicted of murder "if the court is satisfied that the level of culpability in the commission of the offence is so extreme that the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of that sentence". So, the kinds of circumstances that were referred to by the Minister in introducing the bill and by the proponents of the bill, the kinds of circumstances that would provide the level of community revulsion and call for deterrence and punishment, will already allow for a court to impose a life sentence. Under the Act, life means life. A life sentence means just that: a sentence for the term of one's natural life. A life sentence can already be imposed where the court is convinced that it is appropriate because of the level of culpability involved in the offence. Section 19A (1) of the Crimes Act 1900 provides that "a person who commits the crime of murder is liable to imprisonment for life", although a sentence of imprisonment of a lesser amount can be imposed.

Under the current law, one of the features in determining whether aggravating circumstances are appropriate for a life sentence is whether the victim was a police officer. So there is already the capacity to consider the fact of the victim being a police officer in imposing a life sentence. This one-size-fits-all, unjust law as provided in the bill is not required because the present law is already sufficiently stringent. Indeed, where a person has been found guilty of murdering a police officer and has been given not a life sentence but a determinate sentence, the standard non-parole period is 25 years. That is a third of most people's ordinary life. Given that the person has committed the offence as an adult, the standard non-parole period is effectively half of the balance of even a young person's life. Parole does not kick in, even if a determinate sentence is imposed. The current applicable sentencing law is not lenient. Indeed, it is a harsh set of laws, and there is no reason to make it the harsh and unjust set of laws as proposed by the Government.

Judges in the Supreme Court, who see individuals come before them and have experience in imposing life sentences, are aware of the great severity of imposing a life sentence. These are people whose job it is—we as members of the Parliament give them the job—to impose harsh criminal sanctions on defendants. It is worthwhile reflecting upon exactly what a judge has to confront and what it means to impose a life sentence. In handing down the court's decision in the matter of *Regina v Harris* in 2000, the Chief Judge at Common Law, His Honour Chief Justice Wood, said about a life sentence:

> Such a sentence can be crushing, particularly for a young offender, whose life expectancy, on current tables, may well exceed the fifty-odd years that would apply in the case of the present respondent … They were noted in *Garforth* NSWCCA 23 May 1994, where the Court said:

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> But first we should emphasise that we do not intend to diminish the terrible significance of a sentence of life imprisonment.

Nor did Newman J. His Honour quoted the following passage from the judgement of Hunt CJ at CI in *R v Petroff*:

> The indeterminate nature of a life sentence has long been the subject of criticism by penologists and others concerned with the prison system and the punishment of offenders generally. Such a sentence deprives a prisoner of any fixed goal to aim for, it robs him of any incentive and it is personally destructive of his morale. The life sentence imposes intolerable burdens upon most prisoners because of their incarceration for an indeterminate period, and the result of that imposition has been an increased difficulty in their management by the prison authorities.

The rehabilitation of those imprisoned under our system of justice is also important. Rehabilitation should be part of our justice system. Rehabilitation is intended to help prisoners recognise that society condemns their actions and to help them search for some meaning or the capacity to improve. But once a life sentence is imposed that incentive is removed. Regardless of whether or not they find God or undertake education to advance themselves to become useful, functioning members of society, and regardless of their level of remorse or psychiatric improvement, they will never be released. They have no motivation to rehabilitate. We are robbing prisoners of the option to once again be useful, functioning members of society. Why are we doing that? Because this Parliament views a one-size-fits-all punishment as the be-all and end-all of our criminal justice system, and it clearly is not. This legislation removes the option of rehabilitation from this class of prisoner.

The Government suggests that this legislation will have a deterrent effect and that people will not kill a police officer because by so doing they will face life imprisonment. There is simply no evidence to support that contention. Indeed, it is a remarkable proposition that somehow a defendant would be deterred by a life sentence but not by 25 years in prison. When people do these stupid culpable acts they do not think they will be caught or subject to imprisonment. It is utterly without evidence or foundation to suggest a criminal would say, "Well I would do this act if I was only going to get 25 years in prison but I will not do it if I am going to get life imprisonment." That most definitely would not be an operative motive in the mind of the 19-year-old, for example, whom I spoke about earlier. There is no evidence to support the suggestion. Indeed, imposing life imprisonment may reduce any deterrent effect.

Let us take the example of a siege in which a well-armed individual is bunkered down inside a house and the police surrounding the house are threatening to take down that individual. If that individual had killed a police officer earlier on in the siege, then what possible reason would there be for that person—other than his or good conscience—to stop killing further police officers? There would be no hindrance under the criminal law for that individual to be motivated to kill yet more police officers, because having killed the first officer–a tragic and appalling circumstance in itself—that person would not be restrained under the criminal law from killing further police officers because he or she would be already facing life imprisonment. The courts can impose no greater sentence if an individual kills one, two, three, four or tragically more police officers. It is likely not to have a deterrent effect and in many circumstances may have the opposite effect. It will allow a culpable criminal effectively off the leash to kill yet more police officers because there is no deterrent once a person has taken the first awful act of killing one police officer.

Equally there will be no reason for offenders to plead guilty. For any person charged under this Act there is no benefit in pleading guilty. One does not get any discount for pleading guilty. Judges will have no discretion to do anything other than to lock a person found guilty away for life. Why would a defendant do anything other than seek to beat the charge regardless of the weight of the prosecution's evidence? This legislation will almost certainly lead to more contested trials and defendants doing whatever they can to avoid a finding of guilt. There is no 25 per cent discount for an early guilty plea. It will mean that the relatives, friends and associates of murdered police officers will inevitably be put through more lengthy criminal trials and justice will be delayed. Their grieving process will be continued and they will not be allowed the closure that sometimes guilty verdicts give families and friends.

More trials will result in more expense for the Crown and for taxpayers. It may involve also a number of people being found not guilty by contesting the charges against them. Our criminal justice is populated by humans who make human decisions and who will themselves be looking for just outcomes. For example, when prosecutors see a young offender who has been found guilty of an offence facing a life sentence they will have a human incentive to consider putting forward a lesser charge—a charge of manslaughter rather than murder. That is a human fact. It may also lead to fewer prosecutions for murder than otherwise would be the case without this harsh, unjust and inflexible order that the Government is seeking to impose.

Finally, there is no justification for singling out police officers as victims. We respect and rely upon so many people in our society to do good public works; people who put themselves in harm's way for us. I refer to emergency services workers, correctional officers, judicial officers, council rangers, health workers, teachers and community workers. Why is one life valued more than another? Why is the Parliament saying that the life of a police officer should be more highly valued than the life of a nurse, or a correctional officer or an emergency services worker? There is no justification for it. It is wrong in principle. It is wrong on any form of morality to suggest that one person's life is valued higher than the life of another. That is exactly what the Government is saying and that is exactly what this bill proposes to do.

The Greens oppose the concept of mandatory sentencing but where the mandatory sentence to be imposed is life, the gross injustice of it is extraordinary. Under current New South Wales law once a life sentence is imposed there is no capacity for parole to be given. The Greens will be moving an amendment in committee to allow for discretion in the judicial officer to impose a non-parole period. That standard non-parole period will be for 25 years, as under the current law, and will give a level of leniency and individual justice. A parole period does not take away from a life sentence. An offender granted parole would still be subject to a life sentence and the strictures and control of the criminal justice system for the whole of his or her natural life, but the offender would be given that modest discretion where, in appropriate circumstances, he or she could be released on conditional parole, seek to be rehabilitated out of jail and be given some small degree of mercy in our criminal justice system.

**The Hon. SCOT MacDONALD** [11.48 a.m.]: I support the Crimes Amendment (Murder of Police Officers) Bill 2011. The New South Wales Liberal-Nationals Government has a long-standing commitment to introduce mandatory life sentences for those who murder police officers. This bill implements that commitment. Since 1971 some 17 police officers have lost their lives as a result of the actions of offenders who have attacked them whilst executing their duty to protect the community.
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Murder currently carries a maximum penalty of life imprisonment but under section 21 of the Crimes (Sentencing Procedure) Act courts retain the discretion to impose a shorter sentence. This applies to cases where a police officer is murdered. The bill now before Parliament is in line with bills previously introduced by the Coalition. I am pleased that after years of procrastination by the former Labor Government we at last bring these important reforms into law and give police the legislative safeguard they deserve. The bill provides that a court must impose a sentence of imprisonment for a person's natural life where a police officer acting in the execution of his or her duty, or as a consequence of or in retaliation for actions undertaken by the officer or any other police officer in the execution of his or her duty, is murdered. It will apply to persons aged 18 years and over at the time the murder was committed.

As I said earlier, murder currently carries a maximum penalty of life imprisonment. However, under section 21 of the Crimes (Sentencing Procedure) Act, courts retain the discretion to impose a shorter sentence irrespective of whether or not the victim is a police officer. The new law will apply prospectively and where the offender knew or should have known that the victim was a police officer acting in the execution of his or her duty. The new provisions will not apply to persons who have a significant cognitive impairment. The term "significant cognitive impairment" is not defined in the bill. It is intended that the categories of cognitive impairment identified in section 61H of the Crimes Act will fall into the category of cognitive impairment for the purposes of new section 19B of the Act. These forms of cognitive impairment are intellectual disability, a developmental disorder including an autistic spectrum disorder, a neurological disorder, dementia, severe mental illness or brain injury.

In section 61H of the current Act the consideration of those impairments is limited by the requirement that the conditions are such that they result in the person requiring supervision or social habilitation in connection with daily life activities. Under proposed section 19B, in making the decision on whether or not a cognitive impairment is relevant to the court's consideration of a case involving the murder of a police officer, the condition must be significant. The decision on whether impairment is significant will be a matter for the sentencing judge to determine. The amendment will not apply in circumstances where the offender did not intend to kill the police officer and was not engaged in criminal activity that risked serious harm to police officers executing their duty. I look forward to the implementation of the amendments contained in the bill as an effective way of supporting our police officers. I offer my sympathy to the family, Sonya and her two children, of Senior Constable Damian Leeding, who was mortally wounded a couple of days ago and, according to news reports, whose life support system has been switched off today. I commend the bill to the House.

**Reverend the Hon. FRED NILE** [11.52 a.m.]: On behalf of the Christian Democratic Party I support the Crimes Amendment (Murder of Police Officers) Bill 2011, which amends the Crimes Act 1900 to provide a mandatory life sentence to be imposed on persons convicted of murdering police officers. I commend the Government for fulfilling this election commitment. For many years they have put on record their commitment to introduce this legislation on winning government. I congratulate the Hon. Michael Gallacher, Minister for Police and Emergency Services, on fulfilling this commitment, despite strong criticism from the Bar Association and the Law Society. Such criticism is to be expected when introducing this type of legislation. It is the usual reaction to such legislation over the many years I have served in this place. Mr David Shoebridge asked why we should introduce legislation specifically relating to police officers—

**Dr John Kaye:** That is not what he said. You are misleading the House.

**Reverend the Hon. FRED NILE:** I have not finished the sentence. The member asked why we should introduce legislation specifically relating to police officers who are killed in the line of duty. He asked why we did not have similar concerns for nurses and emergency services personnel. The obvious difference is that a police officer is the only person whose duties involve him in actions where his life could be taken.

**The Hon. Cate Faehrmann:** His or her.

**Reverend the Hon. FRED NILE:** He or she straps on a gun and goes on duty, and there is a good chance that these officers may not return home to their family. It happens, sadly, in too many cases. I requested the Parliamentary Library to collate a record of the number of police officers who have died in the line of duty. The briefing paper states that 16 officers have lost their lives as a result of actions of offenders since 1971. The Honour Roll commemorates those members of the New South Wales Police Force who have paid the ultimate sacrifice in the execution of their duty. The official New South Wales Police Honour Roll records the name, rank, date and a précis of each death that has been accepted as duty-related by the various Commissioners and Inspectors General of Police. The list of names on the Honour Roll totals 250, and not just the 16 referred to who have lost their lives since 1971.

One of the officers on the Honour Roll, Constable Norman Allen, who was shot whilst effecting an arrest on 3 January 1931, was a relation of my wife on her mother's side. The family has a number of articles relating to the brutal event that took his life. As previous speakers have said, as we debate this bill today we note the death of Detective Senior Constable Damian Leeding, a member of the Queensland Police Service. Last Sunday Senior Constable Leeding was shot in the face with the full blast of a shotgun at the Pacific Pine Tavern. He has been on a life support system since the attack. I understand that today the life support system has been turned off. The injury caused such a massive destruction of his head that there was no possibility of recovery; in the meantime his family has decided that his organs will be donated.

I have a vested interest in this legislation because two of my sons served for 20 years each in the New South Wales Police Force. On a number of occasions they faced life-threatening situations. In one case my son Stephen was sent to a robbery that was taking place. In such situations one officer approaches from the front of the premises being robbed and one approaches from the rear. Stephen said that when he came in from the rear the robber pointed a shotgun at him and pulled the trigger. The weapon clicked but did not fire. If it had, his name would have been on the Honour Roll. During the years of service of both my sons, it was the practice for off duty police officers to keep their pistols at home. When they went on duty they would don their uniforms, strap on their pistols and go to work. No other person in our society is in the same category. I have no sense of embarrassment supporting legislation that deals with the murder of a police officer in the line of duty.

The Honour Roll lists the names of outstanding police officers who gave their lives serving the State of New South Wales. On 5 May 1989 Constable Allan McQueen was shot whilst effecting an arrest. He was awarded the Star of Courage.
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On 9 July 1995 two officers, Senior Constable Peter Addison and Senior Constable Robert Spears, were shot by an offender on the same day. They were awarded the Commissioner's Valour Award posthumously—a little comfort, but obviously not much comfort to the family who would rather their husband or father had come home that night.

One case that received a great deal of publicity was the death of Constable David Carty on 18 April 1997. Constable Carty was stabbed during an attack on him by a gang—a payback in a most savage way for carrying out his duties. Members can read the details of what was done to

Constable Carty's body during that attack. Constable Peter Forsyth was stabbed whilst effecting an arrest. Another case that received a great deal of publicity was the death of Constable Glen McEnallay on 3 April 2002, who was shot in his police car whilst he was pursuing a vehicle which he believed contained criminals on their way to carry out a robbery. He was also awarded the Commissioner's Valour Award. Most recently, on 9 September 2010, Detective Constable William Arthur George Crews was shot during the execution of a search warrant in Bankstown. He was also awarded the Commissioner's Valour Award.

Police officers can be likened to soldiers in a war: they are engaged in a front-line battle on behalf of the people of this State, and I believe that they deserve special consideration. Currently murder carries a maximum penalty of life imprisonment. However, under section 21 of the Crimes (Sentencing Procedure) Act courts retain the discretion to impose a shorter sentence, and that applies to cases where a police officer is murdered. As I said earlier, since 2002 the New South Wales Liberal Party and The Nationals have introduced several bills to impose mandatory life sentences on those who murder police officers. It was an election commitment in 2010 that the necessary legislation would be introduced in the first parliamentary session, and that is the legislation that we are debating today.

The bill amends the Act to provide that a mandatory life sentence is to be imposed by the court on a person convicted of murdering a police officer while the officer is executing his or her duties or as a consequence of, or in retaliation for, actions undertaken by any police officer in the execution of his or her duties. It will apply in cases where the person knew, or ought reasonably to have known, the person killed was a police officer, and the person intended to kill the police officer or was engaged in criminal activity that risked serious harm to police officers. It will not apply to convicted persons under the age of 18 years or to persons suffering a significant cognitive impairment. However, this exemption will not apply to a person who has a temporary self-induced impairment at the time the murder is committed, such as being under the influence of drugs.

I am pleased to support the legislation. From the aspect of Christian faith, we hope that the convicted person—as has happened in many cases—will have the opportunity in prison to repent for the murder and seek God's forgiveness. Hopefully, the convicted person will become a Christian and will perhaps be of some benefit and assistance to other prisoners in the prison. As judges used to say in the old days: May God have mercy on their soul.

**The Hon. SHAOQUETT MOSELMANE** [12.04 p.m.]: I oppose the Crimes Amendment (Murder of Police Officers) Bill 2011 as it is itself a death sentence on all those who are unfortunately caught up in situations of murdering police officers. I support the comments of my colleague the Hon. Mick Veitch and I endorse the comments made by Mr David Shoebridge. The Hon. Michael Gallacher effectively said in his second reading speech that the bill amends the Crimes Act 1900 to provide for mandatory life sentences to be imposed on persons convicted of murdering police officers. A life sentence is a sentence for the term of the person's natural life without release or parole.

Currently murder carries a maximum penalty of life imprisonment. However, under section 21 of the Crimes (Sentencing Procedure) Act courts retain the discretion to impose a shorter sentence. This bill will provide that compulsory life sentences are to be imposed by courts on persons convicted of murdering police officers. The bill will remove the current discretion of the court in circumstances where a police officer is murdered. A compulsory life sentence is to be imposed if the murder was committed while the police officer was executing his or her duties or as a consequence of, or in retaliation for, actions undertaken by any police officer.

My opposition to the bill is based on the fact that the bill effectively prohibits the courts from taking into consideration a number of issues, including whether there was premeditation in the killing of the police officer or an intention to kill the police officer. In many cases circumstances can come into play which courts have a discretion to take into consideration. This bill removes that discretion, which means that judges cannot consider factors that could lead to a sentence for murder or manslaughter. The Parliament is effectively making the decision to pass a sentence on all persons who murder police officers and prohibiting judges from considering other factors in a case. The President of the Law Society of New South Wales, Stuart Westgarth, wrote a very powerful letter to the Hon. Paul Lynch, in which he stated:

> The Law Society of NSW has always strongly opposed mandatory sentences and in particular mandatory life sentences. The Law Society's Criminal Law Committee (Committee) has reviewed the Bill and urges you to oppose it.
>
> Mandatory sentences have been considered and rejected by sentencing law reviews conducted by the Australian Law Reform Commission—

which took place in 1988—

and the NSW Law Reform Commission—

which took place in 1996.

> It is widely recognised that mandatory sentences do not deter offenders. The Government has provided no objective research or other evidence in support of its proposal.

I note the comments of the Hon. Michael Gallacher in relation to this bill being a deterrent for criminals to murder police officers. The reality is that around the world where death sentences are imposed—such as in the United States of America—for rape or drug dealing those offences continue to happen. There is no evidence that this sort of harsh law serves as a deterrent. Currently in exercising his or her sentencing discretion a judge is not bound by the standard non-parole period and may increase it following a trial. Life sentences already exist in the Act and a judge can increase a life sentence beyond 25 years.
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The Law Society states:

> The Bill is counter-productive from a law enforcement and prosecution perspective. The legislation demonstrates a lack of thought as to unintended consequences, including the following:
>
> . it provides powerful disincentives to plead guilty, with attendant acquittal risk, and resource allocation issues for courts, the Crown and Legal Aid;
>
> . there will be no effective incentive possible for a co-accused to co-operate and give evidence, there being no possibility of a discount for such assistance, or alternatively the Crown will be forced to charge manslaughter to get accomplice evidence;
>
> . it would be well-known to juries and may of itself influence acquittal rates;
>
> . there may be greater difficulty in apprehending suspects because of the prospect of life in prison if caught, and more casualties than otherwise would occur during apprehension, due to desperate steps which might be taken to avoid apprehension. Short of a death penalty, life in prison is the maximum sentence anyone can receive, so once someone has killed one police officer, they have nothing to lose by killing anybody else present, including any other police officers—an offender cannot spend more than one lifetime in prison, and
>
> . mandatory life sentences remove any incentive for a prisoner to be of good behaviour ...

In response to Reverend the Hon. Fred Nile, it does not matter that they may repent in prison; they will remain in custody for the term of their natural life. This legislation makes no provision for rehabilitation and for offenders to re-enter society. I concur with the Law Society. Its letter concludes by stating:

> The legislation is unnecessary, it undermines the proper role of the judiciary, it will not deter offenders and may have serious consequences from a law enforcement and prosecution perspective.

**The Hon. CATE FAEHRMANN** [12.13 p.m.]: I speak against the Crimes Amendment (Murder of Police Officers) Bill 2011. My colleague Mr David Shoebridge has already clearly stated the reasons for The Greens' opposition to this bill. The bill is not based on evidence, is unnecessary, undermines the judiciary, will fail on its stated aim to act as a deterrent and may have further serious consequences with regard to law enforcement and prosecution. The bill has no support from relevant experts, with mandatory sentencing provisions having been considered and rejected by a number of reviews conducted by the Australian Law Reform Commission and the New South Wales Law Reform Commission. It is, perhaps most importantly, contrary to natural justice and the common law principles that have served this State and community for over a century.

If the bill has so few friends, why is the Government proceeding with it at such a pace? The Government's justification centres on the need for further deterrent, but with this argument so comprehensively demolished today by my colleagues Mr David Shoebridge, the Hon. Shaoquett Moselmane and others, where else can one look for an explanation of the Government's position? As far as I can tell, it appears that the only independent support mustered for mandatory sentencing measures comes from small sections of the community that appear to favour punishment, which is often at the expense of justice. With deep sympathy and compassion, we must recognise that the distraught victims of crime, for example, may not be the best option for an objective consideration of all the circumstances as they relate to sentencing. Nor are the police the best option given their daily and courageous service on the front line admirably protecting the people of New South Wales. They will understandably often have a very different perspective from the independent and specifically trained adjudicators that our judicial system provides. No, these

small but powerful pressure groups do not explain the Government's motivation.

I fear the Coalition Government's law and order auction has begun post-haste and will continue as such for the remainder of its term in office. What arrogance from a new government to ignore the best advice of decades of legal expertise and to proceed with such an unproven, unprecedented and controversial law. The Coalition is putting political expediency before good public policy. It is putting expediency before justice and it is putting political expediency before a fair legal system.

Multi-partisan agreements designed to remove politics from law enforcement and prosecution are essential. It must be acknowledged that the previous Government was no white knight in this regard—I call to mind sniffer dogs and public demonstrations of police power at politically opportune times. Why is the Coalition now taking yet another wrecking ball to this important separation between politics and our courts? A telling sign is the Attorney General's backflip since only last year, when he denounced in the *Australian* those who called for mandatory sentencing as "rednecks" who were indulging in a law and order auction. I take issue with the former term but could not agree more with the latter. The *Sydney Morning Herald* reports that he now says police killings are an exception:

> The murder of a police officer is a direct attack on our community and warrants exceptional punishment...
>
> It sends a serious message of support to our police...

The Attorney General now thinks the evildoers deserve exceptional punishment. This is an unsophisticated argument coming from a sophisticated legal mind, a former deputy to the Director of Public Prosecutions and the now Attorney General. Why? It is pure politics. The Attorney General has been admonished by his former boss, Nicholas Cowdery, who says:

> It is surprising that a lawyer with Greg Smith's experience would support a retrograde move towards mandatory sentencing knowing that it produces injustice and has no effect in preventing crime.

Hear! Hear! After all, as I mentioned earlier, the Attorney General said something similar only last year. The Minister for Police stated in his second reading speech that he wants those who murder police officers to "rot in jail". This kind of language says more about the reasons behind this flawed bill than any other justification offered by the Government. I do not doubt the Hon. Mike Gallagher's passion and commitment to the Police Force. Meanwhile, controversial wage-capping legislation brought forward by his Government is being strongly opposed by the police union.

Like all members in this place and the other place, I have received thousands of emails from police officers protesting against the Government's plan to cap public sector wage increases at 2.5 per cent. Police are also concerned about plans to overturn important occupational health and safety laws. The Government holds police support for mandatory sentencing in high regard. However, given that a police officer has not been killed on duty in this State for many years, I suggest that the Minister rethink the best way to send a message of support to our Police Force. I submit that the removal of judicial discretion might not be one of the highest priorities on the wish list of the everyday local police woman or man.

The evidence to support this bill on any of the suggested grounds simply does not exist and it has not been offered today. This is a very dangerous bill with far-reaching consequences. Members opposite should be ashamed of themselves for allowing the law and order auction to attack and weaken the strength and independence of our judicial system. Members in this place should admit to the base politicking that is playing out around this bill and acknowledge the potential for further retrograde measures if this bill becomes law.

**Dr JOHN KAYE** [12.19 p.m.]: I echo the comments of my colleagues Cate Faehrmann and David Shoebridge in respect of the Crimes Amendment (Murder of Police Officers) Bill 2011. It must be said at the outset that the murder of any police officer is a terrible thing and it should be condemned and punished. However, so too is the murder of any front-line public sector worker, or, indeed, any person at work or anywhere else. Murder is a shocking crime and we should do everything we can to stop it happening. We should not tolerate it. However, this Parliament should be working to minimise the risk of murder being committed. We of course recognise that police officers are some of the most exposed workers in our society to the risk of harm. However, the flaws in this legislation make it completely unsupportable.
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Those problems had come under two broad headings. The first is that there is a complete lack of evidence to suggest in any way that this legislation will make police officers any safer in the line of

duty. Further, it has to be recognised that this legislation does great harm to the central justice principles that have protected the guilty and the rest of society and have done justice for hundreds of years in the English-speaking world.

There is no mitigation of those two problems in the fact that this has been Liberal-Nationals policy since 2002. It is quite distressing, when the Coalition is pushed for an argument to support this legislation, that the strongest argument it can come up with is, "This has been our policy since 2002. We were elected, therefore it must be right." Such assertions do not compensate for a complete lack of evidence. There is a complete lack of evidence to suggest that this legislation will reduce attacks on police. This kind of mandatory sentencing, as admitted by the Coalition, has not been tried anywhere else in Australia: it has not been tried anywhere else in the world. We have no empirical evidence to suggest it will reduce attacks on police. It is impossible to find any positive evidence to suggest there is any truth in the proposition that mandatory sentencing for any serious crime reduces the incidence of the commission of that crime.

The only thing that can support such an assertion is an appeal to the unproven idea that somebody who is about to commit a crime or is in the commission of a crime will say, "Given that the sentence for this crime is not 25 years or 30 years but mandatory life imprisonment, I will not commit it." Can it be argued that somebody who deliberately sets out to kill a police officer or who, through reckless disregard for the life of a police officer in the commission of a crime causes his death, will say, "No, I will not do that because of mandatory sentencing"? Some may say that is true but there is no empirical evidence to suggest it is true. Further, there is a lot of counterfactual evidence to say that is not the case, that criminals in the commission of a crime and do not look at the specifics of the sentencing regime that they might be exposing themselves to.

Despite the lack of evidence, the Coalition, with the able and enthusiastic support of the Christian Democrats, is pushing ahead with this legislation—and despite the fact that it undermines some key principles of justice. It ignores the circumstances under which a crime is committed. The following case was put to us. Imagine a young mother who is having her children removed by welfare workers and she arcs up against the children being removed, the police are called and in utter frustration and fury at the idea of losing her children she grabs a knife, lashes out and kills a police officer. It is clearly a terrible event, an event we should be doing everything we can to stop happening. I note the Government Whip just made the sign of a gun being shot. I can only presume that means that that individual should be shot. No doubt the Government Whip will explain that later.

Clearly, that is a terrible event but surely the sentence is up to the judge. By taking away the discretion of the judge and forcing a mandatory sentence on that judge we are taking away the ability of the judge to say there are exceptional circumstances in this case. This woman lashed out in a moment of extreme anguish about losing her children and she should be sentenced accordingly. We are dealing with that woman in the same way as we would deal with someone who sets out to deliberately murder a police officer. We are saying to the judges who will be sitting on these matters that it makes no difference whether it is a matter of someone who deliberately sets out to murder a police officer or someone who does so in a moment of fury. That seems to violate a key principle of justice, where the punishment should somehow or other match the crime.

It also ignores the individual circumstances of the perpetrator of the crime, such as age. Imagine the case of an 18-year-old who was badly affected by an addiction to drugs and who in the commission of a crime to support that addiction murders a police officer. Again, that is an appalling outcome for the police officer and for the officer's family and something that should be punished by law. But surely there is a difference. An 18-year-old may well face—with the normal life expectancy—61 years in jail, during which time there is a reasonable chance, if we had appropriate rehabilitations services, they would break their addiction to drugs. Certainly by the time they reach their mid-30s or 40s they are likely to pass through any dangerous addiction to drugs, as the evidence suggests. Surely that individual has a reasonable opportunity of rehabilitation, at least by the time they reach their 30s or 40s, if not after that. Under this legislation that individual has no opportunity to rehabilitate, no opportunity whatsoever to escape from jail, and is left with no opportunity to rehabilitate. Surely this is a harsh, unreasonable and ineffective way of delivering criminal justice.

Consider the circumstances of an individual involved in the joint commission of a criminal enterprise, somebody who sets out with some understanding that one individual is carrying a gun and with a reasonable suspicion that a police officer might attend the commission of that crime, and the police officer is killed, not by that individual but by another. Under this legislation that person would never be released from jail, or at least until they are at the point of dying or are severely ill. That makes no sense. Surely there is a difference between a person who deliberately

shoots a police officer and a person who is involved in a criminal enterprise in which a police officer is killed.

The final concern with this legislation is that it takes away all proportionality from sentencing and, in many circumstances, will make police officers less safe not more safe. Mr David Shoebridge pointed out the case of a siege where one police officer has already been killed and the other police officers no longer have the protection of the apprehension of a sentence: the person who shot the first police officer knows that they are facing life imprisonment and because there is no proportionality in the sentencing there is no incentive for them—

**The Hon. Dr Peter Phelps:** What is the proportional response to killing you as a member of Parliament? Is it life? Is it 25 years? What is the proportional response? You have raised it. What is the proportional response?

**Dr JOHN KAYE:** In a state of complete shock I acknowledge the interjection by the member but I will not respond to it because I think it is a totally disgraceful statement to make.

**The Hon. Dr Peter Phelps:** You raised proportionality. Answer your own proposition.

**Dr JOHN KAYE:** The member has yet again debased this Parliament by such statements. The problem with this legislation is that it takes away proportionality from sentencing and therefore it makes police less safe rather than more safe. Mr David Shoebridge raised the case of a police officer involved in a siege in which one police officer has already been killed. Other police officers no longer have the protection that the person who shot the first police officer would face a further penalty for shooting them. The contra-positive is true. If it is true, as claimed without evidence by the proponents of this bill, that a person in the commission of a crime is thinking about the nature of the sentence they would incur if they kill a police officer, by saturating the sentencing by making everybody who kills a police officer subject to imprisonment for life you are taking away the protection that proportionality provides in sentencing.
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Nothing is to be lost by killing another police officer or behaving with reckless disregard towards further police officers. The Bar Council points out that this legislation makes it less safe for police apprehending individuals found guilty of the act of murdering a police officer because they can be given no further greater penalty. Nothing is to be lost by killing more or behaving recklessly towards police officers apprehending someone already found guilty or who knows he or she is guilty of killing a police officer. It is ineffective legislation without evidence that it will work. The legislation will remove the discretion of judges to provide justice in individual cases. I note that Reverend the Hon. Fred Nile referred to 250 police officers who have died since 1971, and I do not dispute those figures.

**Reverend the Hon. Fred Nile:** No, not since 1971—from the beginning of when records were kept, going back to the 1800s.

**Dr JOHN KAYE:** Sorry, I misheard you. I thought you were challenging the figure of 16.

**The Hon. Michael Gallacher:** It was in 149 years.

**Reverend the Hon. Fred Nile:** The figure that has been cited today is from 1971.

**Dr JOHN KAYE:** I misheard you. Is that 250 who have died or 250 who have been murdered?

**Reverend the Hon. FRED NILE:** It is 250 who have died in the course of their duty and they are on the honour roll.

**Dr JOHN KAYE:** There is something badly wrong with the figure of 250 who have died—it is terrible that all of them have died, but it must be understood that many police officers die as a result of vehicle accidents, heart attack, falling and all sorts of things.

**Reverend the Hon. Fred Nile:** It was in the course of their duty and they are on the honour roll.

**Dr JOHN KAYE:** There is no question that these people died in the course of their duty, but police officers have motor car accidents in the course of their duty, they have fatal falls in the course of their duty. If we go back 149 years we will see that they fell off their horses. Such occurrences are bad and we should consider ways to minimise them, as we should in any workplace, but that does not address the legislation. Since 1971 16 police officers have been murdered and it is those 16 and their predecessors that are relevant. Reverend the Hon. Fred Nile also said that the Law

Society and the Bar Association had written to all members of Parliament opposing the legislation. He did so in a way that implied there was something wrong with that.

**Reverend the Hon. Fred Nile:** I said they were predictably opposing it, as is their right. I agree with their right to make a submission.

**Dr JOHN KAYE:** They are predictably opposing it. He supports their right to say it, but he thinks the fact that they said it is predictable. He should ask: Why is it predictable? It is predictable that these two institutions stand up, as they ought to do, for a fully functional criminal justice system that delivers justice to all parties. Where they, as practitioners in the law, see that justice being undermined by legislation such as this, they of course stand up and state, "There is something wrong here and we should oppose it." It was not simple opposition. The opposition of the Law Society is based also on the opposition of both the New South Wales Law Reform Commission and the Australian Law Reform Commission, which the Law Society points out recognised that mandatory sentences do not deter offenders. As I have said, the Government has provided no objective research or other evidence in support of the proposal.

The Law Society quotes the New South Wales Law Reform Commissioner saying that being in effect a sentence passed by Parliament mandatory minimum sentences remove judicial discretion and amount to an unwarranted intrusion on judicial independence. It may be predictable that the Law Society stands up for judicial independence and that the Bar Association stands up for evidence-based legislation; that is exactly the kind of predictability we would expect of our legal practitioners and we ignore it at our peril and at the peril of the system of justice in New South Wales. Reverend the Hon. Fred Nile said that police officers are the only people who go to work with a weapon. That is not true. I wonder what security guards, the Armed Forces and prison officers would have to say about that statement.

[*Interruption*]

The barking Government Whip says, "Well, why not amend it to prison officers, security guards and armed forces?" What about nurses? Let me talk about nurses in emergency departments who late at night, as the Hon. Natasha Maclaren-Jones would know only too well, face shocking odds, dealing with people who are drug-affected, people living with mental illness and people who are violent. They are exposed to violence in the same way police officers, security guards, prison officers, some ambulance drivers, fire brigade officers and, I am sad to say, some teachers are exposed to violence.

One cannot start to single out one class in society and say that their position is more difficult than others. This legislation may make members of the Liberal Party and The Nationals feel good, it may some voters feel good and it may even make some police officers feel good that something is being done, but in reality this legislation is opposed by logic and is not supported by the evidence. It is opposed by legal practitioners in our society. It is bad legislation. It is law that will not make police any safer and may in some circumstances make them less safe. This legislation will undermine the independence of the judiciary and will distract from the imperative to address the causes of violence against all front-line workers. It does not make front-line workers safer. It undermines our judicial system. It is bad legislation and it should be opposed.

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [12.37 p.m.], in reply: I thank all honourable members for their contributions to this important debate, particularly Government members who have shown great support for the Crimes Amendment (Murder of Police Officers) Bill 2011. Since 1971 the names King, Riley, McDiarmid, Gibb, Eaton, Burmistriw, Haydon, Katsivelas, Quinn, Sinclair, McQueen, Addison, Spears, Carty, Forsyth, Affleck and McEnallay are the names of 17 officers who died doing their job protecting our community. Their names are on the wall of remembrance, a short walk across The Domain. Today's debate is a culmination of a nine-year journey by members of the Coalition to pass legislation to further protect our police officers.

The New South Wales Liberals and Nationals have advocated for this legislative change since 2002, when former leader John Brogden introduced a private member's bill. As honourable members would be aware, I joined the force in 1980. While I was still in training our instructors came to us one day at the gymnasium at the old police academy and sadly informed my classmates and me that Sergeant Keith Haydon had been shot dead by an offender and had succumbed to his injuries up at Mount Sugerloaf in the Hunter Valley. It was my first experience with losing a colleague on duty. I did not know Sergeant Haydon and I was still in training, but the lasting impression when an officer is killed in the line of duty is evident not only to those who know me but also to all police officers.

Unfortunately, my introduction to a police officer being killed in 1980 was not my last. I did not know personally any of the 17 officers I have named, but I can assure members that many officers, former and serving officers, did know them and the circumstances surrounding their tragic deaths. Those 17 officers who lost their lives deserve to be remembered by this House and the community.
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Members may recall that in my second reading speech I referred to 12 officers. It was a figure that had been given to me by a previous Minister for Police, which I used last week in good faith. Since my contribution last week I went back to the New South Wales Police Force Honour Roll, and today I would like to correct the figure to 17. Since 1970 17 officers have died while undertaking their duty.

I want to respond to some of the comments made during this debate. Mr David Shoebridge spoke about a hypothetical situation in which a 19-year-old is unwittingly involved in drugs. I cite for his benefit the murder of Constable Forsyth on 27 February 1998. Constable Forsyth was 29—in my view, he was also a young person—and he had been in the Police Force for three years. Constable Forsyth was walking to his home in Ultimo with Constable Semple and Constable Neville, and they were approached by a young male selling ecstasy tablets. After speaking with this person and a second offender, Constable Semple informed them that they were police officers and they attempted to make an arrest. One of the offenders then produced a knife and stabbed Constable Forsyth and Constable Semple before running off. They were pursued for a short distance by Constable Neville, before he quickly returned to assist his injured colleagues. As we all know, at 12.14 a.m. on the following morning, 28 February 1998, Constable Forsyth died from his injuries. That is not a hypothetical situation; it is a fact.

I will give another example, because it is important when we have this debate that we put some names around the hypotheticals that continue to be put up—what if this and what if that; what if the person was left-handed and had a limp, and so on. Let us not deal with hypotheticals; let us deal with some relatively recent cases that might jog members' memories. At 11.30 a.m. on 4 April 1984 Constable Katsivelas, who had just completed his probation—he was 20 years of age, another young person—was on duty at Concord Repatriation Hospital, where he was guarding a prisoner who was suffering from heroin withdrawal. The prisoner asked to be allowed to go to the toilet. So the young constable unlocked one handcuff, and with a nurse's aide took the prisoner to the toilet.

**The PRESIDENT:** Order! There is far too much audible conversation in the Chamber.

**The Hon. MICHAEL GALLACHER:** Mr David Shoebridge might be interested in this. As the prisoner left the toilet cubicle he suddenly leapt at the constable, knocking him to the ground. The prisoner then struggled with the young constable, who was 20 years of age, seized his service revolver, and shot him twice in the chest before escaping. That is not a hypothetical; it is a real case.

**The Hon. Penny Sharpe:** And the judge could have given him a life sentence if the judge had wanted to.

**The Hon. Dr Peter Phelps:** And if he was a left-wing judge, he would get off easy.

**The Hon. MICHAEL GALLACHER:** We will come back to this little argument that members opposite keep putting—

**Mr David Shoebridge:** Point of order: The Government Whip just made a disparaging comment about members of the judiciary, suggesting that there are left-wing judges who would let the offender off easily. It is out of order for members of this House to cast aspersions upon the judiciary and the independence of the judiciary in that manner. I ask the Government Whip to withdraw his unworthy comment.

**The Hon. Dr Peter Phelps:** To the point of order: I am not casting aspersions on a particular justice.

**Dr John Kaye:** To the point of order: The judicial officers of the State hold a warrant from the Crown, and therefore by casting aspersions on the judicial officers as a class of people the Government Whip is casting aspersions on the Government. Particularly for a monarchist, that is totally outside the standing orders.

**The Hon. Dr Peter Phelps:** I stand by my previous comment that you're a Joe Behan for The Greens.

**The PRESIDENT:** Order! The Government Whip will come to order. I refer members to a number of former Presidents' rulings relating to reflections on judicial officers. In particular, rulings by President Willis and President Chadwick are relevant. However, it is clear that those rulings relate to reflections on a particular member of the judiciary rather than the judiciary as a class. I remind members that interjections are disorderly at all times.

**The Hon. MICHAEL GALLACHER:** The Hon. Cate Faehrmann made reference to the fact that a police officer had not been killed for many years. I draw her attention to the matter involving Constable David Carty on 18 April 1997. Constable Carty was 26 years of age and he had been a police officer for three years. At about 8.00 p.m. on 17 April 1997 Constable Carty and other police had reason to speak to a number of people in the street at Fairfield while carrying out foot patrols. Later the constable and other police, whilst off duty, attended a local hotel, the Cambridge Tavern. At about 2.10 a.m., as he was leaving the hotel, Constable Carty was set upon by a number of offenders—including some of the persons he had spoken to earlier in the day—and he was viciously stabbed to death.

Senior Constable Michelle Auld, who had gone to Constable Carty's assistance, was also seriously assaulted in this cowardly attack. If the Hon. Cate Faehrmann suggests that 1997 is a long time ago, I can assure her that in the minds of police officers and the family of Constable Carty it is as if it were yesterday. A little bit of research on the part of the Hon. Cate Faehrmann would not go astray. In relation to Constable Carty's murder, it has also been suggested during this debate that, "They'll all get thrown in. They'll all go in for murder. They're all gone for a row." Members have failed to take into consideration that circumstances come into play that distinguish between murder, manslaughter and a negligent act—and, of course, innocence. In the case of Constable Carty, a number of people were involved in a vicious attack. I do not intend to go into the details of the attack, but I assure members that the details were horrific.

**The Hon. Dr Peter Phelps:** Sickening.

**The Hon. MICHAEL GALLACHER:** They were absolutely sickening, as the Hon. Dr Peter Phelps says. Two brothers were involved in this murder. One was found guilty of maliciously inflicting grievous bodily harm to Constable Carty. The other brother was found guilty of murder. So, yes, the court does have an ability to look at the circumstances of the offence and determine whether the offence is appropriately murder, manslaughter or a negligent act. During this debate it has been continually suggested that "They're all going in."

A similar argument has been raised with regard to the McEnallay matter. In this debate we have heard about joint criminal enterprise. We have heard comments by the previous Government in relation to its views about that, which I will come to shortly. I make the point that members opposite should have a look at the McEnallay matter. I think the example was given of a person with a gun doing something, there are other people in the car, and they all get charged and they will all be convicted of murder and serve time for that offence. Members should have a look at the McEnallay murder—which, according to The Greens, is one of those murders that occurred a long time ago. In fact, it occurred in 2002, which does not strike me as a particularly long time ago.

**The Hon. Cate Faehrmann:** We didn't say that.

**The Hon. MICHAEL GALLACHER:** You did.

**The Hon. Cate Faehrmann:** No, we didn't.

**The Hon. MICHAEL GALLACHER:** You did. Have a look at your words. Don't try to backpedal now. Have a look at your words.

**The Hon. Cate Faehrmann:** We said nothing about that murder being a long time ago.

**The Hon. MICHAEL GALLACHER:** I suggest the Hon. Cate Faehrmann have a look at her words about the fact that we have not had these incidents happen for years, or for a long time. With regard to the McEnallay murder in Maroubra, a distinction has been drawn between offenders in a motor vehicle where one offender is involved in the murder and issues arise in relation to criminal enterprise. A distinction has been drawn in relation to the charges imposed on the individuals in relation to their role in the murder of that police officer. Not all the offenders charged were eventually convicted of murder; some were convicted of manslaughter and others were convicted

of firearms offences. Some members opposite have given the impression that somehow innocent people who are in the wrong place at the wrong time have committed stupid, foolish acts, as expressed in one comment. In my view, sticking a knife into somebody's chest does not constitute a foolish act. It is stupid, it is murderous and it is criminal. A person who drives a knife into a person's chest has the intent is to kill that person.
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To somehow suggest that these are the result of people's little brain snaps—

**Mr David Shoebridge**: That is why it is called murder.

**The Hon. MICHAEL GALLACHER:** That is exactly right. Finally, the lawyer is returning to the fact that we have to prove murder.

**Mr David Shoebridge:** We all talking about murder, Michael.

**The Hon. MICHAEL GALLACHER:** I do wonder at times what the member is talking about in relation to these matters, but it is now consistent that we are talking about murder. Justice has also been referred in this debate. In my view the success of justice is where it is consistent and following the passage of this bill when a police officer is murdered justice will be very consistent: there will be a mandatory sentence for those who murder a police officer. The expression "killing a police officer" was also used in this debate. There is a distinction, and I again draw it: the difference between manslaughter—negligent cause of death—and those who murder a police officer.

I loved the reference by Mr David Shoebridge to a siege—it was one of my personal favourites. The example was given of a person who, having earlier shot a police officer during the siege, says, "Well, I am going away for life with a mandatory sentence so I might as well just keep shooting." Those same people who are opposing the mandatory sentence keep telling us that the courts have the ability to give somebody life anyway. They are having a shilling each way. They are saying that the courts have the ability to give someone life, if that is what they deserve for murder, yet somehow the offenders are saying, "Oh well, I might have a chance under the old system." It is quite a silly argument to suggest that people will say, "Well, I have killed one police officer so I might as well go for a row." Is that the pre-emptive strike we will be seeing in the future? I hope we are never faced with the situation when a couple of police officers are killed and The Greens say, "The the only reason the second person was killed was because you passed this terrible legislation. It must have been in the mind of that person that they had killed one so they might as well keep going for a row." That is a stupid argument.

Another argument put forward by The Greens that I enjoyed was that the victims—that is, the families of murdered police officers—will be subjected to more trials. I have not seen too many of these cases going through to court where the person nods the scone—to use the colloquial—and pleads guilty at the District Court or Supreme Courts and says, "Yes, I agree with the facts. I did murder that police officer. Let us rock 'n' roll." Matters such as these go through many hearings, and they will continue to do so, but there will be one bright light burning in the minds of the families of the murdered police officers: they will know that if the court upholds the charge of murder there will be consistency in sentencing. This legislation is all about ensuring consistency in sentencing.

The Hon. Cate Faehrmann made mention of a small number of community members and that somehow this legislation was all about politics. One community member who has been outspoken—members have probably heard of his name—is Andrew Scipione. He is respected around the courts of this State for the role he plays protecting the community and police. He was one of the first to speak out. He said:

> There can be nothing more despicable than to kill a police officer in the execution of his or her duty ... It is an act that goes right to the very heart of justice in this nation.

I draw the attention of the honourable member to the comments of one of those little vocal minorities. Perhaps when next speaking to people about these sorts of matters she will take the time to speak to the Commissioner of Police. I also liked the comment of Mr David Shoebridge about robbing prisoners of the chance of reform. That touched a place somewhere in my body. Nothing was said about robbing the community or robbing the families of those police officers who have been murdered—no, robbing somebody of the chance of reform. Some of the recent cases quite simply speak for themselves and it is sad that The Greens have not taken the time to speak to people on the other side it of the ledger about these matters. It was unfortunate that Mr David Shoebridge, who raised the case of a hypothetical 19-year-old, was not in a position to listen to what I was saying when I gave a factual recreation about a young person. Be that as it may, I am sure when he reflects on this matter in the future he will take the time to look at my comments.

This legislation is about the 16,000 police who put their lives on the line every time they go into a situation in which they have no control, and in which they seek to gain control, to arrest the offenders and to protect our community. The shooting of an officer in Queensland on Sunday night demonstrates how quickly a tragic event can occur. I speak on behalf of all members in this Chamber in passing our sympathies on to the family of Senior Constable Damian Leeding and all police officers in Queensland. We understand that his life support machine is to be turned off today. I suspect that there will be further announcements in relation to this matter.

Police have a sworn duty to assist community members who are in need or to confront offenders, whether that officer is on or off duty. Today I am asking members to take an important step and to acknowledge that the occupation of a police man or woman brings with it a different set of dangers to other occupations, even those of other emergency service personnel. Checks have been done with the Ambulance Service of New South Wales and Fire and Rescue New South Wales with respect to officers being killed in the line of duty. I am informed that in the past 10 years there have been no paramedic workplace fatalities as a consequence paramedics responding to call outs. I am similarly advised that Fire and Rescue New South Wales has no record of any incidents involving firefighters being killed by a member of the public as a consequence of their job in the past 25 years. As I have said, 17 police officers have been killed whilst undertaking their duties since 1971. Every day more than six police officers are assaulted.

When members opposite consider why police should be given special consideration, I take the House back to 1997 when former Attorney General Jeff Shaw, an individual well respected by all members in this place, spoke on the Crimes Amendment (Assault of Police Officers) Bill. He said:

> This bill is predicated upon a belief that police officers are rightfully owed a measure of protection by the community. That is so for at least two reasons.
>
> First, police officers place themselves in positions of risk on behalf of the community. Second, an attack on a law enforcement officer strikes at the core of our system of democratic government.
>
> Those who seek to harm the persons responsible for the enforcement of laws passed by Parliament should be subject to special punishment.
>
> That principle is already recognised in the Crimes Act. Section 58 of that Act imposes a higher maximum gaol penalty for the offence of common assault of a police officer than is imposed for the same defence against a civilian. Indeed, the relative maximum penalties are five years and two years respectively.
>
> Surprisingly ... the principle is not carried through by the Crimes Act to apply to more serious assaults that in fact inflict injury.

Coming to the assistance of the community at any time, whether they are on or off duty, is not something that police officers can make a choice about. This House needs to acknowledge that being a police officer brings with it a different set of dangers to those of other occupations. Today is an opportunity for all members, particularly those opposite, to vote in support of police officers. I take Opposition members back to the days after the murder of young Glenn McEnallay and I take them to the Labor values proclaimed by a past leader, former Premier Carr, who said:

> I want those who murder police officers to go to gaol forever. I want those who murder police officers to go to the dingiest, darkest cell that exists in a prison system ...

It was not the Coalition that used the term "rot in gaol"; it was a former Premier, Bob Carr. He said:

> We want these people to rot in gaol.

Today members opposite have the opportunity to stand up for the words of their former Premier. They also have the opportunity to stand up for the words of a former Parliamentary Secretary for Police, who said:

> The Government wants people who murder police officers to rot in prison; we have never resolved from that position.

<13>
As I told the House on 24 May 2011, I do not expect that the new legislation will need to be used often. I hope it is never used. But we need it, firstly, to deter those who would consider even for a fraction of a second murdering our police and, secondly, to ensure that those who do murder police face the consequences of their actions. I again thank all members who have contributed to the debate. I understand some members face a difficult decision, given the contributions of Opposition members. Whilst I know that they support police, I ask them to accept the proposed legislation to ensure that the integrity and position of police officers are upheld when such officers

are the victims of crime. I commend the bill to the House.

[*The President left the chair at 1.00 p.m. The House resumed at 2.30 p.m.*]

**Pursuant to sessional orders business interrupted at 2.30 p.m. for questions.**

**Full Day Hansard Transcript (Legislative Council, 1 June 2011, Proof)**
**Proof**
Extract from NSW Legislative Council Hansard and Papers Wednesday, 1 June 2011 (Proof).

## CRIMES AMENDMENT (MURDER OF POLICE OFFICERS) BILL 2011
## Second Reading

**Debate resumed from an earlier hour.**

**Question—That this bill be now read a second time—put.**

**The House divided.**

**Ayes, 19**

| | | |
|---|---|---|
| Mr Ajaka | Mr Gallacher | Reverend Nile |
| Mr Blair | Mr Gay | Mrs Pavey |
| Mr Borsak | Mr Green | Mr Pearce |
| Mr Brown | Mr Khan | |
| Mr Clarke | Mr MacDonald | *Tellers,* |
| Ms Cusack | Mrs Maclaren-Jones | Mr Colless |
| Ms Ficarra | Mr Mason-Cox | Dr Phelps |

**Noes, 16**

| | | |
|---|---|---|
| Ms Barham | Mr Moselmane | Mr Shoebridge |
| Mr Buckingham | Mr Primrose | Mr Veitch |
| Mr Donnelly | Mr Roozendaal | |
| Ms Faehrmann | Mr Searle | *Tellers,* |
| Mr Foley | Mr Secord | Ms Voltz |
| Dr Kaye | Ms Sharpe | Ms Westwood |

**Pairs**

| | |
|---|---|
| Ms Cotsis | Miss Gardiner |
| Ms Fazio | Mr Lynn |
| Mr Kelly | Mrs Mitchell |

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

<20>

**In Committee**

**Clauses 1 and 2 agreed to.**

**Mr DAVID SHOEBRIDGE** [3.44 p.m.]: I move The Greens amendment on sheet C2011-036:

Page 3, clause 3, proposed section 19B. Insert after line 2:

(5) Despite subsection (2) and section 54 (a) of the Crimes (Sentencing Procedure) Act 1999, when sentencing a person for life under this section, the court may impose a non-parole period for the sentence (that is, the minimum period for which the offender must be kept in detention in relation to the offence).

(6) Division 1A of Part 4 of the Crimes (Sentencing Procedure)Act 1999 applies to and in respect of a non-parole period set under subsection (5) despite section 54D (1) (a) of that Act.

This amendment adds two subsections to proposed section 19B—that is, subsections (5) and (6).

These proposed subsections seek to give the court the ability to craft a sentence, albeit a life sentence, that allows for a moderate degree of discretion at least in the setting of a non-parole period. In practice, these subsections would operate in this way. If this bill is passed through Parliament, the court is compelled to impose a life sentence. This amendment would not change the fact that the court is compelled to impose a life sentence where a defendant is found to have murdered a police officer. In accordance with the Crimes (Sentencing Procedure) Act in relation to parole, where a life sentence is imposed the statute does not allow a court the discretion to issue a non-parole period. The courts consistently have interpreted the Act to mean that they have no discretion to put in place a non-parole period where a life sentence has been imposed by reason of the statute.

In relation to this bill, the court will have no discretion but to impose a life sentence. Then the court faces a second absence of discretion where it will have no ability to impose a non-parole period. This is where the court may exercise these proposed subsections. If a defendant is found guilty of murdering a police officer, the court is compelled to impose a life sentence. If evidence is placed before the court at sentence that the defendant may eventually be suitable for limited release under parole or, at least, should be given the opportunity to apply to the parole board for release on parole, the court, taking into account the nature of the offence and the circumstances of the defendant at the time, would be able to impose a non-parole period. Of course, it would be subject to the existing provisions for non-parole periods where a defendant is found guilty of murdering a prison officer or any of those classes of protected professions in the Crimes (Sentencing Procedure) Act. The standard non-parole period is 25 years.

This amendment gives the court some degree of discretion. The defendant while on parole would still be subject to the life sentence and the continuing oversight of the parole board. If the defendant in any way breached parole the defendant would go back to prison for the balance of the life sentence. The life sentence would remain hanging over the defendant's head even while the defendant was on parole. This amendment allows for a modest degree of discretion where defendants, first, have served their time, which would be a minimum of 25 years; second, have proven to the satisfaction of the prison authorities and the parole board that they are suitable for release; third, have been released in accordance with a series of stringent conditions set by the parole board; and, fourth, have complied with those conditions. The usual conditions include daily reporting to police, limited places at which they can reside and remaining within the confines of the State. They would be subject to a stringent set of conditions and at all times they would still be subject to the sentence of life imprisonment.
<21>
I will cite a short extract from a Court of Appeal decision in 2000 in *Regina v Harris*, which sets out how the courts have difficulty dealing with the current law where there is no discretion to give a non-parole sentence for those serving life. After noting serious concerns with respect to a sentence of natural life, the then Chief Judge at Common Law, Justice Wood, called for a review of the prohibition. He said:

> The concern that exists in this regard, particularly for those persons who may face potential life sentences in their twenties or early thirties, with the problems of institutionalisation, and the risk of the establishment of a significant population of geriatric prisoners, are such that this area of sentencing, in my view, warrants reconsideration.

He went on to say:

> It may be that after a lengthy period of imprisonment, counselling and simple maturing, that an offender sentenced to life ceases to be dangerous. Lengthy experience with the life sentence redetermination procedure has graphically demonstrated that to be the case—

These appeal judges have had the repeated life experience of dealing with prisoners who are subject to a life sentence coming before the court to ask for redetermination under laws that will not apply to people who are the subject of a life sentence under this mandatory provision. Justice Wood has done the hard yards, he has seen the cases repeatedly brought before him and he made these observations. He went on to say:

> … and has seen a controlled and safe return to society of offenders once considered hopelessly violent and dangerous. The later release of the prisoner can be decided by the Parole Board, which is in a position to act in the light of its accumulated experience and current information concerning the prisoner's mental state and progress towards rehabilitation. Moreover, it is to have regard to the principle that the public interest is of primary importance.

Day in and day out, judges are confronted by the difficulties of life sentences and they recognise that there is a perfectly valid reason, in the public interest, to allow those prisoners who are subject to a life sentence to seek parole. This would be a very modest amendment to the bill, which would

maintain the basic principle and the commitment that the Coalition took to the election of a life sentence. A life sentence would remain; the amendment would simply allow a discretion in the court to set a standard non-parole period of 25 years so that those prisoners serving a life sentence have the option after a quarter of a century to demonstrate to a parole board—if the court has allowed it in their sentence—that they are no longer a danger to society, that they can be safely released, subject to stringent conditions, and that should they breach any of those conditions they would go right back into jail and serve the balance of their life sentence. This amendment would be a modicum of justice in this otherwise mandatory bill and I urge the House to support it.

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [3.52 p.m.]: I will reply to the statement about the amendment being a modicum of justice. I was interested in the final comments of Mr David Shoebridge, where he implied very strongly that if we were to consider the option of having a parole provision it would hang over the heads of somebody who has murdered a police officer for ever whilst they are out on parole. My interpretation of what Mr David Shoebridge said is that it would hang over their heads for ever if they were to be given parole and were back on the street, and that if they do something wrong that they would be back inside. Is that correct?

**Mr David Shoebridge:** If they breach their parole they go back inside.

**The Hon. MICHAEL GALLACHER:** I go back to an earlier comment made in the debate that if a person kills a police officer and they know they will be subject to mandatory sentencing, they will say, "I might as well keep going. I might as well kill more people." The type of person who would be going into custody for murdering a police officer—even if it was a "rash decision", as I heard it described, to put their knife into a police officer's chest—would be a very ill-disciplined person indeed.

**Dr John Kaye:** It is illogical.

**The Hon. MICHAEL GALLACHER:** No, it is not illogical, because it refers to your earlier comments that whilst the person is on parole, if they go back to criminality they will not waste their time committing the crime of shoplifting, because they know that they could go to jail for life on a shoplifting charge and that they might as well get back to being involved in serious crime because they know that they could pay the ultimate penalty anyway. The Greens argument is that people may as well make it worthwhile if they are going to get back into criminality whilst they are on parole. What a joke! Imagine if you were the victim of an armed robbery or one of your family members was murdered or viciously assaulted by somebody who was on parole for murdering a police office. How warm would you feel knowing that a modicum of justice had been applied to the offender? It is an absolute undermining of the whole intent of this bill—hardly modest, as Mr David Shoebridge described it. It comes as no surprise that the Opposition will be opposing this amendment. This bill is intended to send a clear and simple message—

**Dr John Kaye:** Point of order: It is not up to the Minister to say what the Opposition will be doing.

**TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones):** Order! That is not a point of order.

**The Hon. MICHAEL GALLACHER:** The opposition to this amendment will oppose this amendment, and we are the opposition to this amendment. This bill is intended to send a clear and simple message to potential offenders that if they murder a police officer they will do jail for the term of their natural life. We cannot have a situation where this amendment, if it were to be accepted by the House, would undermine the whole tenet of the legislation. We oppose the amendment.

**Mr DAVID SHOEBRIDGE** [3.56 p.m.]: I have heard some errant nonsense in my time in this place but the complete illogicality of the argument of the Minister for Police and Emergency Services was quite remarkable. As far as I understand the Minister, the argument is that because at the time a person committed the offence he or she might be in a certain frame of mind, that 25 years later, when he or she is out on parole—if allowed—there would be no incentive for that person to be law-abiding. That is completely irrational nonsense. Either the Minister fails to understand how parole operates—which is an indictment on him in his position as Minister for Police and Emergency Services—or he was being deliberately disingenuous.

The way parole operates is this: A convicted person is only out on parole if the court allows for a non-parole period. It is in the discretion of the court at the time of sentencing to allow for a non-parole period. There would be the standard minimum non-parole period of 25 years, so all that

would happen would be that if at the time of sentencing a defendant was found eligible for a non-parole period of 25 years, the court could impose a non-parole period of 25 years. But that does not mean that after 25 years the defendant is automatically released; it only gives an eligibility to apply for parole after a quarter of a century. It is only if the parole board considers that the prisoner is in a position to be released—after psychological evaluation and hearing from the prisoner—that the person then gets released, and released only on condition.

If people on parole jaywalk they can find themselves having breached their parole and having to go back to court. There is a far higher threshold impelling someone on parole to be law-abiding than there is on almost any other citizen, because even the slightest infringement—it does not have to be robbing a convenience store—will normally be a breach of parole and will send them back to jail to serve the balance of their life term. If the Minister had a rational reason to oppose this amendment I would be happy to listen to it. If the Minister had some evidence upon which to oppose this amendment I would listen to it. But it is simply the law and order drum being banged—this one-size-fits-all sentence, this reptilian part of the conservative mind that says this is the way we are going to deal with it: those who break the law will be thrown away to rot in jail and we do not care about what the effect is on the public purse, we do not care about public interest and we do not care about crafting justice to fit the crime.
<22>
**Dr JOHN KAYE** [4.00 p.m.]: I echo my colleague's sentiments. I will address one issue raised by the Minister. The Minister said that this amendment undermines the very essence of his legislation. He does not appear to have given enough open-minded thought to what it does. Has he given sufficient thought to how this amendment would operate in practice since The Greens voted against this legislation at the second reading stage? As Mr David Shoebridge said, in the first instance it is up to the courts to set a non-parole period, and the standard non-parole period in this case is 25 years. It would be less only in special circumstances, such as those mentioned in the second reading debate of young people who erred and who had subsequently proved they were reformed. Such people might realise the wrong they had done by finding religion or understanding the errant nature of their behaviour. The Minister shakes his head. Presumably he believes that no offender can ever be reformed.

**The Hon. Michael Gallacher:** Don't try to verbal me by calling attention to my body language. Deal with the issue and move on.

**Dr JOHN KAYE:** There is no need to get angry, Minister.

**The Hon. Michael Gallacher:** Stop trying to verbal people.

**Dr JOHN KAYE:** Calm down.

**The Hon. Michael Gallacher:** That annoys me. You are trying to verbal me.

**Dr JOHN KAYE:** Madam Temporary Chair, I ask that you tell the Minister to calm down. I may well annoy him, but I have a right of free speech in this Chamber and I intend to exercise it.

**The Hon. Michael Gallacher:** Don't verbal people.

**Dr JOHN KAYE:** I will do whatever I like. The Minister does not control what people say in this Chamber.

**The Hon. Michael Gallacher:** The Greens have spoken!

**Dr JOHN KAYE:** Yes. The Minister has failed to recognise that people released on parole are held to a high standard of behaviour and that breaching that standard in any way will result in their return to prison. Offenders might spend 25 years serving a non-parole period, satisfy the Parole Board that they are not a risk to society and that they understand the nature and impact of their crime, make amends and be released. Any minor or major transgression will result in their return to prison. The Minister's argument turns on the idea that, after having spent 25 years in prison and knowing that one foot wrong could result in return to prison, offenders will decide that if they are going to commit a crime, they might as well commit a serious one. It does not work that way. A person who still had that intent would not be released by the Parole Board. It is unrealistic to say that such a person would be released on parole.

This amendment is designed to restore some degree of justice and judicial discretion to cater for those cases in which people can genuinely reform or in which the circumstances of the case do not warrant a life sentence. Anyone convicted of killing a police officer will still be subject to a life

sentence. This amendment simply provides some incentive for offenders to understand what they have done wrong, to reform and to behave in such a way that they can persuade the Parole Board that they should be released. Of course, they would be required to maintain exemplary behaviour.

**Question—That The Greens amendment [C2011—036] be agreed to—put.**

**The Committee divided.**

**Ayes, 17**

| | | |
|---|---|---|
| Mr Buckingham | Mr Moselmane | Mr Shoebridge |
| Ms Cotsis | Mr Primrose | Mr Veitch |
| Mr Donnelly | Mr Roozendaal | Ms Westwood |
| Ms Faehrmann | Mr Searle | *Tellers,* |
| Mr Foley | Mr Secord | Ms Barham |
| Dr Kaye | Ms Sharpe | Ms Voltz |

**Noes, 19**

| | | |
|---|---|---|
| Mr Ajaka | Mr Gallacher | Reverend Nile |
| Mr Blair | Mr Gay | Mrs Pavey |
| Mr Borsak | Mr Green | Mr Pearce |
| Mr Brown | Mr Harwin | |
| Mr Clarke | Mr Khan | *Tellers,* |
| Ms Cusack | Mr MacDonald | Mr Colless |
| Ms Ficarra | Mr Mason-Cox | Dr Phelps |

**Pairs**

| | |
|---|---|
| Ms Fazio | Miss Gardiner |
| Mr Kelly | Mrs Mitchell |

**Question resolved in the negative.**

**The Greens amendment negatived.**

<23>
**Clause 3 agreed to.**

**Title agreed to.**

**Bill reported from Committee without amendment.**

**Adoption of Report**

**Motion by the Hon. Michael Gallacher agreed to:**

That the report be adopted.

**Report adopted.**

**Third Reading**

**Motion by the Hon. Michael Gallacher agreed to:**

That this bill be now read a third time.

**Bill read a third time and returned to the Legislative Assembly without amendment.**