CRIMINAL LAW AMENDMENT (HOME BURGLARY AND OTHER OFFENCES) BILL 2014

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 20: Sections 401A and 401B inserted —

Debate was interrupted after the clause had been partly considered.

Mr P. PAPALIA: I think at the time of the last interruption, I was talking about the database. The minister had indicated that there is no new database; it is just that there are new categories upon which the offences are measured and recorded and then that will be in the database in the future. Noting the concerns articulated by our lead speaker, and indicated by the movement of the opposition's amendment, and the minister's confidence in rejecting that amendment, in five years' time when we are in government and the present government is in opposition and we are assessing this legislation in accordance with the amendment, will we be able to tell from the database how many individuals incarcerated or detained as a consequence of the changes were suffering from some degree of mental illness? If the minister wants to be more specific, I would say that this applies to prisoners who had been diagnosed with a mental illness at the time of their incarceration and were being treated, albeit not to such a degree of impairment that they were incapable of pleading because they had gone to prison or to detention. Will we be able to tell?

Mrs L.M. HARVEY: At present, as I mentioned earlier, the information that we have been extracting is from the case management system, and retention of that data and that information is not required as part of that case management process. The answer is no. Unless it is specifically referred to through judgements and those sorts of things, that information would not be recorded.

Mr P. PAPALIA: Thank you, minister. That makes it even more extraordinary to contemplate that the minister is confident she does not even have to consider our amendment, because she is happy that there will not be any cases of injustice in the course of enacting the law. Putting that aside, I pointed out that I have consistently asked the Minister for Corrective Services, for at least five of the six years the present government has been in office, whether his department is capable of indicating how many people in the prison system have been diagnosed with a mental illness at the time of their reception. If the minister is interested the minister's response is contained in the answer to question on notice 3563 asked on 18 February. He indicated that still, after all these years of me drawing attention to the inadequacy of the system —

> … the number of prisoners who were being treated for a diagnosed mental illness at the time of reception is not recorded in a manner that is easily retrievable.

Noting that by the minister's own very conservative measure this legislation is likely to incarcerate an additional 60 juveniles and 208 adults over three years, in addition to the already extravagant number of people who have been thrown into prison in Western Australia, might it be prudent to adjust the way that we record the data so that we can tell how many people are mentally ill or have been diagnosed with a mental illness at the time of reception? Would that not be possible, and would the minister not consider doing that as part of introducing these laws, noting that she is going to throw a bunch of extra people into prison?

Mrs L.M. HARVEY: As I have said previously, I have confidence in the current operation of section 27 of the Criminal Code that determines what should occur to people suffering from a level of impairment or psychiatric illness to the point that section 27 applies, which leads them down a different pathway through the justice system. Indeed, the Criminal Law (Mentally Impaired Accused) Act also looks after and determines what should happen to people who are incapable of pleading in court.

The Department of Corrective Services records data on general mental health issues and mental health but a wide range of illnesses and conditions fit the remit of "mental illness". The Department of Corrective Services records that information, but as far as the court is concerned with people going to trial and the consequences of their actions being dealt with upon successful conviction, the Criminal Law (Mentally Impaired Accused) Act and section 27 of the Criminal Code operate effectively to ensure that people who are not capable of understanding their actions or coping with and following a court process do not fall into the remit of this legislation, regardless. They would not be come before the courts because those other instruments would act in their cases. We do not record that information, as I said before. People self-identify with some of the illnesses. The criminal justice system and Corrective Services have mechanisms in place to assess people who come into their care and custody, but for the purposes of case management it is not recorded as part of the data and the matters we have been talking about.

Mr P. PAPALIA: I will finish on this. I make the observation that as indicated very well by the lead speaker from our side when we put the amendment, there are people who suffer from a degree of mental illness and

impairment that is not to the extent that they are excluded from being deemed capable of pleading, and as a consequence they enter the court system and are sentenced. However, because the discretion on behalf of the judiciary is being removed, they will stand to suffer as a consequence of this legislation. That is an undeniable fact. One has only to go to a prison to see people in there who are mentally ill and who entered the system mentally ill. Although they were capable of knowing right from wrong, as the member for Butler indicated, because of the nature of their illness they might be vulnerable to falling in with the wrong people and want to be seen to assist those people and end up getting involved in one of the aggravated circumstances, such as being in the company of someone who is breaking into a premises. I think there will be injustice as a consequence of that. I am disappointed that the government will not accept our amendment, but I will complete my observations now and allow the member for Butler to continue.

Mr J.R. QUIGLEY: I am happy for that clause to be put.

Clause put and passed.

Clause 21: Section 401 amended —

Mr J.R. QUIGLEY: This clause will increase sentences from 18 up to 20 years. The minister is saying it is 75 per cent of the 20 years, so there is an increment of two years.

Mrs L.M. HARVEY: No, this clause defines the new charge of separating the offences of home burglary, aggravated home burglary and aggravated burglary.

Mr J.R. Quigley: Which takes it to 20 years.

Mrs L.M. HARVEY: The maximum remains the same for aggravated home burglary.

Mr J.R. QUIGLEY: We have discussed these penalties before and I am happy for the clause to be put.

Clause put and passed.

Clause 22: Section 740B inserted —

Mr J.R. QUIGLEY: If I could be heard on this, I want to ask the minister about the review section. We discussed this briefly before, if the minister recalls, in relation to clause 20. The minister took us to clause 22, which we have now arrived at, thankfully, at five to three on the last day of the debate on this bill. The minister said that whilst a database of sorts had been extracted from the court's records—I think the minister used another word —

Mrs L.M. Harvey: The case management system.

Mr J.R. QUIGLEY: It was from the case management system. However, the system was not solid enough for the minister to share that information with us. The minister said she was not confident of its accuracy. On that premise, I put to the minister that going forward with all of these offences covered in the bill, there will be no way in five years' time to test the efficacy of this bill and the efficacy of the new law without a solid database of offenders and the offences they were charged with. I think the minister has in front of her the graphs from the Attorney General's website, which do not go to individual cases or sentences struck. I think we have already covered that. I have the same database, which I had before the minister kindly gave it to me. There was some confusion. Of course, I have already, as the shadow minister, read the Attorney General's website and the graphs, but we agreed that there is no database of sentences other than recording sentences for 100 armed robberies et cetera. The lengths of the sentences are not mentioned in those databases. Seeing that the minister is going to it, I had better go to it too.

Mrs L.M. HARVEY: As I said, the member for Butler is aware of the reporting that is publicly available on the Department of the Attorney General's website and the web page on criminal cases in the District Court, Magistrates Court and Children's Court. We regularly customise statistics for the media that are often beyond the scope of the statistics packages that are published. We review that information and can pull out that data out. Obviously, there is a limit on the range of data that we will pull out of a system and report publicly, but that information can be obtained; it just is not necessarily easy to do so. It is not necessarily as robust as the member would like it to be, should we want to publish it publicly.

I also note that in all of these statistical reports, every single page that has a list of lodgements and offence type, arrest warrants, custodial sentences et cetera comes with a range of caveats on the statistical data because, as the member says, there are differences between cases. Sometimes people will appear before a court on a multitude of charges and may appear in two databases. It is not an exact science, but I am confident that when we get to the review date, which is the fifth anniversary date after this new act comes into operation, we will have enough data to table an appropriate and informative report before the houses of Parliament.

Mr J.R. QUIGLEY: I need not rush because this is our last clause. We have enough time to look at this, because I know it is of particular concern to those members of the judiciary I have spoken with. I will refer to only one of these reports and I will not take up Parliament's time with the reports on the Children's Court and Magistrates Court. I have the District Court report in front of me at the moment. Does the minister have the District Court one?

Mrs L.M. Harvey: Yes, from 2009–10 to 2013–14.

Mr J.R. QUIGLEY: Yes; it is from 2009–10 to 2013–14. I will quickly go through the database for anyone reading *Hansard*. The first spreadsheet is on case lodgements. Although it gives us, for example, the number of lodgements for homicide and related offences, it does not give any hint as to the types of sentences imposed for each lodgement. Would the minister agree?

Mrs L.M. Harvey: Yes, that is correct.

Mr J.R. QUIGLEY: On the next spreadsheet for case lodgements by offence types, there are no details of any sentences; is that correct?

Mrs L.M. Harvey: Yes, that is right. We have determined previously that the report on criminal cases in the District Court does not report on the length of sentences. We have established that.

Mr J.R. QUIGLEY: We did that before, so we need not traverse that ground again. The point I am seeking to make is that, from these sorts of reports, we cannot extract the sentencing pattern for each individual offence covered in the bill.

Mrs L.M. Harvey: Not from these reports, no.

Mr J.R. QUIGLEY: I have spoken to members of the judiciary and there does not appear to be any database, other than the Director of Public Prosecutions' database of appeals, that keeps a record of individual sentences.

Mrs L.M. HARVEY: The information is available in the database within the case management system, because the case management system includes the sentencing outcomes, but it is available in a different format from the way that the Department of the Attorney General's reports are presented.

Mr J.R. QUIGLEY: The case management database is not published, is it?

Mrs L.M. Harvey: No.

Mr J.R. QUIGLEY: It is not a published document.

Mrs L.M. Harvey: No.

Mr J.R. QUIGLEY: Moreover, although there is a case management database, it has not been compiled to address each individual bracket of offence so that we could quickly look at armed robbery and see all.

Mrs L.M. Harvey: No; that is correct.

Mr J.R. QUIGLEY: The judges are telling me that when they come to strike a sentence, there is no database that they can go to, apart from the DPP's appeal database, to see what the other judges are doing. Would the minister agree with that?

Mrs L.M. Harvey: If the judges are saying that, I would not dispute what they are telling you.

Mr J.R. QUIGLEY: A judge has told me that he keeps a record of his own sentences, and in the judicial common room they will discuss what each other is doing, but there is no consolidated database of actual sentences.

Mrs L.M. Harvey: If that is what the judiciary is telling you, I will accept them at their word and you at your word that that was their conversation with you, member for Butler.

Mr J.R. QUIGLEY: Clause 22 refers to the very information that we will need in five years to assess the efficacy of these new laws, because, as the minister said, there will still be discretion up to the maxima to track what is happening in the courts. Does the minister not agree that it would be worthwhile for both the members of the judiciary, who would like it, and Parliament, which may need it in five years, to establish a consolidated database of sentences? We should have, as do other states of Australia, a consolidated database. This might be outside the remit of the Minister for Police and more within the remit of the Attorney General. I am not trying to embarrass her, as she has said that she is speaking on the bill on behalf of the Attorney General, but would it not make common sense that we have, as do other states such as Victoria, a database of sentences? If we say that the sentences for murder are not proper—I am not talking about aggravated home burglary—and that the judiciary is not exercising its discretion high enough for murder, should we not have a database that we can all go to and say, "There are the 83 murder cases and there are the sentences" and then we would have an evidentiary basis on

which to make an objective judgement about how it is going? Does the minister not think that would be the preferable way to go?

Mrs L.M. HARVEY: Just to clarify what my role is as a minister in the government, I represent the Attorney General in this house on legislation that falls under his portfolio, but I hasten to add that I would never speak on behalf of the Attorney General; I think he is more than capable of speaking for himself. The member has alluded to the Big Brother database of everything, which would be wonderful in a perfect world. As to the adequacies or inadequacies of the database that is made available to the courts, that is a conversation I will need to have with the Attorney General. I am not across the databases that the members of the judiciary can access when they look at sentencing criteria.

I bring us back to the amending legislation in front of us. This legislation will be passed by Parliament as being the will of the people achieved through a mandate at an election. This is the guideline that our judicial officers need to go to as a first port of call regardless.

Mr J.R. QUIGLEY: I was addressing specifically the provisions of clause 22 and the requisite review. That review will be of some limited utility without such a database, because we will be left in the situation that the Commissioner of Police was left in after the statutory review of the operation and effectiveness of the 2009 amendments to sections 297 and 318 of the Criminal Code. I turn to the conclusion and recommendations on page 11 of the statutory review, which states —

> One problem identified in stakeholder consultation was what is seen as a lack of transparency in the process of determining whether to charge an alleged offender with assault in prescribed circumstances. This factor featured prominently in the submission from the St John Ambulance Service and was also identified by the Police Union and the Mental Health Law Centre. Unlike judges' sentencing decisions, prosecuting decisions are not made public, and it seems the process adopted has engendered confusion and resentment among some of the public officers sought to be protected as well as concern on the part of advocates for the mentally impaired.
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> It is difficult to express any conclusion on the practical operation of these amendments from an investigative or prosecutorial viewpoint given the recent change in the process for determining when a person is to be charged with the summary offence in section 318 in 'prescribed circumstances'. The alleged problems set out in, for instance, the Police Union report, may no longer be relevant but it is too early to assess whether this will be the case.
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> With the exception of WA Police and the ODPP, —

The Office of Director of Public Prosecutions, that is —

> the submissions were generally lacking in detail, reflecting the relatively short time since the amendments commenced operation, and this has constrained the review. It is important to bear in mind that correlation is not causation and it should be noted that stakeholders expressed divergent views on the effectiveness of the 2009 amendments. As noted above, the statistics gathered by the Department would tend to *support* the proposition that assaults on public officers have decreased as a result of the 2009 amendments, yet they do not *prove* that this is the case.

This is the Attorney General's review. The recommendations continue —

> In the circumstances, the Police Commissioner's suggestion that '[t]o determine if the legislation is achieving its intended objectives and meeting community expectations, it is likely that a formal longer term study and evaluation will be required' has considerable merit.

My question is: to assist in the five-year review, if not in relation to all offences in the criminal calendar at least in relation to the offences embraced by the current bill before the chamber, a full statistical database of charges and actual sentencing outcomes would be desirable; would the minister not agree?

Mrs L.M. HARVEY: Member, the commissioner's suggestion is—I actually agree with him—there is always a lag time when new legislation is implemented, so the figures are not going to be as concise in the first two years as one would expect, as the case law is developed, the legislation gets embedded and the police officers and the Director of Public Prosecutions et cetera become familiar with working within the new system. A five-year review is a good statutory review time frame in that we can accept and acknowledge that there may be some lag time as the new legislation is implemented and people become accustomed to it. Then the data will settle down as we start to get the consistency of approach, as with any new legislative measure. In this space of criminal law it is more desirable to have a longer time frame of assessment to ensure that we can look for long-term trends, which are more easily identified over a 10-year period than a five-year period. This is certainly the case with road safety because the figures will jump from month to month and from quarter to quarter, but in five-year data we can start to see trends. I would concur with the commissioner's suggestion that it would be more

desirable to once again review the legislation in another five years—that is the 2008 amendments to section 297 and 318 of the Criminal Code. We could then see the trend line that was alluded to in the recommendations, which state —

> the statistics gathered by the Department would tend to *support* the proposition that assaults on public officers have decreased as a result of the 2009 amendments, yet they do not *prove* that this is the case.

Having another review period after another five years would probably allow us to determine whether that trend line is consistent with those assaults trending downwards, which is the deterrent factor and was one of the key factors in implementing that legislation. Member for Butler, I will speak to and work with the Attorney General and the Minister for Corrective Services on all these matters across our three portfolio areas of responsibility. I will raise with him the issue of whether the database that the judiciary has access to is appropriate and suits its needs, and no doubt he will have some ideas on that, but I cannot respond to the adequacy of that database and the judicial access to it, because it is not something that I am familiar with.

Ms M.M. QUIRK: Minister, I have three issues on this clause that I want to raise briefly. The minister has partially answered one, which is why five years? It seems to me that the minister has said there will be a great body of information that will make statistical analysis easier, but if there are unintended consequences of this legislation and it causes injustices, surely having a five-year review period could potentially cause greater injustice. That is my first comment. The second comment I want to make is about subclause (2), which is to review the operation and effectiveness of the Criminal Code. I would like to know what kinds of considerations will be in that review. For example, the member for Warnbro talked about the possibility that there would be a disproportionally large number of Aboriginal persons who might be imprisoned under these provisions. Would the review be limited to only whether this legislation was a good general deterrent, whether it was a specific deterrent or whether it had unintended consequences such as the disproportionate imprisonment of certain groups? Subclause (3) states that this review is to be tabled as soon as practicable after it is done. There has been a tendency under this government to sit on reports for quite a long time before they are actually tabled, and I think that would be contrary to the objective of the legislation, so I want some guidance on what the minister considers to be as soon as practicable. In that context, what tends to happen now is a report is made on a particular matter, the government then tries to fix all the issues that arise in the course of that report so that it is not tabled until such time as the government can then say, "Oh, well, all of these matters have been raised, but we have fixed three-quarters of them." It is much better if it is tabled proximate to when the government receives it. I would like the minister's comments on the review being undertaken after five years. Given that this is highly politically contentious legislation that is attached to some extent to the mandate of the people, I think four years would be a better term. My reason for that is that would then coincide with the term of a government. I would suggest a review after four years. The potential for greater injustice is then limited and it then effectively lines up with a term of government. Finally, I would like to know the terms of reference of any such review.

Mrs L.M. HARVEY: I think I have addressed why we have arrived at the review clause being five years. There is some consistency with Criminal Code amendments, although I note that the assaults on public officer legislation that was introduced in 2009 had a three-year review clause. The interesting aspect is that the statutory review of the operation effectiveness of those 2009 amendments details that a longer period of time to assess the workability and whether that legislation is working in practice and achieving its original objectives could have been better achieved with a longer review period, which the member for Butler has previously canvassed quite eloquently. I am not of the mind to change the review period from five years. When changes were made to the homicide legislation, the review period was put at five years with a review to be conducted as soon as practicable after the report is prepared, which seems to be customary drafting procedure. Whether the Liberal Party is in government or opposition when the review provision comes up, I have no doubt that many people, judging by the contributions to this debate, will have a high interest in seeing the review presented to Parliament and the usual sort of pressure will be applied to ensure that that review is conducted appropriately and that the report on the review is tabled before the houses of Parliament in a suitable time frame. Drafting consistency is always "as soon as practicable" after it is done to ensure a thorough review process.

Ms M.M. QUIRK: I apologise for asking a triple-barrelled question, but the minister did not address how broad the review will be. For example, will it look at whether fewer offences have been committed, whether there have been more or fewer convictions and whether there have been fewer pleas of guilty? Will it include a review of, for example, the time spent by victims giving evidence? A range of issues have been thoroughly canvassed by the member for Butler and it seems to me that in agreeing to this clause, we need to know how broad the review will be and what it will canvass.

Mrs L.M. HARVEY: Member for Girrawheen, consistent with other review clauses and other reviews of legislation, the review will look at the operation and effectiveness of the amended provisions.

Ms M.M. Quirk: What does that mean?

Mrs L.M. HARVEY: It will refer to the second reading speech for the purpose of this legislation. The purpose of the legislation as described in the second reading speech is that it is envisaged that the legislation will act as somewhat of a deterrent. It will ensure that appropriate penalties are imposed. I refer to *Hansard*, which reads —

> In making these amendments, the government is determined to ensure that burglars who commit numerous home invasions, which can involve serious violent offences, are incarcerated for longer periods; to deter such offenders; to ensure that such offenders are kept out of circulation longer; and to reflect community abhorrence of such offending.

The second reading speech then goes on to describe in detail the purpose of the legislation. I envisage that the review will look at such things as the number of offences that have resulted in a conviction and the sentencing outcomes of those convictions. I also envisage that it will cover the rate of burglaries per 100 000 in Western Australia, because the intention is to deter and suppress this behaviour by having a mandatory penalty that will act as a deterrent, but it is also about removing offenders from the community so that they cannot reoffend. It is intended that this legislation will reduce the number of home burglaries and the rate per 100 000 of home burglaries. I anticipate that the review will cover those matters.

Ms M.M. QUIRK: I want this recorded in *Hansard*, because the minister and I may or may not be here in five years. A review looking at the effectiveness of the legislation needs to incorporate an examination of whether there are fewer or more guilty pleas and the impact of the legislation on victims. This legislation is ostensibly about a sentence that is more commensurate with community opinion and that shows that we are all sensitive to victims of these heinous crimes being concerned that the punishment fits the crime. It seems to me that if there are fewer guilty pleas and more contested matters and the need for witnesses to give evidence in court, those things should be taken into account when assessing the effectiveness of the legislation, because as the minister rightly knows, having to give evidence in court is traumatic for victims and that should be weighed against any consideration as to whether offence numbers have gone up or down or whether there has been general deterrence. To have a review without taking into account the possible impact on victims is incomplete.

Mrs L.M. HARVEY: The matters to which the member for Girrawheen referred go to the heart of the operation of the legislation. I expect that the statutory review of the operation and effectiveness of the 2009 amendments to sections 297 and 318 of the Criminal Code will go into a range of areas and matters that were canvassed in the second reading speech and during consideration in detail.

Ms M.M. Quirk: It should have the impact on the victim having to give evidence at trial and specifically canvass the places that you referred to. All we need is some sort of undertaking in *Hansard*, which becomes guidance for the reviewer. That is an appropriate matter to be taken into account to give a complete picture about the effectiveness of these laws.

Mrs L.M. HARVEY: Certainly, the Attorney General will be tasked with the responsibility to do the review at the time. Obviously, the impact of guilty pleas will have to be considered as part of the review because that goes to the heart of the effectiveness of the operation of the legislation and the impact it will have on the court system. I would take it for granted that that would be one aspect of the implementation of the legislation. Member for Girrawheen, I think that I have just put on the record that my expectation is that that will be considered as part of the review.

Clause put and passed.

Clauses 23 and 24 put and passed.

Title put and passed.

Third Reading

MRS L.M. HARVEY (Scarborough — Minister for Police) [3.31 pm]: I move —

> That the bill be now read a third time.

MR J.R. QUIGLEY (Butler) [3.31 pm]: In making my comments to the third reading of the Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014, I will talk about where this all started. The Minister for Police referred several times to the mandate the government achieved from voters at the last state election. During my second reading contribution, I said that is not a mandate. It is not a mandate that the Labor Party would recognise so it is not a mandate that it would oppose. The Leader of the Opposition made that clear during the election campaign. How did this arise during the election campaign? Prior to the election campaign and during the last Parliament, there had been no discussion in this Parliament about the need for this sort of legislation. There had been none whatsoever. The starting point was an absolutely wretched and disgraceful comment by the Premier of Western Australia. He appeared on television and said, "I know, and we all know in the community, that some judges are not doing the right thing." I thought, "This is going to get

interesting down the track because sooner or later the Premier will have to stand and identify the judges who are not doing the right thing so that we can assess their performance."

In my second reading contribution I challenged the Premier to come forward to identify those cases and to identify those judges who are not doing the right thing. In an act of absolute parliamentary cowardice, the Premier did not enter this debate once. The Minister for Police was given carriage of the matter in this chamber. I do not criticise the minister because, as she said, "I am not a lawyer and I don't appreciate the nuances of the law", and I appreciate that, but she said, "I didn't appreciate the impact of the sentencing amendment acts and the transition provisions that reduced a 20-year maximum sentence in the Criminal Code to 13 years and four months." However, the Premier gave her carriage of this matter in this chamber. The Minister for Police and I have come a long way during the debate over the last week or so. At the outset of the debate, the minister named three cases. I have previously given the full recitations for the cases of Thorn, Miller and Ugle. They were the examples given of judges not reflecting community standards. Together with the Premier's public statement that some judges are not doing the right thing, any reasonable person reading that could come to the conclusion—as the judiciary did—that the government was undermining the judiciary by criticising its performance. During the course of the debate, especially today, the minister acknowledged that there is no criticism to be made of the judiciary's performance. She said that the sentences struck in those cases were within the constraints of the laws passed by this Parliament. I will use the Thorn and Miller cases as examples. The maximum sentence available for sexual assault in the course of an aggravated home burglary is not 20 years, as the minister mistakenly believed—I am not criticising the minister—and the court correctly identified that the highest available sentence was 13 years and four months. In the sentences struck, when we factor in the discounts the judges had to give, it actually came to a little over 75 per cent of the maximum sentence. I named the judges earlier. Justices Wheeler, Buss, Miller, Pullin, Mazza, Steytler, McLure and Roberts-Smith all did a magnificent job because the sentences they struck equalled or just exceeded the 75 per cent that the government wants in those particular cases. With some graciousness, the minister conceded in this chamber today that after further examination, she makes no criticism of the judges; it is the law that she is concerned about.

Where does that leave the Labor Party? The Premier said the Liberal Party is tough on crime; that it is going to introduce a mandatory minimum. The Liberal Party, during the state election campaign, ran an advertisement day after day that asked, "Are you going to agree with this, Mr McGowan, or are you soft on crime?" I heard that advertisement run three or four times a day for the entire week, before Mr McGowan said, "Yes, we will not oppose this proposal." What was kept from him and what was kept from the public of Western Australia was the disgraceful proposition that has been brought into this Parliament, that there would be a statutory mandatory minimum of 15 years' imprisonment imposed on an adult committing murder. That is three years below the minimum sentences being imposed by the courts. We asked the minister whether she has any evidence of any lower sentences. The minister said that she does not. Disgracefully and scandalously in relation to a minor, if a person aged 17 years and 11 months invades a home with a weapon in circumstances of aggravation, they will receive a mandatory minimum term of three years' imprisonment! The Liberal Party did not tell the public that that was its proposal. We are going to send a message to the judges that it is acceptable to have a minimum term of three years' imprisonment for murder. This is unbelievable.

The member for Forrestfield comes in here and says, "We're tough on crime. We're tougher than Labor—always are; always will be!" What an empty tin drum he turned out to be! I now turn to page 26 of the uncorrected daily *Hansard* of 17 March. I put it to the minister —

> To understand that—because the minister said in response to an earlier answer that it was the policy that the government took to last the election—if a court sentencing a juvenile for murder committed during an aggravated home burglary does not impose life imprisonment, the Liberal Party is happy with a three-year term of imprisonment?
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> **Mrs L.M. HARVEY**: It should be at least three years, as a minimum, to a maximum of life imprisonment. We are leaving that maximum of life imprisonment at the discretion of the court, but we are mandating that that term starts as a minimum of three years.
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> **Mr J.R. QUIGLEY**: Is the minister saying that—I will get back to the question—if the judge decides in respect of this young offender, a 17-year-old, who commits murder during an aggravated home burglary, the minister will have no complaint if they follow this legislation and imposes the mandatory minimum term of three years?
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> **Mrs L.M. Harvey**: Clearly.

The minister was clearly happy with that. The Labor Party is not happy with that. The Labor Party is not happy with the prospect of a judge, following this legislation, imposing a mandatory minimum of three years' imprisonment. The Labor Party is not happy with that. The Western Australian public will not be happy with

that. I cannot wait until the next leadership debate when that answer is read back to the public of Western Australia. I know what the minister will say. She will say, "There's a maximum of life", but she also said clearly this government would be happy and will not go out onto the ramparts and criticise judges if they impose the mandatory minimum. This is scandalous. This is outrageous. Talk about soft on crime! This is a pathetic stand to take on crime. It is an insult to the families of every murder victim in Western Australia—past, present and future—to think that a government would come in and utter these words. It is an absolute scandal. This is pathetic.

The minister will say, "Well, the judges have a discretion to go higher." Clearly, they have a discretion to impose higher sentences; they can impose a penalty of life imprisonment. But this legislation provides that when a judge does not impose life imprisonment on a particular offender, there must be a statutory minimum. The government is happy that that statutory minimum is a measly three years for raping someone and cutting their head off. That is clearly acceptable because it is Liberal Party policy! I can tell the public of Western Australia now that the Labor Party is not happy with that, not a bit of it. When I asked the minister whether anyone had received a sentence like this since 1829 that the government would be happy with—that is, a mandatory minimum sentence of three years—she said, "No, this is new ground." This was never explained to the public during the election and this is the problem with this sort of debate. This is the problem when this sort of matter is raised during an election campaign and policy is made on the run.

The Labor Party has a different policy. We have a policy to set up a sentencing council and to include the Chief Justice, the Commissioner of Police, the Director of Public Prosecutions and, most importantly, members of the public. We have a policy to build a proper sentencing database similar to that in Victoria and Tasmania, both of which follow the lead of the Sentencing Council of the United Kingdom, which has constructed a proper sentencing database. That council will look at a particular offence such as home invasion involving a murder, it will publish the figures of the sentences, invite submissions from the public, publish a draft paper—a draft guideline—as to what the sentences might be and then give the public a chance to respond to that before publishing sentencing guidelines for the judiciary, which the judiciary must follow. If it does not follow those guidelines, it is a ground of appeal. That is the proper, rational way to go about setting sentencing parameters—not to do it on the fly dishonestly. The minister has outed the Premier. As the Premier said, "Everybody knows that some judges are not doing the right thing." The minister stood in this place and said that she was not criticising any of the judiciary having a look at these cases, having a look at the Sentencing Legislation Amendment Act and the transitional provisions and having regard to all that. She was saying that the state of the law is unsatisfactory. The state of the law, as unsatisfactory as it may or may not be, is not as disgraceful as it will be when we send a message to the judiciary that the Liberal Party of Western Australia will have no complaint if the judiciary imposes the statutory mandated minimum. What a disgrace! I cannot say it enough, and we will be saying it right up to the next election.

The member for Forrestfield says, "We are tough on crime and we always will be." I am telling him now that everyone in Forrestfield will hear this answer. Everyone in Forrestfield will understand that the Liberal Party is sending a message to the judiciary that if it does not choose to impose life imprisonment but a minimum mandatory term of three years, that is clearly satisfactory to the Liberal Party. It is not satisfactory to the Labor Party. What did the minister say when I raised that? She said, "Well, if you think three years is too low, you tell us what the appropriate statutory minimum should be." Hells bells! That is not what members of the Liberal Party said during the election campaign. They did not say that, in government, they would be looking to the Labor Party for suggestions on how to deal with crime. That is not what they said—the fraudsters. It is a fraud. It is a fraud that is similar to the government saying that it would keep power charges in line with the CPI, only for the Premier to come into this chamber and say, "I had my fingers crossed behind my back", like a school kid, "and I only meant for one year." What a deception! What a fraud! He was saying, with his fingers crossed behind his back, "We're going to get tough on crime because we're going to come into Parliament and ask John Quigley, the member for Butler, what we should be doing when sentencing murderers." I will tell the minister what the government should do. It should ensure that murderers are put away for a lot longer than three years, and if any judge goes anywhere near three years, the minister should express her disgust. When I put the question to the government, "So you will not be dissatisfied if they impose what you are putting out as the mandatory minimum?", it said that it clearly would not. What a disgrace! I have dealt with that. This is not soft on crime; this is a capitulation.

There is one thing on which the government and the opposition are at one. It has nothing to do with an evidentiary base approach to the setting of criminal law. It has nothing to do with an objective, cool assessment of sentencing, such as the Attorney General said should happen when he said that campaigns cannot be run on a single case and that that is not a proposition. The government did not give us one case as an example, but it says that it will not criticise members of the judiciary if they impose a mandatory minimum of three years' imprisonment. I am relying upon the judiciary to be far more sensible than the Liberal Party of Western Australia and far more protective of the community of Western Australia.

The Liberal Party was concerned about only one thing, and that was mouthed by the member for Joondalup—wedging the opposition during an election campaign. On behalf of the opposition, I came out and said, as I promise the minister and every member here I will say prior to the next election, that Labor will not engage in an irrational law and order auction. Labor will promote a policy of setting up a proper sentencing advisory council to which the public can make their submissions as to what the sentences should be, to which the victims and victims' associations can make their submissions as to what the sentences should be and to which the public is invited to make written submissions, and, after cool deliberation by a sentencing council chaired by the Chief Justice of Western Australia, recommendations of what the sentences should be can then be published. We do not agree with this tripe that the Liberal Party has served up to this Parliament under the stupid banner of "tough on crime—tougher than you". This was just a lust for the vote without any proper consideration of where this was going, leading to the disgraceful outcome that we have had.

I now turn to the issue of mental impairment. We know that there is an absolute defence to crime—not guilty if a person is insane. We also know that under the Criminal Law (Mentally Impaired Accused) Act 1996, if a person is not capable of pleading, that act can be invoked and an order of detention can be made. Between those two extremes sits another band of people who were fit to plead—like Mr Troy Buswell was fit to plead guilty to his charges—but who were labouring under mental illness. We talk about Indigenous people in the Fitzroy Valley labouring under mental illness. Let us look at a real case. Two young Aboriginal people suffering from foetal alcohol spectrum disorder—I have referred to this before—enter a house looking for food because they have been virtually abandoned by their parents who are affected by drug or alcohol abuse. It is rife through there; we all know that. When they come before the court, no mention can be made of their mental illness; it cannot enter the equation. However, if we come into this Parliament and ask why Mr Troy Buswell hid from the police on the night that he pranged five cars—was he drunk?—the Premier gets on his high horse and says, "How dare you, Butler! How dare you mention this. This man is suffering from a mental illness; get off his back." What a mob of hypocrites—in their conduct, not personally. The member for Joondalup says that I am a misogynist. I find that hard to believe. There are other women in the chamber on both sides who can judge me on that, including you, Madam Acting Speaker (Ms L.L. Baker), but I have already said that in Scarborough, an area that I have lived in or near since 1974, the Minister for Police is a well-regarded woman. She is well regarded in St John's Primary School, in the parish and the community, and she was a loving and supportive wife of her dearly beloved late husband—everything. I am not a misogynist; I am not putting her down, but as a minister she is a dud, and that is not misogyny. While she has been the minister, crime rates have soared.

The ACTING SPEAKER: Member, we need to keep this to the third reading of the bill.

Mr J.R. QUIGLEY: I will, Madam Acting Speaker; I am dealing with the policy behind this bill.

The ACTING SPEAKER: No, member, stick with the bill.

Mr J.R. QUIGLEY: I will stick with the bill.

When it comes to mental illness, and the opposition's reasonable amendment, it is not that people who are suffering from foetal alcohol spectrum disorder get a free ticket out of prison, and it is not that they do not serve significant time for their crime, but when they have a proven mental illness, that can be taken into the balance and considered. It is not that they do not serve significant time, but they do not serve a mandatory term. That was a reasonable suggestion, and I thought it was reasonable, because that is what the Premier of Western Australia said in his interview with PerthNow, published on 24 July 2014. When Magistrate Crawford's concerns about sentencing people with foetal alcohol spectrum disorder were put to him, he said —

> Foetal Alcohol Syndrome, which can result in a severe mental impairment, and therefore that mental impairment is considered by judges and magistrates in sentencing.

We now know that he was been utterly disingenuous at best, and was completely lying at worst, to PerthNow.

Mrs L.M. Harvey interjected.

Mr J.R. QUIGLEY: He was disingenuous and dishonest; that is the best way that I can put it. He was being disingenuous and totally dishonest with the public when he said those words, because he was saying what he thought the reporter and her audience would want to hear. However, when we come into this chamber and we raise the same thing to preserve the same position in relation to Indigenous people suffering from foetal alcohol spectrum disorder, we are slapped down and told it is nonsense. It is not nonsense if it is Mr Buswell, but it is nonsense if it is an Indigenous person.

I will now turn to another part of the bill, if I may, in the eight minutes that I have remaining. It has to do with the way that we count. Let us be under no misapprehension about who will carry the heavy yoke of this method of counting. It is the black man, as it has always been in Western Australia. The minister looks up in disbelief at my comment, but she only needs to go out to Banksia Hill Detention Centre to learn that 80 per cent of the youths in there are black. It is no different from 1829, 1879 and 1929, and here we are in 2015. The people who

will carry the heavy yoke of this are the Indigenous children. There is no question about that. I am glad the member for Kimberley has re-entered the chamber, because she bears witness to the fact that up there in the valley there is dysfunction in the families. Many of the children are without shelter and proper supervision, and can be left without food. They go into another residence and steal some food together, and suddenly it is aggravated home burglary, and we are going to give them mandatory terms. We are going to do this counting under this new section, and we are going to put more of these Indigenous children into prison.

Then the hypocrite supreme, the Premier himself, stands on the steps of this Parliament after the tragic death in the Roebourne Prison of Julieka Dhu, who was in there on a warrant for which a white person would not have been in prison. It was for unpaid fines; a white person in those circumstances would not have been in prison. Let us get this right. She dies in prison, and the Premier stands on the steps of this Parliament, now addressing Western Australians who are once again concerned about how another Indigenous person has died in custody when she probably should not have been there, and should have been in a hospital, and said that he will take personal responsibility for lowering the Indigenous incarceration rate. However, when we come into this Parliament and say that we should at least factor in mental illness when we are dealing with these young Indigenous people, the Premier does not lower the incarceration rate—he floors it; he puts his foot right to the firewall on the accelerator and he accelerates the rate at which Indigenous people will be incarcerated. It is scandalous for the Premier to stand on the steps of this Parliament and say that he will take personal responsibility, and then have the gall to attack the judiciary and say that everyone knows that judges are not doing the right thing, and then, in an act of ultimate cowardice, refuse to come into this chamber to take part in the debate at all to explain himself, and then to accelerate the rate at which Indigenous are incarcerated. We are not saying that they should not be imprisoned; we say that we should take into account their mental circumstances, as the Premier wanted to take into account Mr Buswell's mental circumstances. It is just disgusting! It is absolute hypocrisy.

I am glad the member for Forrestfield has returned to the chamber to hear me once again say, "Gunga din, you stand up again and say we're tough on crime; we're tougher than you. We always have been and we always will be." I will read back to him time and again what this government says about murder. It will make no complaint against the judiciary if it imposes the mandatory minimum of three years' imprisonment for murder. That is absolutely disgraceful. As for the member for Joondalup saying it is not good enough, we gave the people our undertaking during the election campaign, and Labor does not go back on its undertakings. This is unlike the Premier, who gives an undertaking that power prices will not rise faster than the rate of inflation, and then says that that was only for one year, although he did not say that. We do not go back on our undertakings. So when we said to the people of Western Australia that we would not oppose this legislation, we were telling the truth. We are not here to oppose the legislation; we are here to criticise those aspects of the legislation that are disgraceful, and an affront and an offence to this community.

As for the member for Joondalup, who has asked how I am going to vote, we all know how a vote is taken in this house. It will be put that the bill be now read a third time and if the minister's singular voice says, "Aye", and no-one else speaks, it is carried; there is no formal vote. But I can tell the member for Joondalup, because I think he has the heart of a mouse—he has no courage at all—if he wants to see how I will vote, I can give him a bit of instruction, "McGoose". To see how I vote, he has to only return to this chamber during the third reading and vote, "No", and then he is entitled to call a division. Then he will see what side of the ledger John Quigley's name, the member for Butler, appears. The bill will still pass if he comes in and calls a division, but I say, for all of his high and mighty words, Minnie Mouse does not have the courage to come into this chamber and put us to the test. That is what I say about the cultist from Joondalup. He does not have the courage. The cultist from Joondalup and his mates who are trying to take over the Moore division of the Liberal Party are all blow. Come in here, member for Joondalup, wherever you are hiding in this Parliament, because you are not in the chamber now, and vote no and call a division to see which side of the chamber John Quigley sits on. That is the challenge he put to me.

MR P. PAPALIA (Warnbro) [4.02 pm]: There can be few less attractive responsibilities than that of following the member for Butler in the third reading debate when he has his dander up. Nevertheless, I will undertake that responsibility today because I want to close my contribution to the debate on the Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014 by summing up how things have gone. I agree entirely with the member for Butler's observation about all the bluster and all the advertising and millions of dollars spent by the Liberal Party at the last election to convince the people of Western Australia of what this legislation would do. Firstly, it was meant to be tough, and, secondly, it was meant to have a positive impact on the rate of the crimes it seeks to address. We had a good deal of debate on this legislation that provided a good opportunity to hear from the minister, and through her from her adviser, about the extent to which any research was undertaken and any modelling was done to create a portfolio of evidence to support the argument that this is good legislation and that it will do what it is claimed it will do. It is pretty clear that we have found that it certainly will not do that. The minister provided no evidence that was not refuted, and the minister agreed it did not demonstrate what she

had claimed. The three cases she cited with regard to aggravated burglary were unpicked by the member for Butler. I understand that the minister was incapable of refuting the arguments that the member for Butler made to suggest that the judgements made in those cases reflected appropriate judgements by the courts involved and that they reflected entirely the expectations of the people in accordance with the law. What the law compelled them to do, they did. There is no evidence that this law will somehow rectify failures or flaws on behalf of the judiciary in regard to aggravated burglary. There has been no evidence to suggest that the judiciary is not reflecting community expectations, despite all the claims made at the last election, subsequently, and even in the minister's second reading speech in which, again, effectively, the untruth that the judiciary was not reflecting community expectations was repeated. The attack on the judiciary was proven through the course of this debate to be entirely unfounded and wrong. That is the first observation I make in conclusion.

I move on from the front part of the amendment to the three strikes' part of the amendment for my second observation. As I indicated in the course of the debate, I am concerned that very little work has been done to determine whether this bill will have a net positive or a net negative outcome for the people of Western Australia. I am not talking about whether people will go into detention and whether Aboriginal people will be disproportionately impacted, because I know that will happen. There will be an extremely disproportionate impact on Aboriginal people. The only accurate, qualified and focused analysis of the impact of the three-strikes laws was done in 2001, and it confirmed at the time that the law—the current law—was acting in that fashion. We know from the discussions in the debate and the comments made by the minister, and her advisers through the minister, that this legislation will be even more onerous on the same subset of people. Under the current three-strikes laws, between 70 and 90 per cent of juveniles who end up in detention are Aboriginal. Therefore, we cannot pretend that when the laws are changed, without any science to it—it is an effort to reduce the number of strikes that they encounter before they enter the prison system—that that will not impact on Aboriginal people in almost the same manner, or at least in the same ratio. It is undeniable that there will be a greater number—I am not talking in percentages—of Aboriginal juveniles entering the detention system. We know that will happen, and that is what is disturbing. It is not that I particularly object to locking up people. I told the minister I would fully support the legislation if she could provide me with evidence to suggest that putting these particular juveniles into a detention facility earlier would restrain them in any way during the 12 months they were detained and that detention would change their behaviour for the better, but she was incapable of doing that. We know undeniably that when Aboriginal juveniles get out of Banksia Hill Detention Centre, they reoffend at a rate of 80 per cent. That is just a fact. We also know that one in three of them who come out will reoffend after they turn 18 and will be sentenced to adult imprisonment. We also know that when Aboriginal people in Western Australia get out of the adult prison, they reoffend at a rate of 70 per cent, which pretty much means that if a person enters Banksia Hill and they are one of the unfortunate one in three, they will be in prison for the rest of their lives.

There are people who would not care about that, and at times it sounds like there are plenty of members on that side of the chamber who would not care. But that is a simplistic and superficial way of looking at it. If members think that is great because while they are in prison they cannot offend, the problem is they will come out. The vast majority of people who go into prison will come out. There are some sitting in there who look like they will never come out because of the time at which they were sentenced, but this is a different matter. Most people in prison today will come out. The only question is whether the experience of being in prison will have a positive or negative impact on their reoffending and whether it will make them more or less likely to reoffend and hurt more people. The evidence that we have—the government is incapable of presenting any to the contrary—is that it will make them worse, particularly in our juvenile detention facility. No amount of reference to a future amendment to another act and the potential benefits of that future amendment will allay any fears about that. No amount of trial programs conducted within the framework of a commercial-in-confidence environment in a single location, or even in multiple locations, will satisfy my or most people's concerns, when looking at this in a dispassionate and logical fashion, that this legislation will make things worse. It will not make things better. It will result in a massive increase in the recurrent tax bill for the Western Australian taxpayer and the taxpayers will not get what they are being told they are going to get. They will not get a better outcome or deterrence. The one thing it will achieve is a degree of punishment—but one has to wonder about that too. If it is that bad, why is it not working?

I think that what we have undeniably, as has been so clearly demonstrated, is something that is not a law; it is a stunt. It is not an initiative; it is a slogan. It is not a way to deal with a problem, unless it was the problem of getting the Liberal Party re-elected at the 2013 election. It was suffering at the time after being caught flat-footed. The opposition, with far fewer resources, had come up with better ideas that had captured the imagination of the people of Western Australia. The government switched the switch, as it always does, to the one remaining field of endeavour it appears to have —

Several members interjected.

Mr P. PAPALIA: A degree of credibility? Anyone who assesses the outcomes, activities, behaviour and performance of the government in that field of endeavour would have to conclude that it failed. The government flicked the switch there because that is its comfort zone.

Mr J.R. Quigley: Do you think they've got any credibility left after a mandatory minimum of three years for murder?

Mr P. PAPALIA: I reflected on that. That was my first observation. As has been clearly demonstrated by the member for Butler, not only does the claim of being tough not stand up if we look at it and demand a little more modelling, analysis, research, study or argument, but also it obviously does not stand up even in the high-end part of the legislation, which deals with aggravated assault when people are murdered by a juvenile, for which there is a minimum sentence of three years. I do not think the minister intended that a juvenile offender who killed someone after breaking into their home would get a lower sentence. Perhaps I am too generous, but I do not think the minister intended that. It looks like a blunder. It looks like a failure. It looks like inadequate preparation work, despite the fact that she had two years and one month to prepare this legislation. It took her a ong time to get her most important legislation, as the government claimed at the last election, into the house.

As we have heard, an incredible amount of money was spent on advertising during the election campaign to tell the people of Western Australia that this was the first thing the government would do when it got into power, and it never happened. There is a reason for that. I do not think it had the legislation drafted. I think this was a thought bubble by Ben Morton based on some focus groups. He suggested that the government go this way. It had a bit of a line about maybe having another mandatory sentence argument that might work, and it tested it and it looked as though it would work so it rolled it out big time with advertisements. Subsequently, the minister and the minister she is representing had to cobble together a bit of legislation, which is flawed because it applies a lower minimum mandatory sentence for murder by a juvenile who breaks into a house than any sentence given to any offender for that offence in the history of Western Australia. I do not think she would have done that had she thought about it a little more and spent a bit more time on the legislation. That is why I think it is very clear that it was just a slogan and a stunt.

As we have heard from the member for Butler, we know that the people who commit those heinous offences go to jail. They get big sentences and they end up in prison for a long time. However, the people this legislation will impact on in a big way are the very people the Premier made a promise to on the steps of Parliament last year. I think he may have even gone out onto the steps of Parliament today and begged those same people to walk a mile in his shoes and consider his plight, which was an extraordinary approach. I found that unbelievable, but he did it. Those are the people who will be most negatively impacted. Certainly, the rest of Western Australia will be negatively impacted, because some offenders will come out worse. The crime university will ramp up, the number of graduates will expand and the number of victims of crime who would not otherwise have been victims will grow under this government because of this law. Some people will reoffend at a higher rate than they would otherwise have done. Worst of all, prior to introducing this law, the government cut the only intervention that targeted the top-end juvenile offenders. The government is saying to the people of Western Australia that its approach is to wait until someone offends badly enough so they can be thrown in jail, and that is what it is going to do. That is lazy, it is not effective and it will make things worse. The government should be doing everything it can to focus on changing these individuals before they get there. The approach to take is the one that we have recommended for years. It was in place but was not effectively administered when it was cut in 2010 by former Attorney General Christian Porter. It has been modified a little but a similar version is in operation in the United Kingdom, which I referred to earlier and to which the member for Maylands has drawn my attention. That approach employs effectively a more ramped-up modern version of multi-systemic therapy, focusing on the dysfunctional family home—the source of the problem. That is what the government should be doing. The government has money to spend on it, but it is spending money instead on incarcerating juveniles, after they have gotten bad enough, at a cost of $250 000 a year each.

It does not make sense to me. It made sense to the government in the context of the crucible of an election, and it was obviously part of what got the government over the line. I am not sure that people are so naive and willing to believe the slogans and stunts anymore. I hope that because we are two years from an election, there will be a reasonable consideration of what this government does and a lot more focus on the substance of the argument, rather than the slogan. It will be very interesting to see. I do not think the Premier has any credibility anymore. He has gone. Sixty per cent of the people in Western Australia say that they prefer the other guy. I think the minister's credibility has taken a serious blow through her introducing this bill and not being capable of providing any evidence to back her argument. All she has done is salute the commanding officer and come into this place and deliver a pretty flimsy argument for her legislation. Ultimately, after the dust settled, it came down to the minister saying, "This is what we said we would do, this is a judgement call by us and this is what we are going to do." No matter how many arguments or reasonable positions were put by the member for Butler about the mentally ill people who will be impacted by this change to the law, the minister just denied it and refused to

accept it and stormed on. It is admirable that she is being loyal to the Premier and it is commendable if we consider that she is willing to sacrifice her integrity to justify walking this bit of legislation through the house, but, beyond that, it is sad.

I have put all the arguments on behalf of the people who have written to the minister about their concerns over the impact on Aboriginal juveniles in particular and juveniles in general. I think it was acknowledged by the minister during the debate that there are two circumstances in which admission of guilt will result in individuals not being able to seek diversion and ending up in detention. A fine was one of them and I think the other one was a community corrections order.

Mrs L.M. Harvey: It is an admission of guilt that results in a punishment being administered.

Mr P. PAPALIA: Those two were considered punishments.

Mrs L.M. Harvey: The punishments exist under separate provisions of the Young Offenders Act to the other actions that are available to the court, but we are not changing that.

Mr P. PAPALIA: But the minister is saying that two of those punishments available meet the definition of punishment through the amendment here and, as a consequence, if an offender admits guilt for those two categories of punishment, they will get a strike. That means that there is a whole cohort, but we do not know how big that is. Either they will get a strike or the courts will choose to give them something else—a punishment that does not attract that admission of guilt. I do not know which will happen. I suspect the courts will try to do everything they can to avoid loading up the detention centre with even more detainees, but if that does not happen, more will go in. It will be between 60 and 130 over three years, depending on whether we believe the department or the President of the Children's Court. That is a significant number. All of those people, I believe, would then be vulnerable to becoming worse than they were and represent missed opportunities, because the minister has not exercised her mind and directed the government's energy to intervening before they get bad enough to get to prison. Instead, the minister's focus has been on this, which is at the other end. It is like they are falling into the river and the minister is not going upriver to see who is pushing them in. The minister is just plucking them out of the river later.

Ultimately, it is a disappointment. The whole debate has been interesting and worthwhile despite the minister and members opposite criticising us for engaging in it, because we have exposed the fact that the minister has no evidence. The minister has no argument; this was nothing more than a shallow election stunt. I do not think it will work next time around. I think the minister is in a world of hurt now. Given that the government is doing this two years out from an election, we will have time. We will not have to wait five years to ascertain whether it will have a negative impact. It if it starts impacting next year, it will be pretty clear; that will be the interesting thing to watch. Every time members on that side try to roll out an argument about being tough on something, I will demand that they be a little smarter on things. I will demand the evidence and that they make more of a case. I hope that, as time goes by, I am not the only one in Western Australia who demands that. All of us on this side will do it. I hope that the people who observe and report on the matters will expect a lot more of the government than just a one-line, four-word slogan, which is not a promise; it is a lie, though. I hope that the media who comment on these matters demand more.

I have great respect for the people of Western Australia and I think they are getting a bit tired of it. They are a bit tired of having their intelligence insulted by people such as the Premier and the Minister for Police when she makes claims without any substance, and I think over time it will not be effective. I know the minister is doing it because that is the muscle memory going on; the minister is repeating the same thing she has done in the last few battles, but that was the last war and there is another one now. People expect a lot more now that the government has trashed the state economy. They will want to know the impact of that on law and order especially. They want to know whether it is a net positive or a net negative and what on earth it will cost, because there may be a much more efficient, effective and, ultimately, cheaper way of doing things, and this is not it.

MRS L.M. HARVEY (Scarborough — Minister for Police) [4.25 pm] — in reply: It is my pleasure to be closing the debate on the Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014. By the sounds of it, we are about to pass rather than divide on this legislation. For many Western Australians, our homes are our sanctuaries and everyone has a right to feel safe in their homes and the thresholds of our homes need to be protected. Contrary to the claims of the member for Warnbro that we had this policy shoved in some sort of drawer and drew it out in desperation in response to a barrage of Labor Party policies in the last election, we launched our 2013 election campaign with this commitment to impose tough new penalties for offenders who commit serious physical and sexual offences in the course of a home invasion. We also pledged to address the shortfall in the existing three-strikes legislation by ensuring that three burglary offences and convictions will mean three strikes as opposed to three trips to court when numerous burglary offences are bundled together.

Our community feels very strongly that criminals who committed violent and sexual assaults against victims in their own homes were getting unacceptably lenient sentences that they felt did not reflect the severity of their crimes or the damage and pain caused to the victims. They also felt that the prolific and repeat recidivist home burglary offenders offending in their homes and their neighbours' homes and in the community were able to continue offending because they were not given a sentence of imprisonment or detention to put a stop to the offending behaviour. This legislation is about protecting the victims of these crimes and this legislation was developed because of the public sentiment. This legislation is acting for the community of Western Australia.

During debate, a number of opposition members made many comments about this legislation stating that they did not agree with mandatory sentencing and that it does not deter offenders. Deterrence is one element of mandatory sentencing. The opposition has failed to recognise that mandatory sentencing not only incapacitates violent and repeat offenders for a time, but also gives the community confidence and comfort to know that the perpetrators of these crimes will face consequences for their actions. The member for Warnbro discussed the three-strikes changes in great detail and stated that he does not think a term of imprisonment or detention would reduce crime or do anything to change offending behaviour. He stated something to the effect of, "I oppose it on the grounds it will make matters worse. It will not work. It will make crime worse in Western Australia. It will create more victims." The member for Warnbro failed to recognise that when these prolific offenders are given the mandatory term of imprisonment or detention, not only do the victims of these crimes feel that justice has been done and that there is an appropriate consequence for the offender's criminal actions, but the offender has the opportunity to become involved in government programs that aim to prevent, deter and divert offending behaviours. For example, the Minister for Corrective Services announced just this week that the youth justice innovation fund is working with mentoring Aboriginal youth to divert them from their offending patterns and preventing them from reoffending. The amendment to the three-strikes legislation will incapacitate repeat offenders.

A lot was said and there was much passionate debate with members professing that mandatory sentencing removes judicial discretion by setting a mandatory minimum. To set the record straight, it simply sets the boundaries for judicial discretion. As legislators, it is our role, as the member for Butler agreed, to create the laws, and these laws guide the discretion available to the judiciary. The member for Butler also claimed that negating section 9AA of the Sentencing Act and not allowing for a reduction in sentence for an early plea of guilty means that offenders will have no incentive to plead guilty; there will be an increase in pleas of not guilty and this will force victims of these horrendous crimes to be re-victimised. When we drill down into that, we look to one of the very cases that I referred to in my second reading speech in which a woman was violently and sexually assaulted in her own home; this case proves the member for Butler wrong. Although the sentence reduction in section 9AA was not available at the time of this case, a similar reduction was available at the time, yet the offender did not plead guilty at the earliest opportunity. The reduction in sentence clearly did not provide an incentive, as the offender did not change his plea until the morning of the trial. Quite extraordinary and passionate contributions were made by many members. I thank them for their contributions. However, I need to call the member for Butler to account. Good grief, member for Butler—calling for a member of the government to cross the floor to call a division on legislation that he has had the courage to stand in this house and speak to for 30 minutes is extraordinary. The convention in this place is that members speak for or against legislation, or they move to amend legislation. The convention is that it is up to a member who opposes or has a moral conflict with legislation to call a division and to demand a vote on the floor of the house so that their vote can be made to count. The Labor Party has come in here and done nothing but attack the Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014. Members opposite have attacked the bill's intentions. They have said that it is too harsh, that it removes judicial discretion, that it will not work, that it will make things worse and that it will result in more pleas of not guilty and more victims, et cetera. Members opposite should have the integrity to vote against it. The vote is how we speak in this place.

Mrs M.H. Roberts: Have you read Erskine May or not?

Mrs L.M. HARVEY: I will tell the member for Midland what I have read: I have read the contributions made by members of the opposition who are morally opposed to mandatory penalties and morally opposed to this legislation. They say it does not work —

Several members interjected.

The ACTING SPEAKER (Ms J.M. Freeman): Members! The minister has the floor.

Mrs L.M. HARVEY: The fact remains that the government has the numbers. We can implement our mandate and we can —

Several members interjected.

The ACTING SPEAKER: Members, the minister has the floor. It has been a long debate; let the minister finish off.

Mrs L.M. HARVEY: I say to those members of the opposition who stood in this place and argued against this legislation, said that it was not going to work and said that they were morally opposed to it, that when it comes to putting the question, they should call a division, stand on their own integrity and stop the hypocrisy. They should either vote consistent with their rhetoric or sit down and stop the rhetoric. The fact of the matter is that we listened to the people of Western Australia —

Several members interjected.

The ACTING SPEAKER: Member for Butler! Member for Warnbro! The minister has the floor.

Ms M.M. Quirk interjected.

The ACTING SPEAKER: Member for Girrawheen, I am on my feet and you are on two calls.

Ms M.M. Quirk interjected.

The ACTING SPEAKER: You have just spoken again, so you are now on three calls.

Mrs L.M. HARVEY: The fact of the matter is that we listened to the people of Western Australia and we heard their concerns. We made a promise to them that we would ensure that sentences would reflect the severity of these crimes and that repeat offenders would face appropriate consequences for their actions, and we are delivering on that promise. We all wholeheartedly support this amending legislation and we have spoken for it, consistent with the way that we are going to vote. When it comes to a vote on this legislation, members will be held to account for the way they vote. It is not good enough to go out into the community and say, "I don't support mandatory penalties. It's not going to work; it will create more victims and it's inappropriate." It is not good enough to say all those things and then just allow the legislation to pass through the house without calling a division and having some integrity. We on this side of the house have integrity and I support this legislation. It is a step in the right direction and it will work.

Question put and passed.

Bill read a third time and transmitted to the Council.

House adjourned at 4.34 pm